

ROBB EVANS & ASSOCIATES LLC

Receiver of

AOB Commerce, Inc., et al.

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Securities and Exchange Commission v. AOB Commerce, Inc., et al.

CASE No. CV 07-04507 CAS (JCx)

**Nelson Liao's Response to Receiver's Motion for Instructions
Regarding Payment of Attorneys' Fees**

Dated September 6, 2007

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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
12

13 SECURITIES AND EXCHANGE
COMMISSION,

14 Plaintiff,

15 vs.

16 AOB COMMERCE, INC.,
17 AOB ASIA FUND I, LLC,
TERCHI LIAO a/k/a NELSON LIAO,

18 Defendants,

19 and

20 AOB MANAGEMENT, INC.,
21 AOB MEDIA, INC.,
AOB TRANSPORTATION, INC.,
22 AOB VACATIONS, INC.,

23 Relief Defendants.
24

CASE NO. CV07-4507 CAS (JCx)

**NELSON LIAO'S RESPONSE TO
RECEIVER'S MOTION FOR
INSTRUCTIONS REGARDING
PAYMENT OF ATTORNEYS'
FEES**

Date: September 24, 2007
Time: 10:00 am
Courtroom 5

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RESPONSE

1. Statement of Facts

The Securities and Exchange Commission (SEC) filed the instant action on July 12, 2007 alleging that a number of corporate defendants and Nelson Liao were operating a 45 million dollar ponzi scheme. On that same day, the SEC applied and the Court granted a TRO freezing all assets of the corporate defendants and Mr. Liao.

On July 18, 2007, Nelson Liao retained attorney Tom King and shortly thereafter also retained the firm of Yaspan and Thau to represent him in this case. On August 2, 2007, counsel for Nelson Liao filed an answer to complaint and an opposition to the motion for preliminary injunction set for hearing on August 13, 2007. In the opposition, Mr. Liao requested that the Court lift the asset freeze against him because the SEC had not shown that he owed any specific sum of money to the corporate defendants.¹ Mr. Liao asked that the asset freeze be lifted so he can pay ongoing living expenses and legal fees, but did not ask the Court for attorney's fees.

On August 13, 2007, this Court granted the preliminary injunction and denied Mr. Liao's request for lifting the asset freeze. This Court, however, ordered a \$25,000 fee allowance to Mr. Liao to be paid by the receiver. At no time during the hearing, did this Court ask about Mr. Liao's prior fee arrangement with his attorneys. Counsel for the receiver, Gary Caris, Esq., who took the podium at the hearing, also did not raised any question but stated that the receiver had no objections. The receiver did not raise the question of prior fees paid to Mr. Liao's attorneys until more than a week after the hearing. And when it was raised, Mr. Liao's attorneys immediately responded to the receiver's inquiry by disclosing the full amount of fees previously advanced by third parties on behalf of Mr. Liao.

¹ The SEC argued that there was a possibility that Mr. Liao might "dissipate" assets without ever showing what exact corporate assets were in Mr. Liao's possession.

1 **2. The Court Ordered Fee Allowance Is Proper**

2 This is a serious and substantial case involving millions of dollars, hundreds of
3 investors, and nine corporate entities allegedly connected to Nelson Liao.² In light of
4 the total asset freeze against the corporate entities and Mr. Liao personally, Mr. Liao
5 should not be forced to beg or borrow money from third parties to pay his legal fees.
6

7 For this Court to be able to adjudicate the merits of this case based on an
8 adversarial process — rather than an unilateral one — the defense must be allowed
9 the resource to prepare and put on its case. It is noteworthy that the SEC in filing the
10 complaint assigned not less than *five* attorneys to this case. Given the magnitude of
11 this case, the volume of corporate and financial records involved, and the relatively
12 unlimited resource of the SEC, a \$100,000 total fee and cost budget for Mr. Liao's
13 defense is *fair and reasonable*.

14 _____
15 ² See Receiver's Report of July 13, 2007 through July 23, 2007, page 2.

16 The complaint alleges that Mr. Liao was engaged in a \$45 million ponzi scheme to
17 defraud investors. The receiver's report, however, states that the principal amount owed to
18 investors is \$41 million. The defense disputes both of these figures and the allegation that
19 there was ever an intent to defraud investors.

