

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58403 / August 21, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-12918

In the Matter of

**vFinance Investments, Inc.,
Nicholas Thompson and
Richard Campanella,**

Respondents.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS AND
A CEASE-AND-DESIST ORDER
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT
OF 1934 AS TO NICHOLAS THOMPSON**

I.

In these proceedings, instituted on January 3, 2008 pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), respondent Nicholas Thompson (“Thompson” or “Respondent”) has submitted an Offer of Settlement (“Offer”) which the Securities and Exchange Commission (“Commission”) has determined to accept.

II.

Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 as to Nicholas Thompson (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

A. SUMMARY

1. These proceedings involve the failure of a registered broker-dealer to maintain all documents pertinent to its business and provide those documents to the Commission in a prompt fashion for inspection and review.

2. The broker-dealer in this case, vFinance Investments, Inc. (“vFinance”), violated the federal securities laws by failing to preserve and produce the customer correspondence of its registered representative, Thompson. Thompson repeatedly failed to produce records and deliberately deleted data from his hard drive relating to a matter under investigation by the Commission. vFinance’s Chief Operating Officer/Chief Compliance Officer failed to respond promptly to the Commission’s document requests and failed to address Thompson’s non-compliance with the firm’s document retention policies.

B. RESPONDENTS

3. vFinance is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act and is a member of the NASD. vFinance is a Florida corporation with its principal executive offices in Boca Raton, Florida, and is a wholly-owned subsidiary of vFinance, Inc., a Delaware corporation whose securities are registered with the Commission pursuant to Section 12(g) of the Exchange Act. During 2004 and 2005, vFinance had about 25 branch offices and 125 registered representatives nationwide. On April 12, 2005, the Commission entered an Order Instituting Administrative Proceedings in *In the Matter of vFinance Investments, Inc.*, Admin. Proc. File No. 3-11895, finding that vFinance had failed reasonably to supervise a trader through the inadequate implementation of supervisory procedures for preventing market manipulation. In settlement of that proceeding, vFinance retained an independent consultant who provided vFinance in early July 2005 with a preliminary report of the need to improve its supervision of traders.

4. Thompson was a registered representative associated with vFinance and the manager of a small vFinance branch in Flemington, New Jersey from 2002 until 2006. During 2004 and 2005, Thompson supervised one other registered representative (his father) and an administrative assistant in the Flemington branch. Thompson is 41 years old and resides in Kintnersville, Pennsylvania. While at vFinance, Thompson was authorized by vFinance’s head trader to serve as a market maker of a microcap oil and gas firm, the shares of which were quoted on the OTC Bulletin Board, which became the subject of a Commission investigation into potential violations of the federal securities laws.

5. The person at vFinance who served as Chief Operating Officer and Chief Compliance Officer during 2004 and 2005 (the “COO/CCO”) has been affiliated with vFinance as a registered representative since 2001. The COO/CCO became President of vFinance in January 2006 and then President and CEO of vFinance in July 2006. The COO/CCO also is a director of vFinance, Inc. The COO/CCO is 56 years old and resides in Boca Raton, Florida.

C. vFINANCE HAD A DUTY TO RETAIN AND PRODUCE DOCUMENTS

6. Section 17(a) of the Exchange Act mandates that broker-dealers “shall make and keep for prescribed periods such records, furnish copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for

the protection of investors, or otherwise in furtherance of the purposes of this title.” Pursuant to its authority under Section 17(a), the Commission promulgated Rule 17a-4(b)(4), which requires broker-dealers to preserve for at least three years (the first two in an easily accessible place) “originals of all communications received and copies of all communications sent ... relating to its business as such.” The Commission also promulgated Rule 17a-4(j), which requires broker-dealers to “furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the [broker-dealer] that are required to be preserved under [Rule 17a-4], or any other records of the [broker-dealer] subject to examination under Section 17(b) of the [Exchange Act] that are requested by the representative of the Commission.” The Commission has made clear that it is of “overriding importance” that broker-dealers comply with the requests of regulatory authorities during investigations. *See In the Matter of Wedbush Securities, Inc.*, 48 S.E.C. 963, 971-72 (1988).

7. vFinance had in place certain procedures and policies with respect to document retention, but failed to develop reasonable systems to implement them. vFinance’s policies required Thompson to retain copies of all correspondence in his branch in correspondence files.

