

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)**

**Reply of the Securities and Exchange Commission to Nelson Liao's
Response to Receiver's Motion for Instructions
Regarding Payment of Attorneys' Fees**

Dated September 17, 2007

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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 vs.

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

17 Defendants,

18 and

19 AOB MANAGEMENT, INC.; AOB
20 MEDIA, INC.; AOB TRANSPORTATION,
INC.; and AOB VACATIONS, INC.,

21 Relief Defendants.

Case No. CV 07-4507 CAS (JCx)

**REPLY OF THE SECURITIES AND
EXCHANGE COMMISSION TO
NELSON LIAO'S RESPONSE TO
RECEIVER'S MOTION FOR
INSTRUCTIONS REGARDING
PAYMENT OF ATTORNEYS' FEES**

Date: September 24, 2007
Time: 10:00 a.m.
Place: Courtroom 5

1 **I. INTRODUCTION**

2 Plaintiff Securities and Exchange Commission (“Commission”) respectfully
3 submits this reply (“Reply”) to defendant Nelson Liao’s (“Liao”) response
4 (“Response”) to the Receiver’s motion for instructions regarding the payment of
5 attorneys’ fees (“Motion for Instruction”). Liao is nothing if not persistent:

6 Having already separated his investors from tens of millions of their hard-earned
7 dollars, he now seeks the Court’s assistance in separating them from \$25,000 more.

8 The Receiver’s Motion was precipitated by his discovery that Liao failed to
9 disclose to the Court that his attorneys had already received \$75,000 after the asset
10 freeze was put in place when, on August 13, 2007, Liao asked the Court to modify
11 the asset freeze to provide him with \$50,000 for attorneys’ fees. The Court, not
12 having been informed that Liao’s attorneys had previously been paid, modified the
13 freeze and ordered the Receiver to pay \$25,000 to Liao’s attorneys.

14 Liao’s explanation for his omission –that neither the Receiver nor the Court
15 asked whether his attorneys had been paid – is disingenuous, at best. The fact that
16 Liao’s attorneys had already been paid a substantial amount was material to the
17 Court’s determination of his fee request.

18 Liao’s rationale that he “should not be forced to beg or borrow money from third
19 parties to pay his legal fees” does not excuse or ameliorate his failure to disclose
20 pertinent facts to the Court in his fee application. Apparently, accounts held in the
21 name of Liao’s brother Peter (who, we understand, resides in China) were the source of
22 these post-freeze payments. It is unclear to what extent Peter Liao’s assets are tainted
23 by the fraud; however, both account statements were sent to AOB’s offices. Liao is
24 hardly reduced to “begging or borrowing” when the fees are being paid by his brother,
25 who works out of the same office as Liao. This information should have been
26 disclosed by Liao and his attorneys in connection with their fee application.

27 The Commission opposes Liao’s Response, joins the Receiver’s Motion, and
28 asks the Court to reconsider its prior order releasing \$25,000 to Liao’s attorneys.

1 The Receiver has confirmed that investors are owed at least \$41 million in
2 principal by Liao and AOB Commerce, but that realizable assets total only about
3 \$6.9 million, so that investors face losses of up to \$34 million, or over 80% of their
4 principal. Liao should be prevented from using any portion of the remaining
5 investor funds to finance his defense. These funds should be preserved for the
6 benefit of the investors he has defrauded.

7 **II. ARGUMENT**

8 **A. Liao Has No Right To Use Receivership Assets For His Defense**

9 In papers filed prior to the August 13 hearing, the Commission opposed
10 Liao's request to use frozen assets to fund his defense because Liao had not made,
11 and could not make, a showing that the frozen assets were untainted by his
12 fraudulent conduct. Liao has still not made any such showing, and the
13 Commission's position remains unchanged, irrespective of whether Liao had
14 already paid his attorneys \$75,000 and misled the Court in his fee application.

