

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain
Order:

JOHN HAROLD DUROCHER, a.k.a.
JOHN POWERS AND JOHN
ROCKFORD and CALIFORNIA
MEDSPAS, INC., a.k.a. CALMED SPAS,

Respondents

Case No.: Alpha

OAH No.: L2007010385

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated March 5, 2007, and the attached Order Correcting Proposed Decision Pursuant to Government Code Section 11517(c)(2)(C) dated May 2, 2007, are hereby adopted by the Department of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on JUNE 8, 2007.

IT IS SO ORDERED this 6th day of JUNE 2007.

CALIFORNIA CORPORATIONS COMMISSIONER

Preston DuFauchard

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**ORDER CORRECTING
PROPOSED DECISION
PURSUANT TO
GOVERNMENT CODE
SECTION 11517(c)(2)(C)**

On March 5, 2007, Administrative Law Judge Chris Ruiz (ALJ), of the Office of Administrative Hearings, issued a proposed decision in the above-captioned case. On April 17, 2007, the agency, by Colleen E. Monahan, Senior Corporations Counsel, filed a written request with the Office of Administrative Hearings which requested a correction in the proposed decision.

The agency believes that the order of the proposed decision only reflects the conclusion stated in legal conclusion number 2. The agency requests that the order be corrected to reflect both legal conclusions 1 and 2.

On April 30, 2007, Respondent filed a letter which objected to the agency's request for correction.

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Ruling on the Request for Correction

The ALJ grants the request for correction. To the extent that the order is ambiguous, it was the ALJ's intent that the cease and desist order be upheld in full. The Order of the proposed decision, listed on page 6 of the proposed decision, is corrected as follows:

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. John Durocher and California MedSpas, Inc. are hereby ordered to desist and refrain from offering or selling or buying or offering to buy any security in the State of California, including, but not limited to, shares of common stock in CalMed Spas by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact.

2. John Durocher and California MedSpas, Inc. are hereby ordered to desist and refrain from the further offer or sale in the State of California of securities, including, but not limited to shares of common stock in CalMed Spas unless and until qualification has been made under said law or unless exempt.

This Order is necessary, in the public interest, for the protection of investors and consistent with the purposes, policies, and provisions of the Corporate Securities Law of 1968.

Other matters

This order, the agency's request for correction, and respondent's opposition, are hereby made a part of the record. This order shall be attached to the proposed decision forthwith.

The agency shall serve Respondent with the original proposed decision, a copy of this Order, and the agency's memoranda, at the time it serves Respondent with its decision in this case.

IT IS SO ORDERED.

Dated: May 2, 2007

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF CORPORATIONS

STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order:

JOHN HAROLD DUROCHER, a.k.a. JOHN
POWERS AND JOHN ROCKFORD and
CALIFORNIA MEDSPAS, INC., a.k.a.
CALMED SPAS,

Respondents

Case number: Alpha

OAH No. L2007010385

PROPOSED DECISION

This matter was heard on January 31, 2007, and February 1, 2007, at the Theo Lacy Facility in Orange, California, by Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings, State of California.

Respondent John Durocher (Respondent or Durocher) was present and represented himself and CalMed Spas (collectively, Respondents).

Complainant, Preston DuFauchard, California Corporations Commissioner (Commissioner), was represented by Michelle Lipton, Senior Corporations Counsel. Also present was Rebecca E. Gutierrez, Legal Analyst.

Oral and documentary evidence was presented and the matter was submitted for decision on February 1, 2007.

FACTUAL FINDINGS

Jurisdiction

1. The Commissioner, under California Corporations Code¹ sections 25532, 25110, and 25401, issued a Desist and Refrain Order to Respondents on December 27, 2006. The Desist and Refrain Order directed Respondents to refrain from making unlawful offers or sales of securities in the State of California. The Commissioner is responsible for

¹ All further statutory references are to the California Corporations Code, unless otherwise stated.

administering the provisions of the "Corporate Securities Law" as stated in Code section 25000 et seq.

