BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order Issued to:	)	
	)	Case No. 38300
GREGORY DAVID LEVY 360TV, Inc. 3030 S. Sawtelle Boulevard, Suite 1 Los Angeles, CA 90066-1499	))))	OAH No. L2002060099
Respondents.	)	

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated January 7, 2003, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter with the following technical and minor changes pursuant to Government Code Section 11517(c)(2)(C):

(1) Corporations Code Section "25532(a)" is substituted for section "25230(e)" in line 2 of the first paragraph under the heading FACTUAL FINDINGS on page 1 of the Proposed Decision.

(2) The word "unqualified" is substituted for the word "unregistered" in line 3 of the first paragraph under the heading FACTUAL FINDINGS on page 1 of the Proposed Decision.

(3) The word "Corporations" is substituted for the word "Corporation" in line 4 of the tenth paragraph under the heading FACTUAL FINDINGS on page 3 of the Proposed Decision.

This Decision shall become effective on Jan. 30, 2003

IT IS SO ORDERED Jan. 30, 2003

DEMETRIOS A. BOUTRIS
California Corporations Commissioner

Original

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GREGORY DAVID LEVY
360TV, INC.
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PROPOSED DECISION

On June 18, 2002, in Los Angeles, California, John D. Wagner, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Complainant was represented by Karen L. Patterson, Senior Corporations Counsel.

Respondent Gregory David Levy represented respondents.

Evidence was received and the record remained open for the receipt of briefs and additional evidence. Briefs were received and marked as Exhibits 11 and D. Additional evidence was received and marked Exhibit C. The record was closed and the matter was submitted on December 3, 2002.

FACTUAL FINDINGS

1. On May 28, 2002, complainant Demetrios A. Boutris issued an order to respondents pursuant to Corporations Code section 25230(e) requiring them to Desist and Refrain from the further offer or sale in California of unregistered securities in the form of common stock of respondent 360TV, Inc.

2. Respondent Gregory David Levy ("Levy") is an individual doing business as Levy Financial Services at 3030 Sawtelle Boulevard, Suite 1, Los Angeles, California.

3. Respondent 360TV, Inc., a California corporation, was originally incorporated under the name E.S.P. Electronics, Inc., in 1993. It receives its mail at 3030 Sawtelle Boulevard, Los Angeles, California. It was created to consolidate ownership of 360 degree optical display technology, and to develop, manufacture, market, distribute and license a line

of 360 degree televisions and other display related products. Levy is its founder, President, registered agent and majority share holder.

4. On May 31, 2002, respondents objected to the above Desist and Refrain Order and requested a hearing. This hearing followed.

5. Respondents are attempting to develop a 360 degree color television system. Such a system is viewable from any angle. A viewer at any angle perceives the TV image as facing him or her directly.

6. On June 26, 2001, respondents filed a Form D, Notice of Sale of Securities Pursuant to Regulation D Section 4(6)(No. 21L-10536-79), pursuant to the provisions of the Securities Act of 1933, with the Securities and Exchange Commission, United States of America.

7. For several years, respondents have been creating a database consisting of the names of individuals who have expressed an interest in the technology of 360 degree television, potential products that will result from this technology, and/or 360TV, Inc., itself. The names were acquired when 360TV representatives appeared in public venues, such as consumer electronic shows, (e.g. Consumer's Electronic Show in Las Vegas), malls, and advertisements in newspapers and other publications. Names were also acquired as a result of other publicity concerning the technology and 360TV. The names in the database consisted primarily of individuals who were interested in the technology and potential products that might emanate from that technology. They are not names of individuals who are sophisticated investors or who have knowledge or financial information concerning respondent 360TV, Inc., that is similar to what would be found in a registration statement.

8. On April 27, 2002, respondents used the above database to send letters to approximately 35,000 people. The one page letter was headed: "360-Degree-T.V. Almost-Shareholder News." The salutation read: "Dear Almost-Shareholder." The letter began with the sentences:

"Do you want 360TV, Inc., shares at .50 cents per share as a prelude to our IPO ("Initial Public Offer")? This will be our last offering prior to becoming a public company."

