SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
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STATE OF NEW YORK,
Plaintiff,

-against-

NOVACON ENERGY SYSTEMS, INC., STEPHEN H. BAER and VIVIAN MOOK BAER,

Defendants
----------X

SUMMONS

Index No.

Plaintiff designates New York County as the place of trial

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer in this action and serve a copy of your answer, or if the complaint is not served with the summons, to serve a notice of appearance on the Plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service. If this summons is not personally served upon you, or if this summons is served upon you outside of the State of New York, then your answer or notice of appearance must be served within thirty (30) days. In case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Filed: November 8, 2011

Dated: New York, New York
November 8, 2011

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Assistant Attorney General

SUPREME COURT OF THE STATE OF NEW YORK
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STATE OF NEW YORK

Plaintiff,

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VERIFIED COMPLAINT

INDEX NO._____

Plaintiff, the People of the State of New York, by Eric T. Schneiderman, Attorney General of the State of New York ("Attorney General"), alleges upon information and belief, the following:

PRELIMINARY STATEMENT

Defendant Novacon Energy Systems, Inc. ("Novacon"), a Delaware corporation, was formed by defendant Stephen H. Baer ("Mr. Baer") to develop and market a product purporting to have a patented solution to burning coal in an "environmentally safe manner." In 2003 and 2004, Mr. Baer entered into a series of agreements with Global Business Development ("GBD") to raise capital for the development of his product. GBD's Managing Member, William "M.J." Rifkin ("Mr. Rifkin") agreed to secure a minimum of $3.5 million for the corporate development of Novacon. Beginning in January 2004 and continuing through December 2007, Mr. Baer and Mr. Rifkin, without ever registering with the Attorney General to issue, offer or sell securities, solicited investors by conducting telephone marketing calls to tout the company's patented process. During those calls, to solicit investors, Mr. Baer engaged in several misleading

marketing and financial practices, including the use of financial projections that had no basis in fact and projecting an unduly positive picture of Novacon's viability.

Using these misleading practices, Mr. Baer, with the assistance of Mr. Rifkin, obtained over $3 million in investments in Novacon. Of that, Mr. Rifkin was paid approximately $400,000 as "commissions" and a substantial part of what remained was used by Mr. Baer and defendant Vivian Mook Baer, his wife, for personal expenses at retail establishments, as well as to pay for the expenses of their residence.

In 2007, responding to an investor complaint, the Attorney General opened an investigation. In December 2007, in connection with the Attorney General's ongoing investigation, it obtained an Order of the Court requiring that defendant (1) produce documents, (2) testify before a Special Referee of this Court, and (3) be enjoined from engaging in the sale of securities from New York. In addition, the Order froze certain bank accounts containing approximately $1.2 million.

Thereafter, Mr. Baer appeared before Special Referee Howard Leventhal eight times to give testimony. While he stated to the Court that it was his intent to cooperate, his answers to the Attorney General's questions were substantially unresponsive. In some instances he even refused to answer, without asserting a privilege, despite being warned by the Attorney General that this conduct constituted contempt of Court. Ultimately, Mr. Baer asserted a privilege against self incrimination. On October 23, 2008, defendant Vivian Mook Baer also appeared before Referee Leventhal but asserted her privilege against self incrimination. The hearings before Referee Leventhal were thereafter adjourned.

This action under the Martin Act and Executive Law § 63(12), seeks judgment for fraudulent acts and requires defendants to pay restitution and damages caused, directly or indirectly, by their fraudulent acts.

PARTIES

1. The Attorney General brings this action on behalf of the People of the State of New York, pursuant to the Attorney General's authority under General Business Law ("GBL") Article 23-A, Executive Law § 63(12), Civil Practice Law and Rules § 1301 and the common law of the State of New York.

2. Defendant Novacon is a Delaware corporation organized by Mr. Baer on April 26, 1992. Prior to 1992, the company was doing business as Anergy, Inc. Its business office and laboratory are located at the residence of Stephen H. Baer and Vivian Mook Baer at 50 Hickory Kingdom Road, Bedford, Westchester County, New York.

