

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**SECURITIES AND  
EXCHANGE COMMISSION,  
100 F. Street, N.E  
Washington, D.C. 20549  
Tel. (202) 551-4719**

**Plaintiff,**

v.

**INVESTTOOLS INC., MICHAEL J. DREW,  
and EBEN D. MILLER,**

**Defendants.**

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Case: 1:09-cv-02343  
Assigned To : Friedman, Paul L.  
Assign. Date : 12/10/2009  
Description: General Civil

**COMPLAINT**

Plaintiff Securities and Exchange Commission ("Commission") alleges:

**SUMMARY**

1. This case involves a fraud in the investor seminar industry from 2004 to approximately June 2007. Defendants Michael J. Drew ("Drew") and Eben D. Miller ("Miller") were employees of defendant Investtools Inc. ("Investtools" or the "Company"), a company that sells instruction, software, and personal coaching to investors who want to learn how to trade options and other securities. Drew and Miller made sales presentations at workshops that Investtools held at hotels throughout the United States. To sell Investtools' how-to-trade-securities courses, personal coaching, and other products and services, on certain occasions Drew and Miller misleadingly portrayed themselves as expert investors who made their living trading securities. They did so to mislead investors into believing that they too would make extraordinary profits trading securities

if they purchased expensive Investools instructional courses and other products and followed Investools' securities trading strategies.

2. Contrary to Drew and Miller's representations that they became wealthy trading securities, they were in reality unsuccessful investors. Their substantial incomes were primarily from sales commissions they earned by selling Investools' products and services to investors.

3. From 2004 to approximately June 2007, Investools failed to adequately supervise its sales personnel. During that time, Company management learned that certain speakers were claiming at workshops that their securities trading was tremendously profitable. However, the Company never required speakers to provide it with documentation substantiating their trading success claims, such as brokerage account statements or tax forms. As a result, Investools failed to root out and stop the use of false claims in the sales presentations made by certain of its employees.

4. The Commission requests that this Court permanently enjoin the defendants from violating federal securities laws and rules pursuant to Section 21(d)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78u(d)(1)]; impose civil penalties on the defendants pursuant to Exchange Act Section 21(d)(3) [15 U.S.C. §78u(d)(3)]; and enjoin Drew and Miller from receiving, directly or indirectly, any form of compensation for their participation in the development, presentation, promotion, marketing, or sale of any Securities Investing Seminar, as defined below.

## JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§78u(d), 78u(e), and 78aa], to permanently enjoin the defendants from engaging in the acts, practices, and courses of business alleged herein, and to order other relief.

6. The defendants, directly or indirectly, have made use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange in connection with the acts, practices, and courses of business alleged herein, certain of which occurred within the District of Columbia. Venue is proper in this district pursuant to Section 27 of the Exchange Act [15 U.S.C. §78aa].

## DEFENDANTS

7. **Investools Inc.** (“Investools”) is a corporation based in New York City that is in the “investor education” business. During the relevant period, the Company was known as Online Investors Advantage Incorporated, but subsequently changed its name to Investools Inc.

8. **Michael J. Drew**, age 36, became employed by Investools in 2002. For several years, until 2008, Drew was employed by Investools as a “workshop instructor”, selling the Company’s packages of instruction, software, and personal coaching.

9. **Eben D. Miller**, age 38, became employed by Investools in 2004. For several years, until 2008, Miller was employed by Investools as a workshop instructor, selling the Company’s packages of instruction, software, and personal coaching.

## **FACTUAL ALLEGATIONS**

### **Initial Advertising to Induce Attendance at Free Events**

10. During times relevant to this Complaint, Investools' advertisements appeared in television infomercials, on the internet, and by direct mail, radio, and other means. The infomercials and advertising enticed investors to attend an upcoming free event, typically at a hotel in their area. One of the Company's infomercials, for example, promised that at the free event Investools would "reveal secrets experts use to get rich and stay rich," and claimed that Investools "is like the pin code that unlocks the biggest wealth creation machine the world has ever known—the US stock market." Some of the free events took place in the District of Columbia.

11. At the free events, speakers for the Company sold an upcoming two-day workshop allegedly taught by expert traders, and they described Investools' flagship product—a web-based analytic called the "Investor Toolbox" that helps investors select securities to buy and sell. The price of admission to the two-day workshop was approximately \$2,000.

12. Investools exercised control over its free event and workshop speakers, including defendants Drew and Miller. The speakers were "at-will" employees whom the Company paid sales commissions and "base pay" per day for each workshop at which they spoke. The Company had the authority to discipline or terminate its speakers. The speakers were contractually bound to assist the Company in "marketing and selling the Company Programs and Products;" were required to "carry out any duties assigned by the Company;" and were required to present the Company's products according to Company "training and protocol" and in a prescribed format.