8. In his role as Chief Operating Officer, the COO/CCO was responsible for vFinance’s document retention practices.

9. vFinance had an unwritten policy prohibiting the use of non-vFinance email accounts for work purposes. vFinance adopted a policy in August 2003 requiring that instant messages be printed and saved in paper files. vFinance’s systems did not retain instant messages or emails in non-vFinance email accounts.

10. The COO/CCO prepared the vFinance instant message policy citing the July 2003 NASD Notice to Members entitled “Instant Messaging,” which said “[m]embers that permit instant messaging must use a platform that enables the member to monitor, archive, and retrieve message traffic.”

11. vFinance executives knew the firm was required to monitor and maintain customer correspondence in branch offices. On March 22, 2004, the chairman of vFinance, Inc. sent the COO/CCO and vFinance’s then-President an email with a link to SEC Staff Legal Bulletin No. 17. The bulletin said, “if firms permit communications with customers from employees’ home computers or personal computers not connected to the firm’s network, SRO rules require firms to employ systems to monitor those communications.” The bulletin specifically cited firms’ obligation “to maintain copies of incoming and outgoing correspondence” in branch offices under Section 17(a) of the Exchange Act and Rule 17a-4.

D. vFINANCE, AIDED AND ABETTED BY THE COO/CCO AND THOMPSON, FAILED TO RETAIN DOCUMENTS

12. Since at least 2003, Thompson used non-vFinance email accounts and instant messages to communicate with customers and for other business purposes. As previously described, vFinance policies required Thompson to retain in correspondence files copies of all work-related emails and instant messages, including paper copies of all instant messages. Nonetheless, Thompson deleted numerous work-related emails and instant messages from his

computer, and did not print out and retain the emails and messages in hard-copy correspondence files. Thompson also periodically deleted all documents from his computer by reformatting the hard drive and wiping it clean.

13. The COO/CCO relied on annual office inspections and branch manager questionnaires to monitor the firm's document retention practices in branch offices. The vFinance employee who visited Thompson's branch office sent notes and reports to the COO/CCO that discussed Thompson's document retention practices. The notes from his first visit to Thompson's office in December 2003 said Thompson had "no written correspondence," which was highly unusual because Thompson was engaged in extensive retail trading and market making activities while at vFinance. In 2003, 2004 and 2005, he reported to the COO/CCO and vFinance that Thompson was using an instant message program for business purposes and not retaining messages in paper files as required. He reported to the COO/CCO and vFinance again in 2005 that his review of Thompson's "incoming and outgoing correspondence, faxes and e-mails revealed very little correspondence with clients" (which was inexplicable given Thompson's extensive retail trading and market making activities).

14. The COO/CCO was separately on notice as early as March 2004 that Thompson was not complying with the firm's policy against using non-vFinance email for work purposes. In March 2004, he received a work-related email from Thompson's personal blast.net account. In August 2004, the COO/CCO received an email from Thompson's personal account discussing trading in the issuer's stock.

15. On September 1, 2005, vFinance's head trader, whom the COO/CCO directed to collect documents from Thompson in response to the staff's request, copied the COO/CCO on an email he sent to Thompson stating that "the firm definitely captures all emails, except the ones from a personal account like [your blast.net] account ... **you** are required to retain the ones from your personal account."

16. No one at vFinance ever reprimanded Thompson or told him to stop using personal email and instant message accounts to communicate with customers or to print and save instant messages.

E. vFINANCE, AIDED AND ABETTED BY THE COO/CCO AND THOMPSON, FAILED TO PRODUCE DOCUMENTS PROMPTLY

17. In mid-2005, the staff of the Commission was conducting an investigation into possible securities law violations involving a microcap oil and gas company (the "issuer"). On July 18, 2005, the Commission's staff sent a letter to the COO/CCO asking vFinance to preserve all documents relating to the issuer and to produce documents – including trading records and correspondence – regarding the issuer. Only an incomplete and tardy production of documents was made by vFinance in response to that July 18th request, and vFinance failed (through the COO/CCO) to address whether Thompson preserved and produced all documents relating to the issuer.