3. Defendant Stephen H. Baer, at various times referred to in Novacon documents as the President and CEO of Novacon, resides at 50 Hickory Kingdom Road, Bedford, Westchester County, New York.

4. Defendant Vivian Mook Baer, at various times referred to in Novacon documents as Executive Vice President and as President of Novacon, resides at 50 Hickory Kingdom Road, Bedford, Westchester County, New York.

JURISDICTION AND VENUE

5. The People of the State of New York bring this action pursuant to General Business Law § 352, *et seq.* (the "Martin Act"); Executive Law §§ 63(1) and 63(12) and in its sovereign and quasi-sovereign capacities as *parens patriae*.

6. Venue is proper in the Supreme Court of the State of New York, New York County because defendants' actions originated in New York, New York. Moreover, numerous New York residents, as well as the interests of the State of New York were harmed by defendants conduct within the State of New York.

FACTUAL ALLEGATIONS

A. Background

7. Novacon was formed as a Delaware corporation by Mr. Baer on April 26, 1992 for the purpose of developing and bringing to market a process to make the burning of coal environmentally safe. The company has never filed a certificate of doing business with the New York Secretary of State.

8. Mr. and Mrs. Baer were the sole officers and directors of Novacon. Mr. Baer assumed the title of, and was at various times referred to as, CEO and President of Novacon. Mrs. Baer was also at times referred to as President, and at other times referred to as Executive Vice President. The business of Novacon was at all times carried on at the residence of the Baers.

9. Novacon has neither been registered to offer and sell securities from or within New York, nor ever exempted from registration. No sales people were ever registered to sell securities.

10. Defendants offered and sold unregistered, nonexempt securities to approximately 128 investors on various occasions from April 2004 to December 2007 by means of misrepresentation and material omissions. In 2003 and 2004, Novacon planned to sell $3.5 million worth of its stock to the general public to finance the development and marketing of its coal burning system. Defendants entered into a series of agreements with GBD for consulting services and assistance in soliciting funds for Novacon. GBD's principal was William "M.J." Rifkin, also an unregistered sales agent. Pursuant to their agreements, GBD was obliged to introduce Novacon to prospective investors for the purpose of securing a minimum of $3.5 million in investments for Novacon. In return Novacon was to pay a commission of five percent on monies GBD raised from investors. Securities sold in New York between April 2004 and December 2007 were worth approximately $3 million.

B. Materially False Representations

11. Novacon was promoted by Mr. Baer and Mr. Rifkin as having the ultimate solution to environmentally safe coal burning. During their various sales pitches, which were made telephonically, via email, in printed material and on recorded messages, Messrs. Baer and Rifkin made numerous representations to investors attempting to convince them to invest in Novacon and its patent process. These representations were false, and can be separated into the following categories:

Misrepresentations about Mr. Baer's background

- *Before the age of eighteen Stephen Baer was a designer of rockets who worked as an assistant to Werner Von Braun.*
- *Mr. Baer was put through school by the United States government and worked for the predecessor agency to NASA.*

- *Mr. Baer has a degree in accounting and finance from New York University.*

- *Mr. Baer wrote the original report for the creation of the option trading marketplace.*

- *At 25 years of age, he helped found the kidney foundation transplant center and redesigned many hospitals.*

- *In about 1990, the AES Corporation helped him develop his anti-pollution system by installing it in its plant and proving that the concept worked.*

Misrepresentation about Mr. Baer's enterprise

- *Between 1996 and 1999, patent protection were obtained in 23 countries.*

- *The Baers had about $2.5 million invested in the business. Outside investors had about $700,000 invested.*

- *Novacon had 50 outstanding contracts for its process in the United States, as well as in China, Russia and Kazakhstan.*

- *Goldman Sachs was going to underwrite an initial public offering of Novacon.*

- *Other investors included lawyers, United States Senators, members of the United States Congress, a member of the British Parliament and the House of Lords.*

False projections concerning the potential profits and returns to investors

- *Mitsubishi wanted to take over the project in 1998. It hired a consultant who had been the head of the United States Department of Energy. Based on a study he undertook, he stated:*

> *"[They] have a process, basically it has a market place of somewhere around $30 billion a year and probably can produce profits in the range of $200 to $300 million a year within a five year period of time and is probably worth, on a typical multiple as a public corporation, once they've been in operation for four or five years,*

of some $3.5 billion"[sic].