20 First, The \$41 million figure is grossly overstated because it does not take into account
21 the fact that the earlier investors, due to the high interest payout, have already received more
22 than the money they put in and are therefore not entitled to further recovery. As to the later
23 investors, all interest payments they received must be deemed return on principal because, as
24 a matter of law, the note they hold against the AOB defendants are inherently usurious.

25 Second, even according to the trustee's report, millions of dollars were invested in
26 legitimate businesses or AOB affiliated businesses, which the defense contends had long
27 term prospects had the trustee not immediately terminated them upon taking control. One of
28 the businesses which the trustee assumed control (rightly or wrongly) and shut down, AOB
Biotech, is itself a publicly registered company with enormous financial potential.

Third, unlike any other fraudulent scheme where the objective is always to line the
personal pocket of the operator, here Mr. Liao led a very modest lifestyle and did not divert
corporate funds for personal luxury.

1 The legal representation of Nelson Liao comes with numerous time-consuming
2 and often difficult tasks, including having to deal with disgruntled and increasing
3 hostile investors, fact gathering concerning all the corporate entities (and money
4 flowing in and out of them) allegedly traceable to Mr. Liao, review of records,
5 researching and analyzing the labyrinth of securities laws in relation to the variegated
6 fact patterns of this case,³ etc. — Most of the legal fees previously advanced by third
7 parties have already been incurred for these purposes.

8
9 In order to preserve the limited resource available for Mr. Liao’s defense, Mr.
10 Liao’s attorney Tom King met and conferred with the receiver’s attorney Gary Caris
11 prior to Mr. Caris’ filing of this motion. Mr. King proposed that, rather than
12 incurring time to fight over the fee issue now and later, Mr. Liao is willing to accept
13 the \$25,000 fee payment previously ordered by the Court as a one-time, final fee
14 allowance. This, together with the previous \$75,000 fees paid by third parties, would
15 at least allow Mr. Liao a combined total fee and cost budget of \$100,000 for this case.
16 Although this would spare the parties and the court from further fee issues and
17 disputes, Mr. Caris declined this proposed resolution on behalf of the receiver.

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23 ³ Neither the findings of fact nor the conclusions of law made in connection with the
24 preliminary injunction are binding at trial. *University of Texas v. Camenisch* (1981) 451 U.S.
25 390, 101 S. Ct. 1830. The defense contends that the short term note offered by the AOB
26 defendants do not constitute “securities” under the *Howey* test. *SEC v. W.J. Howey Co.*
27 (1946) 328 U.S. 293, 66 S. Ct. 1100. There is a lack of horizontal commonality because the
28 rate of return and conditions on each and every note offered by the AOB entities are
individually negotiated. For example, some investors requested life insurance on Nelson
Liao be purchased in the amount of their investment designating them as beneficiaries. Or
for example, some investors requested that they travel with Mr. Liao to China to understand
any specific project in China as a condition of their investment.

1 **3. In Conclusion**

2 The court ordered \$25,000 fee allowance from the frozen estate is proper.
3 This, together with the fees previously advanced by third parties, would give Nelson
4 Liao a total defense budget of \$100,000 for legal fees and costs. This is a realistic
5 and reasonable amount for the pending case.
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9 Dated: September 6, 2007



Tom F.Y. King

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11 Attorney for
12 Defendant NELSON LIAO
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3 **PROOF OF SERVICE**

4 I, the undersigned, am over 18 years of age and not a party to this action. My
5 business address is 150 North Santa Anita Avenue, Suite 300, Arcadia, California
6 91006.

7 On this date, I served this document, N, on all interested parties by placing a
8 copy thereof in separately sealed envelopes with postage fully prepaid and addressed
9 as follows:

10
11 Peter F. Del Greco, Esq.
12 Securities and Exchange Commission
13 5670 Wilshire Blvd., 11th Floor
14 Los Angeles, CA 90036

Gary Owen Caris, Esq.
Mckenna Long & Aldridge
444 South Floor Street, 8th Floor
Los Angeles, CA 90071

15 Robert Yaspan, Esq.
16 Yaspan & Thau
17 21700 Oxnard Street, Suite 1750
18 Woodland Hills, CA 91367

19 I deposited the sealed envelope in a United States mailbox in the City of
20 Arcadia, California.

21 I declare under penalty of perjury under the laws of the United States of
22 America that the foregoing is true and correct. This proof of service is executed in
23 Arcadia, California on this date.

24
25 Dated: September 6, 2007

26 
27 Tom F.Y. King
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