The letter goes on to indicate that the respondents' records indicated that the addressee may have requested or received in the past a prospectus from 360TV from a private placement offering but is not a shareholder. (No evidence was received to indicate that a substantial number of the addressees actually may have received a prospectus in the past.) The letter points out that respondents' technology has been reported in Newsweek Magazine of Japan, The Los Angeles Times, Tomorrow's World, Sound and Vision Magazine, and respondents have been contacted by the Discovery Channel regarding the technology.

With regard to a future IPO, the letter states that a subsidiary of Wells Fargo Bank would execute the IPO, except raise the actual funds, and that 360TV plans to raise 15-25

million dollars, or more, with Wells Fargo as the underwriter. It also states that "PricewaterhouseCoopers" has agreed to perform all required accounting work and audits.

The letter also refers to a website address containing a Private Placement Offering Prospectus. Finally, the letter attempts to qualify what otherwise appears to be a general solicitation to sell a security (common stock) in an issuer transaction. It states: "This is not a solicitation or offer of any kind." This qualification is untrue. The letter is obviously a general solicitation to sell common stock in an issuer transaction prior to an IPO. The last sentence of the letter, however, is very true. It states: "Any Public or Private Offering of securities must meet all Federal and State securities laws without exception." In short, the letter was a solicitation, not just a news announcement.

9. At the time of the above solicitation 360TV had approximately 120 shareholders. Levy is the largest. Others are closely associated with respondents.

The website prospectus referred to in the solicitation letter was placed on the net in 2001, before the letter. It included a Subscription Agreement and 24 individuals submitted subscriptions based on the prospectus. Only two additional subscriptions were received as a result of the above general solicitation letter. The prospectus provided for a minimum offering of $500,000.00. This minimum was not met and subscriber funds were returned to the subscribers after being held in escrow. The offering legally closed on June 15, 2002.

10. Respondents engaged in offering securities of 360TV by mail. They solicited potential investors by mail. The offering was a general solicitation in an issuer transaction. The securities consisted of common stock at $.50 per share. The Department of Corporation has not issued a permit or any other form of qualification authorizing any person to offer or sell the common stock of 360TV, Inc., in this state.

LEGAL CONCLUSIONS

1. Section 25110 of the California Corporations Code ("Code") provides in relevant part that it is unlawful for anyone to offer or sell in this state any security in an issuer transaction unless the sale has been qualified. If such a security has not been qualified and is or has been offered or sold, the California Corporations Commissioner may order the issuer or offeror to Desist and Refrain from such activity until qualification has been made, or until an exemption from the qualification requirement has been established. Section 25532(d) of the Code provides for a hearing on such an order if a hearing is requested. This hearing was conducted in accordance with that section and The Administrative Procedure Act.

2. The offer to sell the above securities was not exempt from registration requirements of the Securities Act of 1933, as amended. Although respondents' website prospectus described itself as a "Private Offering Prospectus," the letter solicitation was a general solicitation, not a private offering. The Federal exemption for private offerings is set

forth in section 4(2) of the 1933 Act. The exemption from registration applies to "transactions by an issuer not involving any public offering."

The Security and Exchange Commission ("SEC") implemented section 4(2) by the issuance of regulation D in 1982, 17 C.F.R. sections 230.501-230.508, which sets forth a series of three limited offering exemptions applicable to issuer transactions. Respondents' Form D relied on the exemption set forth in Rule 505. the filing of a Form D does not, in itself, make a securities offering in a issuer transaction an exempt private offering. Form D does not determine whether an offering is a private offering. The facts surrounding the offering determine its character. Respondents' offering in this matter was clearly not a private offering. As set forth in Finding 10, respondents' letter of April 27, 2002, was a general solicitation which referred to an online prospectus, including a Subscription Agreement. General solicitations are not exempt under Rule 505. (17 C.F.R. 230.502(c).)

3. Based upon the foregoing Findings and Conclusions, the common stock of 360TV, Inc., is a security that was being offered in an issuer transaction in this state without the sale having been qualified. The offering is unlawful pursuant to section 25110 of the Code.

ORDER

WHEREFORE the following order is hereby made:

Pursuant to section 25532 of the Code, Gregory David Levy and 360TV, Inc., are ordered to Desist and Refrain from the further offer or sale in the State of California of securities in the form of the common stock of 360TV, Inc., unless and until qualification has been made under the California Securities Law of 1968.

DATED: January 7, 2003

JOHN D. WAGNER
Administrative Law Judge
Office of Administrative Hearings