- *Reliant Energy wants [Novacon] to retrofit 18 of their power plants.*

- *Baer is now faced with the decision whether to sell out or to find the necessary working capital to move his company into the next stage by itself because that's where the real profit multiple is. The company already has a growth potential worth $200 or $300 million. Baer is opting to go out and raise $3.5 million so that "we all make a bundle."*

- *His 5 year business plan for Novacon shows at the end of five years earning over $70 million in a high case.*

12. Additional statements, with no basis in fact, were contained in Novacon's 2004 business plan, which states that:

> *"The NOVACON process has been under development since 1990 and received patents on 28 claims in 23 countries, including the United States."*
>
> *Alstom, one of the largest power plant vendors in the world (22 billionS of annual sales) is presently demonstrating [the Novacon process] under the aegis of the US Department of Energy.*
>
> *The business plan's financial projections state that "the company could generate earnings of $20-$70 million per annum within the next five years, yielding a hypothetical market value well in excess of 1 billion dollars."*
>
> *[T]he company has already been extremely effective in both developing the process to a commercial-ready state and successfully undertaking early-stage marketing. NOVACON currently seeks to secure funding which will enable the company to expand its marketing program and prepare it for commercial rollout. The applicable market for the NOVACON process is in excess of $30 billion per year worldwide.*

13. When he appeared before Special Referee Leventhal pursuant to General Business Law § 354, Mr. Baer eventually stopped answering the Attorney General's questions and asserted his Fifth Amendment right against self-incrimination. His refusal to answer questions under oath specifically related to the truth of the representations made to investors. His refusal

thus raises an adverse inference as to those representations. Among the questions Mr. Baer refused to answer were the following:

- Isn't it true that the statement in Novacon's 2004 business plan that the market for Novacon's process is in excess of $30 billion was not based on a factual analysis? [AG v. Novacon, 14:19, June 25, 2008]

- Isn't it true that Alston [sic]did not engage in a full scale testing of Novacon's System? [AG v. Novacon, 15:7, June 25, 2008]

- You stated that that there were 35,000 firms worldwide that were interested in Novacon's technology. Isn't it true that that figure was not factually accurate? [AG v. Novacon, 15:15, June 25, 2008]

- You stated that Novacon's profit margins would be 70 to 75 percent. Isn't it true that there was no financial analysis to back this up? [AG v. Novacon, 15:21, June 25, 2008]

- Novacon's business plan [stated] that Novacon could generate earnings of [$]20 to $70 million per year within the next five years from the time of the business plan yielding a hypothetical market value well in excess of one billion dollars. [I]sn't it true that these figures were not based on a factual analysis? [AG v. Novacon, 16:2, June 25, 2008]

- Isn't it true that you at no time notified investors in Novacon that Novacon, you and Vivian Baer, had been issued subpoenas by the New York Office of the Attorney General in January of 2007? [AG v. Novacon, 16:11, June 25, 2008]

- In a tape-recorded conversation between you and William Rifkin which was made for potential investors, you were referred to as Dr. Stephen Baer. Is it correct that you do not have a doctorate degree? [AG v. Novacon, 114:25, June 25, 2008]

14. Mr. Rifkin also told potential investors that he had full authority to sell options and/or stock in Novacon and that the options could be converted into stock at a later date. The Baers and Mr. Rifkin also made promises to investors regarding the potential profitability of their purchase of common stock and options convertible into common stock in Novacon that

were never realized. Indeed, Mr. Baer now disavows Mr. Rifkin's representations, stating that the options would not have been honored and calls Mr. Rifkin "a thief" and "a crook." Regardless of their broken relationship, Mr. Baer and Vivian Mook Baer fraudulently offered and sold common stock and options in league with Mr. Rifkin resulting in the complete loss of investors' funds and causing irreparable injury to Novacon investors.

15. Undisclosed to Novacon investors were the further material facts concerning Novacon's unsustainable financial condition. During the period December 2004 through January 2005, Novacon had not been in business because the office files and equipment had been packed away in preparation for the reconstruction of its offices, laboratory and workshops located at the residential address of the Baers. At that time, Novacon was essentially inoperative as it had no employees and no development work had been completed.

