

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

CASE NO: 8:03-cv-1895-T-23TGW

VIATICAL CAPITAL, INC., et al.,

Defendants.

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**ORDER**

The Securities and Exchange Commission ("SEC") files the consents of defendants Charles Douglas York (Doc. 325-2), Viatical Capital, Inc. (Doc. 325-4), and Life Investment Funding Enterprises, Inc. (Doc. 325-6)(collectively, "the defendants"). The defendants, conceding both the court's personal and subject matter jurisdiction, neither admit nor deny the complaint's allegations. Waiving findings of fact, conclusions of law, and any right to appeal this order, the defendants voluntarily consent to entry of this final judgment. David M. Levine, the receiver for Viatical Capital, Inc., also agrees to entry of this final judgment. Accordingly, the proposed judgments (Docs. 325-3, 325-5, 325-7) are **ADOPTED** as follows:

**I. PERMANENT INJUNCTIVE RELIEF**

**Section 5 of the Securities Act of 1933**

Viatical Capital, Inc., and Charles Douglas York, their agents, servants, employees, attorneys, and all persons in active concert or participation with them are

permanently enjoined from violating Section 5 of the Securities Act of 1933, 15 U.S.C. § 77e, by either directly or indirectly, in the absence of any applicable exemption:

(1) utilizing any means or instrument of transportation or communication in interstate commerce, including the mails, to sell a security through the use of a prospectus or any other medium, unless a registration statement is in effect as to the security;

(2) carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, a security for the purpose of sale or for delivery after sale, unless a registration statement is in effect as to the security; or

(3) utilizing any means or instrument of transportation or communication in interstate commerce, including the mails, to offer to sell or offer to buy a security through the use of a prospectus or any other medium, unless (i) a registration statement has been filed with the Commission as to the security or (ii) the registration statement is the subject of a refusal order, stop order, or (prior to the effective date of the registration statement) any public proceeding of examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

Section 17 of the Securities Act of 1933

The defendants, their agents, servants, employees, attorneys, and all persons in active concert or participation with them are permanently enjoined from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), in the offer or sale of any security utilizing any means or instrument of transportation or communication in

interstate commerce, including the mails, directly or indirectly:

(1) to employ any device, scheme, or artifice to defraud;

(2) to obtain money or property by means of any untrue statement or omission of a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading; or

(3) to engage in any act, practice, or course of business that operates as a fraud or deceit upon the purchaser.

Section 10 of The Securities Exchange Act of 1934

The defendants, their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this order are permanently enjoined from violating Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5, as promulgated under 17 C.F.R. § 240.10b-5, by utilizing any means or instrumentality of interstate commerce, including the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(1) to employ any device, scheme, or artifice to defraud;

(2) to either make any untrue statement of a material fact or omit a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading; or

(3) to engage in any act, practice, or course of business that operates as a fraud or deceit upon any person.

## II. INCORPORATION OF CONSENTS

The defendants' consents (Docs. 325-2, 325-4, 325-6) are incorporated by reference with the same force and effect as if fully set forth in this order. The defendants shall comply with all undertakings and agreements provided by the consents.

## III. DISGORGEMENT AND CIVIL PENALTY

The SEC's remaining monetary claims for disgorgement and civil penalties against Viatical Capital, Inc., and Life Investment Funding Enterprises, Inc., are **DISMISSED**.

Based upon Charles Douglas York's ("York") August 6, 2004, "Statement of Financial Condition" and his agreement to disgorge the assets set forth in Paragraph 14 of the consent (Doc. 325-2), the SEC does not seek disgorgement in this case. The SEC's determination not to seek disgorgement and civil penalty is contingent upon the accuracy and completeness of York's "Statement of Financial Condition" and his payment of the amount set forth in Paragraph 14 of the consent. If at any time following this order either the SEC or the receiver obtains information that York's representations to the SEC concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material way at the time York made them, the SEC may, at its sole discretion and without prior notice to York, petition for an order requiring him to pay the maximum civil penalty allowable under law. In connection with such a petition, the only issue shall be whether the financial information provided by

York was fraudulent, misleading, inaccurate, or incomplete in any material respect at the time he provided the information. In its petition, the SEC may move to consider all available remedies including but not limited to ordering York to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this order. The SEC may also request additional discovery. York may not, by way of defense to the petition (1) challenge the validity of either the consent or this order; (2) contest the allegations in the complaint; (3) assert that disgorgement or a civil penalty should not be ordered; (4) contest the amount or imposition of the maximum civil penalty allowable under law; (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitation defense.

#### **IV. OFFICER AND DIRECTOR BAR**

Pursuant to Section 21(d)(2) of the Securities Exchange Act, 15 U.S.C. § 78u(d)(2), York is prohibited from acting as an officer or director of any issuer either with a class of securities registered pursuant to Section 12 of the Securities Exchange Act, 15 U.S.C. § 781, or required to file reports pursuant to Section 15(d) of the Securities Exchange Act, 15 U.S.C. § 78o(d).

#### **V. RETENTION OF JURISDICTION**

The court retains jurisdiction for the limited purpose of enforcing the permanent injunction.\*

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\*But see SEC v. Smyth, 420 F.3d 1225, 1233 n.14 (11th Cir. 2005).

Pursuant to Rule 54(b), Federal Rules of Civil Procedure, the Clerk is directed to enter **JUDGMENT** in favor of the SEC and against the defendants.

ORDERED in Tampa, Florida, on February 8, 2006.



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**STEVEN D. MERRYDAY**  
**UNITED STATES DISTRICT JUDGE**

cc: US Magistrate Judge  
Courtroom Deputy