

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ANCHORAGE ILLIQUID
OPPORTUNITIES OFFSHORE MASTER
V, L.P.,

Plaintiff,

C.A. No. _____

-against-

TRUSTIFY, INC.,

Defendant.

**VERIFIED COMPLAINT AND PETITION FOR
INSPECTION OF BOOKS AND RECORDS, APPOINTMENT OF A
RECEIVER/CUSTODIAN, AND ENTRY OF A *STATUS QUO* ORDER**

Anchorage Illiquid Opportunities Offshore Master V, L.P. (“Anchorage”) brings this Verified Complaint (“Complaint”) against Trustify, Inc. (“Trustify”), a Delaware corporation, seeking relief pursuant to 8 *Del. C.* §§ 220 and 226(a)(3) & (b), and this Court’s equitable powers. Anchorage’s allegations are made upon personal knowledge or other information obtained upon investigation that it believes to be true, and on information and belief, as follows:

NATURE OF THE ACTION

1. By this action, Anchorage seeks to protect its interests and investments in Trustify, which are being abandoned—and potentially misappropriated—by Trustify’s management and about which Trustify is refusing to provide any reasonable information.

2. Anchorage has sound reason to believe that its substantial investment in Trustify is being squandered and its rights as a stockholder are being materially, irrevocably, and adversely affected through Trustify's abandoning of its business and through the fraudulent and negligent actions of Trustify's Chief Executive Officer, Daniel K. Boice ("Boice"), and its other officers.

3. As a registered stockholder, Anchorage has sought to ascertain whether Trustify's board of directors was adequately managing Trustify's business and financial health, and whether the funds Anchorage had invested into Trustify were being protected and correctly used.

4. When Boice effectively made Trustify "go dark" by refusing to engage with Trustify's stockholders or respond to their concerns, Anchorage made numerous, reasonable requests for information (including two formal written requests) which would enable Anchorage to make its own determinations regarding the safety and health of its interests in Trustify.

5. Instead, however, both information requests have been ignored. Moreover, a number of Trustify's board members have suddenly resigned and one has even retained separate counsel, Trustify's corporate headquarters have been shuttered and abandoned, and Anchorage has uncovered malfeasance, mismanagement, breaches of fiduciary duty, and fraud relating to the funds

received by Trustify as part of its stock offerings into which Anchorage has invested.

6. Anchorage therefore now seeks relief to enforce its contractual rights to access Trustify’s information and Anchorage’s statutory right to obtain access and copies of certain financial information relating to Trustify and its board. Furthermore, Anchorage seeks the appointment of a receiver or custodian to protect the interests of Anchorage and the other Trustify stockholders in light of Trustify’s apparent abandoning of its business without taking steps to dissolve, liquidate, or distribute its assets—which includes Anchorage’s total investment of \$6,707,498.57. Finally, Anchorage further seeks entry of a *status quo* order to protect the interests of Trustify and its stockholders currently being irrevocably harmed.

JURISDICTION

7. This Court has jurisdiction to hear and determine this action pursuant to 8 *Del. C.* §§ 220 and 226(a)(3) & (b), and this Court’s inherent powers as a Court of Equity.

PARTIES

8. Anchorage is a Cayman Islands exempted limited partnership which invests in various companies in the United States. Anchorage IO GP V, L.L.C. (“Anchorage IO”), a Delaware limited liability company, is the General Partner of

Anchorage. Pursuant to a December 11, 2015 Investment Management Agreement, Anchorage IO appointed Anchorage Capital Group, L.L.C. (the “Investment Manager”), a Delaware limited liability company, as Anchorage’s Investment Manager.

9. Trustify is a Delaware Corporation with its principal headquarters at 200 12th Street South, #801, Arlington, Virginia 22202. Trustify is an on-demand technology platform that helps to connect and hire private investigators in the United States, although Trustify may have abandoned its business and its corporate headquarters in Arlington, Virginia are shuttered.

FACTUAL BACKGROUND

A. Anchorage’s Investments In Trustify

10. Trustify operates with the stated objective of creating and maintaining a technology platform to connect individuals across the United States to a nationwide network of trained and vetted private investigators. Through this connective platform, Trustify offers real-time observation and digital monitoring services, as well as background checks and other private investigative work.

11. In or about May of 2017, Boice and Trustify’s other officers sought to raise additional working capital. To do so, they amended Trustify’s Certificate of Incorporation and created a class of Series A Preferred Stock. *See* Ex. A §§ IV(A), (C).