16. Defendants, Mr. and Mrs. Baer, failed to reveal to investors their distressed personal financial condition and the distressed financial condition of Novacon.

C. Investors Relied on the Misrepresentations When Purchasing Securities

17. Based on their various false representations, defendants ultimately induced about 128 investors into purchasing over $3 million in Novacon securities.

18. For example, in or about February 2006, a Florida investor, Mr. Rosenberg, now deceased, learned of Novacon through another Novacon investor who was a friend of Mr. Rifkin. Mr. Rosenberg was told by his friend that the sale of Novacon stock was closed, but that he could still purchase options that would come due in June 2007. At the suggestion of his friend, Mr. Rosenberg called Mr. Rifkin. Mr. Rifkin told him he represented Novacon and that he raised money for it through the sale of stock. After several communications with Mr. Rifkin,

Mr. Rosenberg purchased, on behalf of himself and his aunt, Novacon options in a series of three installments totaling $65,000, *to wit*: $25,000 on February 22, 2006; $15,000 on March 7, 2006; and $25,000 on April 17, 2006. All three payments were made to Mr. Rifkin.

19. Another Florida investor, Mr. Nevins, also purchased Novacon options in reliance upon Mr. Rifkin's representations. Mr. Nevins purchased the Novacon options in reliance on a Novacon newsletter delivered via the internet from Novacon's New York offices on February 27, 2006. Additionally, and most importantly, he was advised by Mr. Rifkin to hear a tape recorded interview of Stephen Baer by calling to a pre-recorded Novacon call line. The subject line on a message to investors from Mr. Rifkin was, "Novacon Exciting Investors Update Feb 27, 2006." It urged investors to listen to an "exciting conference telephone call I had with *Dr. Stephen Baer*."

D. Defendants Used Investors' Funds for Their Own Purposes

20. Not only were the representations false, the money was never invested in any way whatsoever for the benefit of the investors. Instead, Defendants used the money for their own purposes. Defendants transferred approximately $400,000 of these funds for commissions to Rifkin.

21. Defendants used the remainder of the proceeds as follows: $224,000 for debit card purchases at restaurants, groceries, pet shops, video stores, jewelry stores and for direct ACH bill payments. Approximately $357,000 for unidentified ATM withdrawals, wire transfers and other cash withdrawals. Additionally, the Baers used (and comingled) approximately $1 million for business payments to GBD and for their personal expenses.

22. On June 15, 2006, $1,250,000 was withdrawn from the Novacon Citibank checking account and transferred to a Novacon Citibank Insured Money Market Account ("IMMA"). Two

weeks later approximately $100,000 was withdrawn from the IMMA account to make a payment on a home equity loan to CitiMortgage, Inc. on behalf of the Baers.

CLAIMS

FIRST CAUSE OF ACTION

Failure to Register – General Business Law §§ 359-e and 359-f

23. The Attorney General repeats and realleges paragraph 1 through 22 as if fully set forth herein.

24. At no time were defendants registered with the New York State Department of Law to issue, offer or sell securities pursuant to GBL § 359-e, nor were they exempt from registration, pursuant to GBL § 359-f, to issue, offer or sell securities to the public within or from the State of New York. These acts and practices constitute conduct violating Article 23-A of the GBL.

SECOND CAUSE OF ACTION

Fraudulent business practice – Executive Law § 63(12)

25. The Attorney General repeats and re-alleges paragraphs 1 through 22 as if fully set forth herein.

26. The acts and practices alleged herein constitute conduct proscribed by § 63(12) of the Executive Law, in that defendants engaged in repeated fraudulent or illegal acts or otherwise demonstrated persistent fraud or illegality in the carrying on, conducting or transaction of business.

THIRD CAUSE OF ACTION

Securities Fraud – General Business Law § 352-c(1)(a)

27. The Attorney General repeats and re-alleges paragraphs 1 through 22 as if fully set forth herein.

28. The acts and practices of the defendants alleged herein violated Article 23-A of the General Business Law, in that they involved the use or employment of fraud, deception, concealment, suppression, or false pretense, where said uses or employments were engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation, or purchase within or from this state of any securities.