2. On January 3, 2007, the Desist and Refrain Order was served on Respondents.

3. On January 4, 2007, Respondents submitted a written request for an administrative hearing.

CalMed Spas Business Operations

4. Respondent Durocher is an individual who was the president of California MedSpas, Inc., a.k.a. CalMed Spas (CalMed Spas). Respondents' last known business address was 23046 Avenida De La Carlota, Suite 600, Laguna Hills, California. Durocher is currently incarcerated, while awaiting criminal trial, at the Theo Lacy Facility in Orange, California.

5. Beginning in approximately December 2004 and continuing through August 2005, Durocher and CalMed Spas offered and sold securities, in the form of shares of common stock in CalMed Spas, to approximately six investors in an amount in excess of \$1,000,000. Durocher obtained investment money by soliciting investors through newspaper advertisements in the Los Angeles Times and the Orange County Register.

6. CalMed Spas' business plan was to acquire day spas and convert them into medical spas. Durocher entered into agreements to purchase two day spas: Reniu Laser Day Spa and Lisa Belle Salon (spa purchases). Durocher sold shares of CalMed Spas stock and promised investors up to 10 percent of the gross profits. After Durocher acquired these businesses, he used some of the investor's money for his own personal use. With these funds Durocher bought a home, vehicles, a \$10,000 wedding ring, and some dental work. Durocher personally kept, as compensation, approximately \$250,000 from the sale of CalMed Spas' stock. CalMed Spas collapsed when Durocher could not obtain additional financing to purchase additional day spas and to make the payments on the prior spa purchases.

7. Corporations Code section 25401 provides:

It is unlawful for any person to offer or sell a security in this state or buy or offer to buy a security in this state by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

8. In connection with the offer and sale of CalMed Spas' stock, Durocher and CalMed Spas failed to disclose material facts which a reasonably prudent investor would have considered important in deciding whether to invest. Durocher did not provide the following information:

a. Investors were not told that Durocher had been convicted of Violating California Penal Code section 487, subdivision (a)(grand theft), in 1999 and that he was on parole when he solicited investments for CalMed Spas.

b. Investors were not told that Durocher has a criminal record which includes convictions for theft and forgery.

c. Investors were not told that Durocher was using, and planned to continue using, investor money and business revenue for his own personal use.

d. Durocher did not fully disclose his and CalMed Spas' financial condition by not informing investors that CalMed Spas did not own the spa purchases without debt. Some investors believed that CalMed Spas owned, without debt, the spa purchases when, in fact, CalMed Spas owed money for the spa purchases and eventually defaulted on both loans.

9. The misstatements and omissions listed in finding eight were material facts within the meaning of section 25401.

10. Code section 25110 provides, in relevant part, as follows:

It is unlawful for any person to offer or sell in this state any security in an issuer transaction . . . unless such sale has been qualified under section 25111, 25112 or 25113 . . . or unless such security or transaction is exempted or not subject to qualification under Chapter 1 (Commencing with Section 25 100) of this part

11. The Commissioner did not issue a permit or other form of qualification authorizing the offer and sale of the securities by Durocher or CalMed Spas.

12. Respondents Durocher and CalMed Spas offered and sold shares of CalMed Spas common stock within the state of California within the meaning of sections 25008 and 25017. The shares of stock were securities as that term is defined under section 25019. The stock offered and sold by Durocher and CalMed Spas were "issuer transactions" within the meaning of sections 25010 and 25011.

13. The securities in the form of shares of common stock in CalMed Spas offered and sold by Durocher and CalMed Spas were securities subject to the qualification requirement as set forth in section 25110.

14. Respondent failed to establish that the offer and sales of CalMed Spas' stock met the criteria for any exemption from the qualification requirement stated in section 25110 for the reasons stated in findings 15-17.