12. The Series A round did not have a minimum threshold amount to be raised in order for the round to close and the Series A Preferred Stock to be issued. *See* Ex. B at p. 1.

13. Among other potential investors, Boice and Trustify's other officers solicited the Investment Manager to have Anchorage invest in Trustify's Series A round. On or about May 22, 2017, Anchorage purchased 2,408,599 shares of Series A Preferred Stock at a price of \$1.9721 per share, for an aggregate investment of \$4,749,998.09. *See id.* at p. 1 & Exhibit A thereto.

14. To further induce Anchorage to purchase Trustify's Series A Preferred Stock, Trustify and Anchorage entered into a separate letter agreement dated as of May 22, 2017 ("the Letter Agreement"), which grants Anchorage specific information and inspection rights in addition to those provided under 8 *Del. C.* § 220. *See* Ex. C.

15. In pertinent part, the Letter Agreement requires Trustify to provide Anchorage with quarterly and yearly balance sheets, yearly financial projections, and a yearly budget. *See id.* at § (1)(a). The Letter Agreement also provides Anchorage with the right to visit and inspect any of Trustify's properties, to discuss Trustify's affairs, finances, and accounts with its officers, and to receive access to and copies of any other reasonably requested information. *See id.* at §§ (1)(b)-(c).

16. Approximately a year after the Series A round was completed successfully, Trustify sought to raise additional working capital in a manner substantially similar to the prior successful round. To that end, Trustify's Certificate of Incorporation was again amended to create a class of Series B Preferred Stock. *See* Ex. D §§ IV(A), (C).

17. However, unlike the Series A round, Boice wanted to raise at least \$15 million (with a maximum of \$20 million) during the Series B round before the round would close and the Series B Preferred Stock would be issued. *See* Ex. E at p. 1.

18. Boice solicited Anchorage to participate in the Series B round. Boice told Anchorage that the Series B round had a lead investor—Nfluence Partners (“Nfluence”), a well-established boutique investment bank for technology, media, and telecom transactions. Nevertheless, Boice and other Trustify officers simultaneously voiced uncertainty as to whether the Series B round would reach its \$15 million target minimum raise, and thus actually close and issue Series B Preferred Stock.

19. Due to this uncertainty, Anchorage told Boice that it would only wire funds as part of the Series B round after Nfluence had done the same. Boice and Anchorage also agreed that any funds Anchorage wired to Trustify would be kept in a specific Series B-related bank account with Square 1 Bank, and that such

funds would be returned directly to Anchorage if the Series B round did not meet its minimum investment target.

20. Boice subsequently provided Anchorage with proof of wires received from some of the smaller Series B investors. When Anchorage informed Boice that it awaited confirmation from Nfluence, both Boice and Nfluence's Managing Partner, Gary Moon, emailed Anchorage stating that Nfluence had wired funds to Trustify as Nfluence's participation in the Series B round.

21. Based on this confirmation, on June 14, 2018, Anchorage wired \$1,957,500.48 to Trustify with the understanding that Anchorage would receive 642,292 shares of Series B Preferred Stock at a price of \$3.04768 per share if the Series B round met its minimum target—or Anchorage would receive its money back. *See* Ex. E at p. 1 & Exhibit A thereto.

B. Trustify “Goes Dark” While Disturbing Facts Emerge

22. Subsequent to Anchorage's wire to Trustify for the Series B round, and while the round's funding was still ongoing, Trustify and its stockholders executed an Amended and Restated Stockholders Agreement dated as of June 14, 2018 (the “June 2018 Agreement”). *See* Ex. F

23. Upon Anchorage's review of the June 2018 Agreement's stockholder list, it appeared that Nfluence had in fact not wired any funds or participated in any Series of Trustify stock: the June 2018 Agreement listed Anchorage as a

stockholder (of Series A Preferred Stock, as Series B had not yet been fully funded), yet merely contained a placeholder for some undesignated “Nfluence Partners entity” and which held no Trustify shares of any kind. *See id.* at Schedule A.

24. Anchorage raised concerns to Boice and other Trustify officers regarding Nfluence’s alleged participation, but received no response or explanation.

25. As months went by without notice that the Series B round had met its minimum target for funding, Anchorage inquired regarding when and whether the round would close, and regarding the status and location of the \$1,957,500.48 that Anchorage had wired to Trustify but for which it still had not received any stock.

26. Instead of receiving substantive responses, Boice made Trustify effectively “go dark,” evading and outright ignoring Anchorage’s repeated requests for information regarding the Series B round and Trustify’s general business and financial health.

27. The majority of Trustify’s board members also resigned during this same time, including Boice’s co-founder and wife, Jennifer Mellon. While Anchorage and other investors were able to communicate with one of Trustify’s sole remaining board members, Timothy Gentry, Mr. Gentry himself was unable to

procure legitimate and verified information from Boice or access Trustify's records.

28. On or around November 8, 2018, Anchorage became aware of a lawsuit filed in the New York State Supreme Court against Boice as the principal of Trustify, alleging that Boice had failed to pay for work completed for Trustify by a public relations firm. *See* Ex. G. The public relations firm claimed damages of \$180,152.63. *See id.*

29. Through early January 2019, Boice continued to refuse or ignore investor requests for information, and was refusing to provide information about Trustify even to Mr. Gentry or board observers.

30. Almost simultaneously with Boice's (then) most recent refusal to speak with Anchorage, on or about January 8, 2019, Anchorage became aware of another lawsuit filed against Boice and Trustify, this time in the United States District Court for the District of Virginia. *See* Ex. H. This action, brought by Trustify employees, alleges that Trustify paid its employees late for the month of October, that some of the paychecks provided bounced when deposited, and that Trustify had failed to pay its employees for the month of November 2018. *See id.* ¶¶ 23-50, 57.

31. More importantly, the Trustify employees' complaint asserts that Boice commingled and utilized Trustify's funds for his personal use, that Trustify

was in financial distress by the fall of 2018, and that Trustify had stopped paying amounts owed to some vendors. *See id.* ¶¶ 21-22, 55-56.

32. Subsequent to the Virginia lawsuit's commencement, Anchorage received independent documentation indicating that Boice has commingled and utilized Trustify's funds for purely personal use. Anchorage was also informed by a principal of another entity invested in Trustify—Sovereign's Capital—that it was in possession of emails from Trustify's chief of staff which showed that Boice annually transferred \$750,000 from Trustify's accounts into a limited liability company that Boice created and maintained for his personal use.

33. Sovereign's Capital also informed Anchorage that Boice had provided Sovereign's Capital with certain copies of Trustify's bank statements that had either been completely fabricated or had been "doctored" to show an inflated amount of funds in the account.

34. On January 22, 2019, after Boice had repeatedly ignored renewed requests from investors and board members to review any of Trustify's records or bank statements, Anchorage was informed that Mr. Gentry had suddenly resigned from Trustify's board and retained counsel. This was especially shocking as Mr. Gentry had also been one of Trustify's earliest investors.

35. Anchorage attempted to contact Boice and other Trustify executives multiple times to inquire as to the cause of Mr. Gentry's sudden resignation and the

health of Trustify's business, but each such attempt continued to be ignored or rejected.

36. Finally, Anchorage's independent investigation revealed that Trustify's corporate headquarters in Arlington, Virginia has been completely abandoned; the property was shuttered and the property management company confirmed that they had changed the locks on Trustify's offices.

C. Anchorage's Formal Information Demands Are Ignored

37. Anchorage sought to actively protect its own investments from corporate waste and malfeasance. On January 28, 2019, Anchorage sent Trustify a written request for the following, among other things: (a) access to inspect Trustify's premises; (b) a meeting with Trustify's officers to review Trustify's affairs, finances, and accounts; and (c) access to certain financial records and information relating to Trustify's finances and the Series B funds collected. *See* Ex. I.

38. Instead of providing Anchorage with the access and information it had reasonably requested, Boice responded by email the next morning, falsely stating that Trustify "ha[s] already acquiesced to countless requests from Anchorage for conference calls and meetings and text[s]" with Boice and Trustify's other remaining officer. *See* Ex. J. Yet Boice acknowledged "the struggles with closing the Series B and the dwindling of our cash position" and further explicitly admitted

that Trustify was “at the point of the Series B likely falling apart, and we are perhaps a matter of months away from having to wind up the company if that doesn't change.” *See id.*

39. Finally, Boice explicitly gave notice that he would not “spend [his] time responding to emails from lawyers and doing more conference calls with Anchorage”—which included responding to Anchorage’s information request; Boice also threatened that he would “push Trustify through all of [its precarious financial position] but, as I explicitly told [Anchorage] in one of our many conversations, I'm not going to do that if I also have to deal with a bunch of distractions that hinder what needs to be done.” *See id.*

40. An Anchorage representative responded to Boice’s email, reiterating that Anchorage’s interests remain aligned with those of Trustify and which Boice had stated, and that Anchorage’s information requests were made in order for Anchorage to better understand Trustify’s issues and attempt to keep Trustify solvent and running. Boice, however, never responded and remained entirely unavailable.

41. Based on Boice’s email, the concerning circumstances detailed above, and Trustify’s remaining “dark,” Anchorage served its formal Demand for Inspection of Books and Records (the “Demand”) under oath upon Trustify at its

corporate address and upon its registered agent for service of process within the State of Delaware on February 27, 2019. *See* Exs. K, L.

42. Anchorage's Demand met all of the statutory form and manner requirements, and requested the following information:

- A. Trustify's current and quarterly bank statements for the period of May 1, 2017 through the present, including those that reflect Trustify's cash and cash equivalents that support the quarterly financials provided to Anchorage by Trustify to date;
- B. The status of the Series B Account (as defined in the Series B Agreement) from inception to the present, including records of any deposits, withdrawals, transfers, and/or application or use of funds from that Series B Account;
- C. Trustify's most recent balance sheet, P&L, and other financial statements;
- D. Records of any related party transactions during the period of May 1, 2017 through the present, including any transactions between and among Trustify and Daniel Boice, Jennifer Mellon, and/or any of their agents, representatives, or affiliates (including family members and their agents, representatives, or affiliates);
- E. Trustify's general ledger for the period of May 1, 2017 through the present;
- F. Shareholder and board meeting minutes since May 1 2017, including any minutes or notes of any meetings at which Timothy Gentry's resignation from Trustify's board was discussed, including but not limited to interviews of Mr. Gentry; and
- G. All correspondence, including emails, to and from Trustify's board members, directors, and/or officers concerning the items requested and set forth in this Demand.

See Ex. K at p. 2.

43. Anchorage also provided several proper purposes and bases for the Demand, including Trustify's "going dark," Boice's refusal of Anchorage's prior information requests, the legal allegations regarding misappropriation of corporate assets and nonpayment of employees, and the other facts ascertained by Anchorage. *See id.* at pp. 3-4.

D. Anchorage Is Entitled To The Relief It Seeks

44. Anchorage has fully complied with the provisions 8 *Del. C.* § 220 regarding the form and manner of demanding the access and information from Trustify. Trustify, however, never responded to the Demand and has not produced the information requested therein.

45. Consequently, Trustify is in violation of 8 *Del. C.* § 220 and Anchorage is entitled to access to, and inspection of, the information identified in its Demand.

46. Moreover, the evasion tactics, continuous refusal to comply with stockholder requests, gross mismanagement, fraud, and commingling and conversion of Trustify's assets demonstrate extreme circumstances causing imminent danger of great loss to the interests of Trustify and its stockholders which cannot otherwise be prevented.

47. As Trustify is also in a state of complete mismanagement and appears to be abandoning its business to the total detriment of its stockholders, the

circumstances require that this Court appoint a custodian who will take charge of Trustify's assets, business, and affairs, and further empower the custodian to do all other acts which may be done by the corporation and which may be necessary and proper to protect Trustify and its stockholders.

48. Finally, as the facts demonstrate the ongoing and imminent danger of irreparable harm to Trustify's stockholders caused by Boice's gross mismanagement, commingling, and conversion of Trustify's assets, this Court should issue an Order maintaining Trustify's *status quo* and enjoining Trustify and any of its officers or representatives from disbursing any funds or transferring any assets other than those needed to meet Trustify's day-to-day obligations.

49. Indeed, given the severe and disturbing circumstances ascertained by Anchorage and the apparent abandonment of Trustify's business, Trustify's assets will be wrongfully misappropriated, and Anchorage and Trustify's other stockholders will be irrevocably damaged, absent such relief.

COUNT I

(Information and Copies of Certain Books and Records Under 8 Del. C. § 220)

50. Anchorage repeats and realleges each and every allegation contained in paragraphs 1 through 49 of this Verified Complaint as if fully set forth herein.

51. Anchorage, a shareholder of Trustify, has delivered the Demand for information and copies of certain books and records of Trustify.

52. Anchorage has fully complied with the provisions of 8 *Del. C.* § 220 regarding the form and manner of demanding information and copies of Trustify's books and records.

53. Anchorage's stated purpose in making its Demand is proper under Delaware law and is directly related to its interests as a shareholder of Trustify.

54. The requests for information and books and records are narrowly tailored to serve these stated purposes, and are necessary and essential to fulfill these purposes.

55. Trustify has not provided Anchorage with any of the information requested in the Demand and has no legitimate basis under 8 *Del. C.* § 220 not to provide Anchorage with these materials.

56. Anchorage is therefore entitled to inspect and receive copies of the information requested in the Demand in Delaware or, alternatively, to its counsel of record in New York.

COUNT II

(Receiver/Custodian Under 8 *Del. C.* § 226(a)(3) & (b))

57. Anchorage repeats and realleges each and every allegation contained in paragraphs 1 through 56 of this Verified Complaint as if fully set forth herein.

58. 8 *Del. C.* § 226 provides in pertinent part as follows:

The Court of Chancery, upon application of any stockholder, may appoint 1 or more persons to be

custodians, and, if the corporation is insolvent, to be receivers, of and for any corporation when ... [t]he corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

59. A custodian so appointed is granted all the powers and title of a receiver appointed under 8 *Del. C.* § 291, which authorizes a receiver to “[t]ake charge of [the corporation’s] assets, estate, effects, business, and affairs . . . and do all other acts which may be done by the corporation and which may be necessary and proper.” *See, e.g., Esopus Creek Value LP v. Hauf*, 913 A.2d 593, 606-607 (Del. Ch. 2006).

60. Furthermore, this Court is empowered to make such an appointment for the protection of stockholders when fraud, gross mismanagement or extreme circumstances causing imminent danger of great loss which cannot otherwise be prevented. *See id.* (citing *Drob v. Nat’l Mem. Park, Inc.*, 41 A.2d 589, 597 (Del. Ch. 1945)); *Zutrau v. Jansing*, No. 7457-VCP, 2013 Del. Ch. LEXIS 71, at *15 (Mar. 18, 2013).

61. As alleged in detail in this Complaint, Trustify’s business and corporate headquarters appears to be suddenly and completely abandoned, Boice is grossly mismanaging Trustify’s business and has converted its assets for personal use thereby defrauding the interests of Trustify and its stockholders.

62. Anchorage has exhausted all reasonable efforts to protect its investments and interests in Trustify, yet cannot stop its interests from being irreparably harmed or stop its investments from being potentially squandered and misappropriated.

63. Accordingly, Anchorage is entitled to the appointment of a receiver or custodian to protect its investments and interests in Trustify and/or to liquidate and return those investments to Anchorage.

COUNT III

(Status Quo Order for Injunctive Relief)

64. Anchorage repeats and realleges each and every allegation contained in paragraphs 1 through 63 of this Verified Complaint as if fully set forth herein.

65. As Anchorage is entitled to access to Trustify's books and records as requested in the Demand and the circumstances justify the appointment of a receiver/custodian, Trustify is likely to succeed on the merits of this action.

66. In the absence of immediate injunctive relief by way of a *status quo* order Anchorage will be irreparably harmed, as Trustify has abandoned its business and its remaining assets are being squandered and misappropriated.

67. The harm to Anchorage and Trustify's other stockholders if the *status quo* order is not granted substantially outweighs any harm to Trustify or Boice, as

their conduct threatens the viability of Trustify's operations and the protection of the stockholders' investments and interests therein.

68. In contrast, a *status quo* order will not harm Trustify, as it will simply maintain Trustify's *status quo* and any day-to-day operations still ongoing while enjoining Boice from continuing to engage in the wrongful conduct that continues to cause damage to the interests of Trustify and its stockholders.

69. Based on the foregoing, Plaintiffs are entitled to injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Anchorage prays that this Court enter an Order:

- A. Entering judgment in favor of Anchorage;
- B. Directing Trustify to provide Anchorage and its duly authorized representatives with copies of the information requested in the Demand in Delaware or, alternatively, to its counsel of record in New York;
- C. Appointing a receiver/custodian for Trustify;
- D. Maintaining Trustify's *status quo* and enjoining Boice and Trustify's other officers from taking further action to damage Trustify and its stockholders;
- E. Awarding Anchorage its costs and expenses incurred in bringing and prosecuting this action, including its attorneys' fees; and

F. Awarding such other and further relief as this Court deems just and appropriate.

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