FOURTH CAUSE OF ACTION

Securities Fraud – General Business Law § 352-c(1)(c)

29. The Attorney General repeats and re-alleges paragraphs 1 through 22 as if fully set forth herein.

30. The acts and practices of the defendants alleged herein violated Article 23-A of the General Business Law, in that defendants made, or caused to be made, representations or statements which were false, where (i) they knew the truth, or (ii) with reasonable efforts could have known the truth, or (iii) made no reasonable effort to ascertain the truth, or (iv) did not have knowledge concerning the representations or statements made, where said representations or statements were engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation, or purchase within or from this state of any securities.

FIFTH CAUSE OF ACTION

Common Law Fraud

31. The Attorney General repeats and re-alleges paragraphs 1 through 22 as if fully set forth herein.

32. The fraudulent acts and practices of the Defendants and their agents and employees alleged herein constitute actual and/or constructive fraud under the common law of the State of New York.

33. The Defendants made these statements, conducted the scheme to defraud and conducted the fraudulent course of conduct with the intent to induce investors to act and to forbear acting.

34. The false statements and misrepresentations were material to the offering and selling of securities.

35. Investors relied upon the Defendants' false and misleading statements and were deceived by the Defendants' scheme to defraud and fraudulent course of conduct while acting and forbearing actions.

36. Investors have been harmed by the aforesaid acts and practices and have no adequate remedy at law.

WHEREFORE, plaintiff demands judgment against the defendants as follows:

A. Enjoining and restraining defendants, their affiliates, assignees, subsidiaries, successors and transferees, officers, directors, partners, agents and employees, and all other persons acting or claiming to act on their behalf or in concert with them, from engaging

in any conduct, conspiracy, contract, or agreement, and from adopting or following any practice, plan, program, scheme, artifice or device similar to, or having a purpose and effect similar to, the conduct complained of above;

B. Permanently enjoining and restraining defendants from offering or issuing securities to the public within or from the State of New York, and permanently enjoining and restraining from in any manner engaging in the securities business with the public within or from the State New York as brokers, dealers, issuers or salesmen, or as officer, directors or controlling persons of a broker, dealer or issuer;

C. Providing an accounting of all fees, revenues, or other compensation received, directly or indirectly from defendants'' illegal and fraudulent behavior;

D. Directing that defendants disgorge all moneys obtained in connection with or as a result of the violations of law alleged herein, all moneys obtained in connection with or as a result of the fraud alleged herein;

E. Directing that defendants pay damages caused, directly or indirectly, by the fraudulent and deceptive acts complained of herein, plus applicable pre-judgment interest;

F. Directing that defendants make restitution of all funds obtained from investors in connection with the fraudulent and deceptive acts complained of herein;

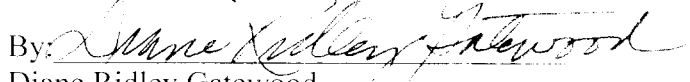
G. Directing that defendants pay plaintiff's costs, including attorneys fees as provided by law;

H. Directing such other equitable relief as may be necessary to redress defendant's violations of New York law; and

I. Granting such other and further relief as may be just and proper.

Dated: New York, New York
November 8, 2011

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: 
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Of Counsel

VERIFICATION

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

DIANE RIDLEY GATEWOOD, being duly sworn, deposes and says:

That she is an Assistant Attorney General in the office of Eric T. Schneiderman, Attorney General of the State of New York; and that she has read the foregoing complaint and knows the contents thereof; that the complaint is true to her own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters she believes the complaint to be true.

That the reason this verification is made by your deponent and not by the State of New York is that the State of New York is a body politic and sovereign acting through its officials and agents; that the source of your deponent's knowledge and the grounds of her belief are investigations caused to be made by the Office of the Attorney General of the State of New York and documents and records made available to it.

Diane Ridley Gatewood

DIANE RIDLEY GATEWOOD
Assistant Attorney General
of the State of New York

Sworn to before me this
8th day of November, 2011

R. Pierce Johnson

R. PIERCE JOHNSON
Assistant Attorney General
of the State of New York