15 The monies Liao seeks rightfully belong to his defrauded investors. The
16 Supreme Court has held that a defendant has no right to use another person's funds
17 for attorneys' fees. *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617,
18 626, 109 S. Ct. 2646, 2652-2653, 105 L. Ed. 2d 528 (1989) (a defendant has no
19 right to spend another person's funds for attorneys' fees even if those funds are the
20 only way a defendant can retain the attorney of his choice, and no lawyer has the
21 right to accept stolen property in payment of a fee). Neither a criminal defendant
22 nor a civil litigant has the right to pay counsel with another person's money. *SEC*
23 *v. Cherif*, 933 F.2d 403, 416-417 (7th Cir. 1991), *modified, reh'g denied*, 1991
24 U.S. App. LEXIS 11439 (7th Cir. June 7, 1991) (*en banc*).

25 Similarly, in *SEC v. Quinn*, 997 F.2d 287, 289 (7th Cir. 1993), the court
26 applied the Supreme Court's reasoning in *Caplin & Drysdale* directly to securities
27 violators, stating: "Just as a bank robber cannot use the loot to wage the best
28 defense money can buy [citations omitted] so a swindler in securities markets

1 cannot use the victims' assets to hire counsel who will help him retain the
2 gleanings of crime." *Accord SEC v. Roor*, 1999 WL 553823, *3 (S.D.N.Y. July
3 29, 1999) ("A defendant in a case brought by the SEC may not use income derived
4 from alleged violations of the securities laws to pay for legal counsel."); *SEC v.*
5 *Current Financial Services, Inc.*, 62 F.Supp.2d at 69 ("A defendant is not entitled
6 to foot his legal bill with funds that are tainted by his fraud.") (internal quotations
7 omitted).

8 Accordingly, all the assets should remain frozen, including the \$25,000 that
9 is the subject of the Court's prior order on Liao's attorney fees.

10 **B. Liao's Attorneys Have Already Been Provided With Three Times**
11 **The Amount The Court Authorized For Attorneys' Fees**

12 When Liao appeared before this Court, through his attorneys, on August 13,
13 he requested \$50,000 for attorneys' fees, and the Court pared his request to
14 \$25,000 and instructed Liao's attorneys not to return seeking additional monies
15 anytime soon. Unbeknownst to the Court, the Receiver, or the Commission, Liao's
16 attorneys had previously been provided with \$75,000 to fund Liao's defense. Liao
17 now contends that he cannot mount an effective defense for less than \$100,000, or
18 four times the amount the Court thought sufficient. Liao provides no factual basis
19 to support overturning the Court's prior determination that \$25,000 was sufficient.
20 Since Liao's attorneys have already received the \$25,000 – as well as an additional
21 \$50,000 – no further funds should be taken from the receivership estate.

22 **C. Liao Comes Before This Court With Unclean Hands**

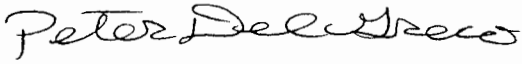
23 In seeking to enforce the Court's order of August 13, which modified the
24 asset freeze to permit the payment of Liao's attorneys' fees, Liao comes before this
25 Court with unclean hands. The unclean hands doctrine "closes the doors of a court
26 of equity to one tainted with an inequitableness or bad faith relative to the matter in
27 which he seeks relief." *Adler v. Federal Republic of Nigeria*, 219 F.3d 869, 877
28 (9th Cir. 2000) (quoting *Precision Instrument Mfg. Co. v. Automotive Maintenance*

1 *Mach. Co.*, 324 US 806, 814 (1945). Here, Liao is tainted with the bad faith he
2 displayed in failing to disclose that his attorneys had already received \$75,000.
3 The Court should “close the door” to Liao and deny him access to frozen investor
4 monies.

5 **III. CONCLUSION**

6 For the foregoing reasons, the Court should instruct the Receiver that he
7 should not and shall not make the previously authorized payment of \$25,000, in
8 whole or in part, to Liao and/or his attorneys, and accordingly modify or withdraw
9 the prior order.

10
11 DATED: September 17, 2007

Respectfully submitted,


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Securities and Exchange Commission