

STATE OF ARKANSAS
SECURITIES DEPARTMENT

IN THE MATTER OF
HOPEHILL EQUITY HOLDINGS, INC.,
BERENS & COMPANY, and MARC IVAN BERENS No. S-03-012-04-FO04

AMENDED AND SUBSTITUTED
CEASE AND DESIST ORDER

This order was originally issued as Cease and Desist Order No. S-03-012-03-CD01 and included as respondents ERNESTO W. LETIZIANO and HOPE E. HILLABRAND. After a hearing held before the Arkansas Securities Commissioner (the Commissioner) pursuant to Ark. Code Ann. § 23-42-209(a)(2)(A) (Repl. 2000), the Commissioner found that the evidence did not warrant the inclusion of LETIZIANO or HILLABRAND as respondents. Therefore, this amended and substituted order is hereby issued. HOPEHILL EQUITY HOLDINGS, INC., BERENS & COMPANY and MARC IVAN BERENS are found to have violated provisions of the Arkansas Securities Act (the Act), codified at Ark. Code Ann. §§ 23-42-101, *et seq.* (Repl. 2000) and remain as respondents.

FINDINGS OF FACT

An ongoing investigation has revealed the following facts:

1. Hopehill Equity Holdings, Inc. (Hopehill) is a Nevada corporation incorporated on 12 August 2002 with its principal office stated at 205 Worth Avenue, Suite 316, Palm Beach, Florida 33480.
2. Berens & Company (B&C) purports to be a “private merchant banking and consulting firm” that provides “consulting services for companies worldwide.” The Staff has not found

records of incorporation or other business entity formation for B&C. Although B&C on its web site, www.mibcoinc.com, states that it is “NOT a Broker/Dealer or Registered Investment Advisor,” it goes on to state that its “primary product and service is providing debt capital to clients.” Its principal office is purported to be located at 9801 Collins Avenue, Suite 6G, Bal Harbor, Florida 33154.

3. Marc Ivan Berens (Berens) is the principal and owner of B&C. His address is the same as the address listed for B&C, 9801 Collins Avenue, Suite 6G, Bal Harbor, Florida 33154.
4. The address put forward for both Berens and B&C, 9801 Collins Avenue, Suite 6G, Bal Harbor, Florida 33154, is the address of a residential condominium in a high rise condominium complex called the Balmoral. Although there are a few offices in the building, #6G is not one of them. It is a residential apartment or condominium unit.
5. On 27 November 2002, Berens made an offer via email to an Arkansas resident (AR) to sell shares of Hopehill. AR had been contacted by Berens by telephone some time earlier, having been referred to AR by a mutual friend. After asking AR to sit on Hopehill’s board of directors, the offer was worded in an email as follows:

Hopehill would issue you a 2-year warrant to purchase an additional 1 million shares at an exercise price of \$0.20/share for each million shares purchased at a cost of \$2/share. In addition, we would agree that if we did not sell an additional 1 million shares or raise additional equity equal to your investment within 180 days of becoming publicly traded, we would issue you an additional 1 million shares for \$.01/share. We would also agree to immediately seek to register the shares that you purchased (we would require a minimum purchase of \$1mm of stock be purchased based on the cost of registration).

6. Further explaining this offer, Berens sent as attachments to emails a subscription agreement and a memorandum of understanding, both reflecting the offer of Hopehill common stock

for \$2 per share. The subscription agreement specified that the offer to sell common stock in Hopehill was a private placement made pursuant to an exemption from registration provided for by § 4(2) of the Securities and Exchange Act of 1933 and Rule 506 of Regulation D. The memorandum of understanding set out the offer in the email of an additional 1 million shares to be offered to AR for \$.01 per share if Hopehill's management did not sell an additional 1 million shares @ \$2 per share within 180 days of becoming a publicly traded company by means of a merger with another, unnamed company. The memorandum stated that the project to be developed with this money by Hopehill in its new, publicly traded capacity was a development "located near the Reno/Lake Tahoe region of the State of Nevada," which included "components" of "television network facilities . . . and management contracts therefore . . . Thoroughbred and quarter horse racing facilities and management contracts therefore . . . Up scale hotel facilities with management contracts therefore . . . [and] Casino facilities with management contracts thereto."