Respondent Durocher's Contentions

15. Respondent is an articulate and personable individual. He testified that he has bought and sold businesses for 40 years. He has suffered convictions for forgery and other theft crimes. In 1969, he was convicted of "uttering a false instrument" and spent 3 months in federal prison. In 1977, he was convicted of "check-kiting" and spent one year in jail. In 1999, he was convicted of violating California Penal Code section 487, subdivision (a)(grand theft). Respondent testified that after his 1999 conviction he was placed on probation, and then sent to prison for 5 years because he violated his probation by associating with his girlfriend, a co-conspirator in his 1999 crime.

16. Durocher contends that the CalMed Spas venture was risky, and that his investors are unhappy because their investment did not turn a profit. Respondent further contends that as the majority shareholder, he did not need to inform the investors how he was using their investment. Before the sale of CalMed Spas' stock, Respondent hired a law firm to assist and counsel him regarding the CalMed Spas business venture and the sale of CalMed Spas stock. However, his attorneys told him that if he made a general solicitation for the sale of CalMed Spas stock, it was a "shady gray area" as to whether the exemption to the qualification requirement would still apply. In fact, Respondent's activities in connection with the offer and sale of the stock constituted a general solicitation to the public for the reasons stated below.

17. Respondent contends that he was selling a business, rather than a security, namely stock. Respondent acknowledges that the CalMed Spas stock was in his name, and that subsequent to the sale of stock to investors, he remained the majority shareholder. Respondent's concept was to purchase day spas, convert them to medical spas, and then re-sell those businesses by way of a "managing partner" concept. Respondent's former counsel, Christopher Doan, indicated that not all stock sold in California needs to be qualified. For example, the sale of stock to less than 35 people does not need not be qualified under section 25102, subdivision (f)(1). That is, the sale of stock in that situation would be exempt. There are also other exemptions to the qualification requirement. However, as stated above, if a party makes a general solicitation to the public to sell the stock, then the exemptions do not apply under section 25102, subdivision (a). Respondent contends that the advertisements he placed in the newspaper were for the sale of a business, rather than for the sale of stock. The evidence did not establish what was stated in the advertisements utilized by Respondent. However, even if Respondent advertised to "sell a business", this does not change the fact that ultimately stock was sold to the investors who responded to the advertisement. Respondent's offer to the public was, in fact, an offer to sell CalMed Spas's stock which needed to be qualified.

LEGAL CONCLUSIONS AND DISCUSSION

1. Cause exists to uphold the desist and refrain order under sections 25532 and 25110 based on Durocher's and CalMed Spas' offer and sale of unqualified stock in California. To sell common stock in California, the stock must be qualified unless an exemption applies. The burden of establishing an exemption to the qualification requirement is on Respondent under section 25163. Under section 25102, an exemption may not be had if a general solicitation for purchase of the stock occurred. While Respondent contends his public newspaper advertisement was for the "sale of a business," those offers to the public resulted in the sale of CalMed Spas stock. Durocher's argument that transactions similar to those in which he was involved occur every day is not persuasive. For example, Respondent contends that businesses are commonly sold via newspaper advertisements, and that those sales ultimately result in stock being passed from the seller to the buyer. Assuming that this is true, Respondent contends that he is being unfairly targeted. However, the fact remains that Respondent was selling stock which was not qualified, and for which an exemption did not exist. Also, Respondent's transactions were far more complex than the simple sale of a business wherein the seller purchases all the assets, liabilities, and stock. In Respondent's situation, Respondent remained the majority shareholder even after selling some of the stock. As such, the qualification of the stock was vital to the protection of the public because it was Durocher who controlled the fate of CalMed Spas, not the investors. (Factual Findings 4-17.)

2. Cause exists to uphold the desist and refrain order under sections 25532 and 25401 because of Respondent's misstatements and omissions of material facts which a reasonable investor would have considered in deciding whether to invest. (Factual Findings 6-9.)

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Pursuant to section 25532, John Durocher and California MedSpas, Inc. are hereby ordered to desist and refrain from offering or selling or buying or offering to buy any security in the State of California, including, but not limited to, shares of common stock in CalMed Spas by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact.

This Order is necessary, in the public interest, for the protection of investors and consistent with the purposes, policies, and provisions of the Corporate Securities Law of 1968.

DATED: March 5, 2007.

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings