

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRENT LEMONS

Defendant,

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Case No.:

COMPLAINT

Plaintiff, Securities and Exchange Commission, files suit against Defendant Brent Lemons and would respectfully show the Court as follows:

SUMMARY

1. This matter involves the misappropriation of customer funds by Brent Lemons while he was employed as a registered representative in the Tyler, Texas, branch offices of Banc of America Investment Services, Inc. ("BAIS") and A.G. Edwards ("AGE"), both Commission-registered broker-dealers.

2. From at least September 2004 through April 2007, Lemons misappropriated over \$1.4 million from several customers during his association with AGE and BAIS. He was able to accomplish this by having his customers sign bank and brokerage documents in blank, including withdrawal slips, ostensibly to facilitate reinvesting the proceeds from the liquidation of securities in his customers' accounts. Instead of using the funds to buy securities as he had promised, Lemons used most of the funds to cover his substantial gambling losses.

3. The Commission, in the interest of protecting the public from any further unscrupulous and illegal activity, brings this action against the Defendant, seeking permanent injunctive relief, disgorgement of all illicit benefits Defendant received, plus accrued

prejudgment interest, and a civil monetary penalty.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to § 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78(aa)]. Defendant, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, practices and courses of business described in this Complaint. Venue is proper because many of the transactions, acts, practices and courses of business described below occurred within the jurisdiction of the Eastern District of Texas.

PARTIES

5. Brent Steven Lemons, age 51, was a registered representative in the BAIS Tyler, Texas, branch office from September 24, 2004 through April 23, 2007, when BAIS terminated him for violating BAIS’s policies and procedures. From 1982 to 2004, Lemons was associated with AGE as a registered representative in the Palestine, Texas, branch office and later as the branch office manager in Tyler. On March 4, 2008, for the activities described in this Complaint among other things, Lemons was indicted in the Eastern District of Texas (Tyler Division) in *U.S. v. Brent Steven Lemons*, No. 6:08 CR 20, (E.D. Tex. Tyler Division, March 4, 2008).

FACTUAL BACKGROUND

6. Lemons misappropriated money from his customers’ brokerage and bank accounts, mostly from the liquidation of the customers’ variable annuities and Lemons’ subsequent use of withdrawal slips to abscond with the proceeds. In perpetrating his fraudulent scheme, Lemons routinely provided his customers with “statements” he prepared manually, sometimes handwritten, that purportedly summarized their securities holdings. These statements included not only the securities held in the customers’ AGE or BAIS accounts, but other securities, such as variable annuities, which were held outside of their brokerage account.

7. To aid in implementing his scheme, Lemons directed some of his customers to sign in blank various documents, including withdrawal slips, letters of authorization and new account opening documents – ostensibly to facilitate investing or reinvesting their funds. Lemons would then submit requests for full or partial surrender of his customers’ variable annuities and direct the proceeds to be deposited into the customers’ BOA bank accounts. Finally, Lemons, using the withdrawal slips that were previously signed in blank by his customers, withdrew cash from the customers’ bank accounts. Lemons concealed his theft by reflecting fictitious “purchases” of other securities in the statements he prepared and by telling his customers that the AGE or BAIS brokerage account statements did not reflect the “true value” of their holdings.

Customer A

8. In 2001, a 61 year old customer of Lemons received approximately \$1.3 million in a divorce settlement. When the customer received the funds, she had no investing experience, but knew Lemons because of his brokerage relationship with her former husband. The customer opened an account at AGE by depositing the \$1.3 million, which represented essentially her entire liquid net worth. Thereafter, she trusted Lemons to manage the money in her AGE account, and later in her BAIS account, in a manner that would provide her with income for the remainder of her life. Lemons asked the customer to sign documents in blank (new account forms, Letters of Authorization and withdrawal slips) purportedly to facilitate his transfer of her funds to better investments, if they became available. Lemons, instead, used the documents, without her consent, to misappropriate money from her account. In connection with these illicit transactions, Lemons lied to her about outside investments he made for her and told her to ignore the statements she received from AGE, BAIS and BOA.

9. Between May 2005 and March 2007, Lemons fraudulently withdrew nearly \$650,000 from the customer's accounts. Lemons accomplished the theft by submitting requests for full or partial surrender of annuities owned by her, depositing the proceeds in her BOA bank account, and then misappropriating the funds. The first theft took place on May 11, 2005, when, without the customer's knowledge, Lemons requested the surrender of one of her annuities and used the proceeds to obtain a cashier's check in the amount of \$148,000. Lemons then deposited the cashier's check into the bank account of another customer. Lemons stole the remaining \$500,000 between November 2005 and February 2007, when he caused the surrender, in whole or in part, of other annuities she held. Of the \$500,000, Lemons "invested" \$86,000 in one of his private businesses and spent approximately \$111,000 to purchase two pieces of real property, which the customer purportedly would own with Lemons. Only Lemons' name, however, appeared on the title to either of these properties. Then, in February and in March 2007, Lemons used \$200,000 to purchase three separate cashiers checks. Each of the cashiers checks was payable to Boyd Corporation (a/k/a Sam's Town casino). Finally, between September 2006 and April 2007, Lemons withdrew \$102,000 in cash from the customer's bank account. As with the withdrawals for the cashiers check, Lemons used blank withdrawal slips.

Customer B

10. In 2002, a customer of Lemons, who is 54 years old, a relative of Lemons and a medical malpractice lawyer, received \$1 million in legal fees from the settlement of a lawsuit and deposited the funds into his AGE account. In September 2004, when Lemons moved to BAIS, the customer transferred his accounts to BAIS – valued at that time at approximately \$1.2 million.

11. Between January 2005 and January 2007, Lemons misappropriated \$707,000 from the customer. In January 2005, Lemons falsely claimed to have purchased 17,000 Bank of

America (“BAC”) stock options and offered one-half to the customer, who paid Lemons \$100,000 for his half. Lemons never purchased or owned BAC options. From December 2005 through January 2007, without the customer’s permission or knowledge, Lemons misappropriated another \$607,000 from the accounts by liquidating securities held in the customer’s brokerage account and depositing the proceeds in the customer’s rarely used BOA bank account. Lemons then wire transferred \$467,000 in 18 separate transactions to accounts Lemons controlled. In January 2007, Lemons transferred \$140,000 from the customer’s IRA account maintained at BOA to one of Lemons’ BOA accounts. The customer neither authorized the transfer nor signed the confirmation document requested by BOA.

Customer C

12. In 1988, while Lemons was associated with AGE, a customer of Lemons, who is currently 57 years old and a Baptist minister, opened an account by depositing his life savings of \$38,000. Between 1988 and September 2004, when Lemons left AGE, the customer deposited over \$168,000 in the account, including an inheritance of approximately \$120,000.

13. Lemons routinely told the customer that his AGE account statements did not reflect the true value of his account. For example, Lemons told the customer that he owned an annuity at Sun Life Financial worth over \$100,000 that was separate from his other AGE holdings. Lemons never provided the customer with any documentation to substantiate this claim. The customer relied on Lemons to monitor his account holdings and rarely reviewed the statements he received from AGE. In December 2003, Lemons gave the customer handwritten statements showing his account value was in excess of \$165,000. In reality, the customer’s AGE account value at that time was \$11,000, including \$9,000 in margin debt.

14. In September 2004, after Lemons moved to BAIS, the customer decided to keep his account at AGE. In reviewing his account with his successor representative at AGE, the

customer learned that there was no record that Lemons had purchased a Sun Life annuity or any other annuity. Additionally, the customer discovered that Lemons had made numerous unauthorized withdrawals totaling approximately \$161,000 from his account.

15. On or about November 8, 2004, in an effort to solve the mystery of the missing annuity, the customer confronted Lemons. At the time, Lemons insisted that the customer's \$100,000 annuity was "in with his [Lemons's own annuity]," but failed to provide confirmation or documentation. The customer persisted and, finally, Lemons gave him a computer printout showing a \$109,000 "annuity balance." He also gave the customer information to verify the balance, including the account number, a telephone number, an access code and a PIN number. The customer called the telephone number, but he was directed to customer service, where he learned that it was a BOA bank account opened the prior day by Lemons with an opening deposit of \$109,000.

16. In a November 9, 2004 letter to the customer, Lemons attempted to justify his conduct by claiming that he created the account as part of his "mission work" in which he made a weekly contribution to a retirement fund for the customer. Lemons claimed that he is the owner of the account, but that the customer was the sole beneficiary and, at retirement, the customer would receive the balance. According to the account documents, Lemons was the sole owner and beneficiary.

The Scheme Unravels

17. On April 19, 2007, a 77 year old customer of Lemons complained to BAIS about \$27,000 in suspicious withdrawals from her BOA account. The customer and her husband had been customers of Lemons since the mid-1980s, but Lemons consulted about their account holdings primarily with the customer's husband, until the husband's death on March 9, 2007.

Lemons typically provided the couple with account statements he had prepared manually. Many of these statements often included handwritten notes about their holdings.

18. After the customer's husband died, Lemons advised her that she would be receiving a substantial sum of money: the death benefits from her husband's variable annuity, in two separate checks. On April 5, 2007, at Lemons' insistence, the customer opened a bank account at BOA. Lemons advised her to sign blank withdrawal slips so that he could later move her funds to higher interest-bearing investments. On April 10, 2007, two checks totaling \$394,276, the proceeds from the variable annuity, were deposited into her BOA account. Unknown to the customer, using the withdrawal slips she had signed in blank, Lemons withdrew from her account \$7,000 on April 10, 2007. Also on April 10, Lemons deposited \$7,000 into his own personal account. On April 12, 2007, Lemons withdrew \$20,000 from the customer's account. The withdrawal slips were stamped "KTT" or "known to teller," indicating the teller believed Lemons had the authority to withdraw the funds on behalf of the customer.

19. On April 23, 2007, BAIS confronted Lemons regarding the customer's complaint about the suspicious withdrawals. Lemons explained to BAIS that he often assisted the customer and other customers with cash withdrawals from their bank accounts. He had advised the customer to sign blank withdrawal forms for that purpose. Lemons also told BAIS that the customer asked him to withdraw the \$20,000 in cash to have her son disinterred and moved to another cemetery. After discussing the customer's complaint with BAIS, Lemons telephoned her advising her that an investigator from BOA would be contacting her and asking her to corroborate the explanation he gave to BAIS. Lemons also asked the customer not to disclose that he had contacted her. Finally, Lemons promised the customer he would return the money and asked her to open another bank account. After Lemons' telephone call, the customer spoke with BAIS representatives and told them about her conversations with Lemons. Later the same day,

Lemons telephoned the customer again and told her he had been fired from BOA because she had complained.

20. Lemons used the funds he had misappropriated from his customers to gamble at various casinos. Between September 2004 and April 2007, Lemons' net gambling losses were over \$1.4 million, virtually the same amount he misappropriated from his customers.

CLAIM
Violations of Section 10(b) of the Exchange Act and Rule 10b-5

21. Plaintiff Commission repeats and incorporates paragraphs 1 through 20 of this Complaint by reference as if set forth *verbatim*.

22. Defendant, directly or indirectly, singly or in concert with others, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

23. As a part of and in furtherance of his scheme, Defendant, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those set forth in paragraphs 1 through 24 above.

24. Defendant made the above-referenced misrepresentations and omissions knowingly or with recklessness regarding the truth.

25. By reason of the foregoing, Defendant violated and, unless enjoined, will continue to violate the provisions of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

RELIEF REQUESTED

The Commission seeks the following relief:

26. An order permanently enjoining Defendant from further violations of the federal securities laws and specifically enjoining Defendant from continuing violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

27. Disgorgement of all illicit proceeds and benefits plus prejudgment interest realized by Defendant as a result of the scheme alleged herein.

28. A civil monetary penalty against Defendant as provided by statute and determined by the Court to be just and proper.

29. Such other and further relief as the Commission may show itself entitled.

DATED: August 1, 2008

Respectfully submitted,



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