7. Sometime later on 27 November 2002, AR received another email from Berens. In this email, Berens explained that the earlier offer had been changed. In the new offer, it was explained that Hopehill needed \$1 million to \$2 million immediately to merge into a public company and close a \$40 million loan in order to start an unspecified project. Shares of Hopehill were said to be selling pursuant to a private placement for \$2 per share. Berens gave AR the following offer:

Ernie has instructed me to offer you or your investors 5mm shares @\$.40/share=\$2mm, with Ernie (the Company) retaining an option to buyback 2.5 mm shares for \$2mm in 180 days leaving the investor with 2.5mm shares for free! I can have a contract to you upon request. We can be public in 3-5 days if we can get the money into escrow.

8. On 2 December 2002, Berens sent AR another email urging AR to invest \$2 million in Hopehill on yet another basis. The project that apparently had been referred to in an earlier email and in ¶ 7, above, was the purchase of a Hilton Hotel and Casino on Isla de Margarita or Margarita Island, Venezuela. According to this email, Berens identified another potential lender who could extend a \$150 million line of credit to Hopehill if Hopehill could get \$2 million with which to take Hopehill public, i.e., sell Hopehill stock on some stock exchange.
9. Attached to the email of 2 December 2002 was an unsigned and unattributed document entitled Executive Summary setting out the project of acquiring the Margarita Hilton Hotel, Casino, Suites, Golf Course and Properties. According to the executive summary, the properties are managed by Hilton Management and Cirsa Management, a Spanish company that manages casinos. The properties, which include time share suites, was said to be owned by “private ownership, Venezuelan Government and Venezuelan Banks.” According to the executive summary, the Venezuelan government had become involved in these properties because they had become insolvent. The following paragraph set out just how good a deal it would be to purchase the entire property for \$60 million:

Because of Government intervention, the Golf Course and adjacent properties will be acquired for approximately 50% of their real value. It is because [of] the Government’s intervention this entire project will be purchased for less than 65% of value. The opportunity to acquire [these] properties at [this] price is because the private ownership does not want to be in business with the government and is willing to discount the price to extricate itself from their current position. Their predicament has created this incredible opportunity.

10. AR did not invest any money in Hopehill, but instead reported these offers to the Staff.
11. Berens did not inform AR that the 165th District Court in Harris County, Texas had found

that Berens and another of his companies, Berens Corporation (BC), had fraudulently induced Resort Suites-Scottsdale, Inc. (RSSI) to enter into a contract for a \$10 million loan from BC and awarded RSSI \$767,231 in damages and \$317,822 in prejudgment interest against Berens and his corporation. According to the opinion of the Texas Court of Appeals for the 14th District affirming the 165th District Court, these transactions took place in 1994. BC, through Berens, who owned all the stock of BC, represented to RSSI that it could procure a \$10 million loan that RSSI could use to retire a \$15 million debt in order to emerge from a Chapter 11 bankruptcy. Berens represented that BC would obtain this financing through other sources of credit, i.e, investors, or, if such sources did not materialize, through its line of credit with its warehouse lender, The Mortgage Acquisition Group (TMAC), which he identified as BC's joint venture partner. On the faith of these representations, RSSI advanced Berens and BC \$100,000 in commitment fees. Eventually, BC did not make the loan, and RSSI had to procure financing elsewhere. RSSI sued BC and Berens for its \$100,000 commitment fee and for the greater cost of the loan it eventually procured. In the trial of the case, which was before the trial judge, only, the president of TMAC testified that "he had never even heard of Berens, much less that Berens Corp. had a line of credit through TMAC or that Berens Corp. was its joint venture partner." *Berens and the Berens Corporation v. Resort Suites-Scottsdale, Inc.*, 2001 WL 520985, p. 2 (Tex. Ct. App. 14th Dist., 17 May 2001), *pet. rev. denied* (Tex.Sup.Ct. 25 October 2001; Case No. 01-639). The Texas Court of Appeals went on to affirm the district court's holding of Berens personally liable for the judgment against him for fraudulent inducement because of his personal misrepresentations. Because Berens and BC were held to be jointly and severally liable,

Berens, personally, was held liable for the entire judgement.