18. In August 2005, the Commission's staff asked vFinance (through the COO/CCO) for the contents of Thompson's computer hard drive and made the same request of Thompson's

legal counsel in September 2005. vFinance and the COO/CCO failed to take any action at that time to provide the Commission with Thompson's computer hard drive. Additionally, rather than producing and saving all materials relating to the issuer, Thompson deleted from his computer files and correspondence relating to the issuer and other companies for which Thompson's firm was a market maker. Furthermore, in or around November 2005, Thompson ran a special disk wiping program designed to eliminate all traces of the erased files on his hard drive. Thompson then loaded specially selected emails and messages that he had set aside back onto his computer before producing it to the Commission's staff on February 14, 2006, without telling the Commission staff about his deletions.

19. The COO/CCO was the person at vFinance responsible for responding to the staff's document requests on behalf of vFinance, first as Chief Compliance Officer and Chief Operating Officer, and then as President. The COO/CCO repeatedly told the staff that vFinance would not physically go to Thompson's vFinance branch office to look for documents because Thompson's employment status was that of an independent contractor rather than an employee. In fact, Thompson's independent contractor agreement required Thompson to give vFinance access to all business records in his office upon request.

20. In response to the staff's July 2005 document request, the COO/CCO sent the staff some records electronically stored at vFinance's headquarters office for some (but not all) of the accounts that traded in the issuer's stock, and told the staff that Thompson had no correspondence related to the issuer. vFinance produced a small number of additional documents in September and October 2005 in response to the staff's request, but the documents still did not include any of Thompson's customer correspondence. On November 18, 2005, the COO/CCO incorrectly certified that vFinance's document production was complete.

21. After the Commission issued a formal order of investigation relating to the issuer in May 2006, the staff issued subpoenas to Thompson and vFinance covering the same documents that had been requested in July 2005 and extending the relevant time period to the date of the subpoenas. Thompson produced no additional documents. When Thompson resigned from vFinance in August 2006, vFinance did not attempt to retrieve his vFinance documents.

22. vFinance ultimately produced additional documents, but not until December 2006, after the staff told vFinance that the staff had learned from other sources that there were at least three additional vFinance accounts that had traded in the issuer's securities during the relevant time period. In February 2007, nineteen months after the staff's first document request, vFinance produced account records for all accounts that had traded the issuer's stock. At the same time, vFinance also produced a small number of Thompson's instant messages that it claimed to have recently discovered – nineteen months after the staff's initial document request – and told the staff these were the only instant messages of Thompson's it had retained.

23. In March 2007, the COO/CCO finally searched Thompson's office for documents. The COO/CCO located additional responsive documents from Thompson's paper customer files, but could not find Thompson's emails and instant messages.

F. VIOLATIONS

24. As a result of the conduct described above, vFinance willfully violated Section 17(a) of the Exchange Act and Rules 17a-4(b)(4) and 17a-4(j) thereunder when it failed to retain for at least three years (the first two in an easily accessible place) Thompson's electronic communications relating to vFinance's business as such, and failed to furnish promptly to the staff upon request records that vFinance was required to maintain.

25. As a result of the conduct described above, Thompson willfully aided and abetted and caused vFinance's violations of Section 17(a) of the Exchange Act and Rules 17a-4(b)(4) and 17a-4(j) thereunder. Thompson knowingly provided substantial assistance to vFinance in furtherance of vFinance's violations by communicating with customers using accounts outside the vFinance network, only keeping copies of those communications on his computer, and periodically deleting all documents from his computer by reformatting and wiping it clean. Thompson delayed producing his hard drive for six months, and never provided any documents from his paper customer files to vFinance or the staff in response to the staff's requests.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Thompson's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

- A. Respondent Thompson cease and desist from causing any violations and any future violations of Section 17(a) of the Exchange Act and Rules 17a-4(b)(4) and 17a-4(j) promulgated thereunder;
- B. Pursuant to Section 15(b)(6) of the Exchange Act, Respondent Thompson be, and hereby is barred from association with any broker or dealer, with the right to reapply for association after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.
- C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.
- D. Respondent shall, within thirty (30) business days of the entry of this Order, pay a civil money penalty in the amount of \$30,000 to the United States Treasury. If

timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Thompson as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Steven Buchholz, Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104.

By the Commission.

Florence E. Harmon
Acting Secretary