12. The Hilton Margarita is a resort on Margarita Island, just off the coast of Venezuela. As stated in the document entitled Executive Summary, the resort includes a casino and time share apartments, and it is owned partially by private ownership and partially by a Venezuelan government entity. The government entity holds partial ownership not because the entire resort was insolvent, but because one of its owners had financial difficulties. Hilton International manages the resort, but has no ownership of it. However, it is not true that the “private ownership” is seeking to sell its interest in the resort for 50% to 65% of its value because it does not like to be in business with the Venezuelan government. The private owners do not feel that they are in a predicament because of the government’s present involvement with the resort. To the contrary, the resort is not for sale, and the “private ownership” has no knowledge of Hopehill or any offer from Hopehill to purchase the resort.

CONCLUSIONS OF LAW

13. Ark. Code Ann. § 23-42-102(15)(A)(2) defines security as stock.

14. Ark. Code Ann. § 23-42-102(2)(A) (Supp. 1999) defines agent as, *inter alia*, an individual representing the issuer of securities or a broker-dealer and effecting or attempting to effect purchases or sales of those securities.

15. Ark. Code Ann. § 23-42-301(a) (Repl. 2000) prohibits as unlawful the transaction of business as an agent of the issuer by any person who is not registered with the Department as such.

16. Ark. Code Ann. § 23-42-507(2) (Repl. 2000) provides that it is unlawful for any person in

connection with the offer or sale of any security to make any untrue statement or omit to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which they are made.

OPINION

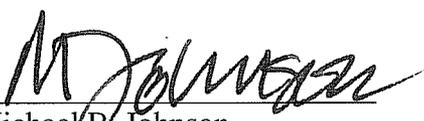
17. This matter has been properly brought before the Arkansas Securities Commissioner in accordance with Ark. Code Ann. § 23-42-209 (Repl. 2000).
18. In the offers for sale of Hopehill common stock set out in ¶¶ 5-8, above, Berens and B&C acted as agents of the issuer of the securities involved herein, the Hopehill common stock, without being registered as agents of the issuer, Hopehill, in violation of Ark. Code Ann. § 23-42-301(a) (Repl. 2000).
19. The listing of B&C's address by Berens as 9801 Collins Avenue, Suite 6G would lead one to believe that it is the address of a suite of offices. Because this is the address of a residential apartment or condominium unit, it would be accurately listed as Apt. 6G, Unit 6G or # 6G. This was an untrue and misleading statement made in violation of Ark. Code Ann. § 23-42-507(2) (Repl. 2000).
20. The failure of Berens to inform AR that a Texas court had determined that he had made misrepresentations involving a multi-million dollar loan transaction and awarded damages against Berens, personally, and another of his companies of over \$1 million was misleading and the omission of a material fact in violation of Ark. Code Ann. § 23-42-507(2) (Repl. 2000).
21. The statements made to AR by Berens and B& C that Hopehill was attempting to purchase the Hilton Margarita on Margarita Island, Venezuela for some 50% to 65% of its value was

fraudulent in that no such negotiations are ongoing, the owners of the resort know of no such offer or of Hopehill and the resort is not for sale at this point. These statements, set out above in ¶¶ 8 and 9, were untrue statements of material fact made in violation of Ark. Code Ann. § 23-42-507(2) (Repl. 2000).

ORDER

IT IS THEREFORE ORDERED that HOPEHILL EQUITY HOLDINGS, INC., BERENS & COMPANY and MARC IVAN BERENS as well as others whose identities are not yet known who are in positions of control of HOPEHILL EQUITY HOLDINGS, INC. or BERENS & COMPANY and who are employed by or otherwise affiliated with HOPEHILL EQUITY HOLDINGS, INC. or BERENS & COMPANY, directly or through other companies, **CEASE AND DESIST** from any further actions in the state of Arkansas in connection with the offer or sale of the securities described above or any other securities.

WITNESS MY HAND AND SEAL this ~~28~~ day of May, 2004.


Michael B. Johnson
ARKANSAS SECURITIES COMMISSIONER