### Drew and Miller's False and Misleading Workshop Presentations

13. Investools marketed its two-day workshop as a course taught by expert securities traders, such as Drew and Miller. Drew and Miller, however, were not expert securities traders, but, rather, product salesmen for Investools. The main purpose of the two-day workshops conducted by Drew, Miller and other Investools employees was to “up-sell” expensive packages of instruction, software, and personal coaching for prices as high as \$20,000. Investools paid its workshop speakers—including Drew and Miller—a commission based on the dollar amount of products and services they sold at workshops. Some of the workshops took place in the District of Columbia.

14. The packages sold by Drew, Miller, and other workshop speakers included securities trading courses, such as Basic Options, Advanced Options, and Advanced Technical Analysis. Some packages also included access to a coaching “hotline.” The Company named the most expensive package the “PHD”—which stands for “Program of High Distinction.”

15. The packages often contained personalized one-on-one coaching which, according to Investools, would allow students to “apply what they are learning.” Drew told workshop attendees that a coach’s job “is to help students pay off their tuition,” and that the Company’s coaches “will lean over your shoulder, shorten your learning curve, and make sure you get to that cash flow.” Miller told workshop attendees that the coaches would make sure they did not make “stupid mistakes” in their trading, and “[t]hat’s the reason why coaching is so critical.”

16. Drew and Miller told workshop attendees that they themselves had spent substantial amounts of money to learn how to trade securities. They led workshop

attendees to believe that they had paid this money to Investools for packages similar to those they were urging attendees to purchase. On at least one occasion, Drew told attendees that he had paid \$15,000 for his first class. Miller told attendees that he and his wife “came to this class” and that they had spent \$35,000 on their investing education. Miller misled attendees to believe that he and his wife purchased the equivalent to Investools’ most expensive package, the PHD, that included personal coaching and other products and services. Miller also misrepresented that his father had paid \$20,000 for Investools’ PHD package. Drew and Miller knew, or were reckless in not knowing, that their claims about how much they—and Miller’s father—had paid Investools for packages of instruction, software, and personal coaching were false because they were vastly overstated.

17. Drew and Miller told investors about the wealth they allegedly obtained by trading securities using Investools’ strategies. Drew misled workshop attendees into believing that he was able to retire because of his success as a full-time securities trader. He commented that you do not have to have a college degree to be rich and that he is living proof of that. Drew told workshop attendees that in January and February of a given year, he usually makes enough money to live on for the rest of the year. He also said that, using advanced options techniques, “we can pull about . . . anywhere between 8 and 15% a month out of this strategy.” He told another workshop audience, “I don’t know how to be a doctor or dentist or attorney or lawyer, but I do know how to make money in the market.” Drew told attendees that his biggest problem is taxes and that he thinks that is a good problem to have. Drew knew, or was reckless in not knowing, that his claims about his trading success were false.

18. Drew also misrepresented his profits on particular trades. He showed workshop attendees profitable options trades he claimed to have made and, to prove that what he was saying was true, displayed his brokerage trade confirmations. As it turns out, Drew intentionally mismatched purchase and sale confirmations from unrelated options transactions. In one such instance, by showing a sale confirmation as corresponding to a trade that Drew had, in fact, completed three weeks earlier, Drew made a net loss of approximately \$1,000 appear like a short-term trading gain of \$148,000. Drew knew, or was reckless in not knowing, that his claims about his profits on particular trades were false.

19. Miller told workshop attendees on certain occasions that, within nine months of attending an Investools workshop, he and his wife “replace[d] \$100,000 earned income,” and he quit his job. He also told attendees on certain occasions that, “six to nine months later, my wife and I made it into the million dollar status,” and that he “was just trading all the time.” Miller told a workshop audience that he was now a multimillionaire, implying he had made this money trading securities. Miller also said that he and his wife traded in the markets and had over \$300,000 generated income per year. He claimed that he doesn’t like to “get into a trade unless I’m making at least 100% per month,” and that “89% of the time, I’m going to be profitable because even if I’m dead wrong I can still roll it over into a profitable trade.” Miller described the Investools product offerings as “the ATM to becoming a multimillionaire. How many of you like that ATM? Yeah, it’s a money making machine, folks.” Miller knew, or was reckless in not knowing, that his claims about his trading success were false.

20. Beginning in 2005, Drew, Miller, and the Company's other workshop speakers acknowledged annually that they had reviewed the Company's compliance policies, and understood that they could be terminated for violating them. The compliance policies included the following directive to workshop speakers: "You must have actual reasonable proof of the validity of any claim. For example, if you claim that you made \$1 million dollars [sic] in three months, you must be able to prove it."

#### **The Truth About Drew and Miller's Trading Performance**

21. Drew and Miller knew, or were reckless in not knowing, that their representations regarding their profitable securities trading—an integral part of their sales presentations to investors—were false. Neither Drew nor Miller made the profits by trading securities that they claimed to make. In 2005 and 2006, for example, while Drew was portraying himself as a successful investor, he had hundreds of thousands of dollars in net trading losses. Similarly, in 2006 and 2007, while Miller was portraying himself as a successful investor, he had tens of thousands of dollars in net trading losses.

#### **Investools Failed to Ensure That Its Workshop Speakers Told the Truth**

22. Investools established compliance procedures in early 2005. The procedures were designed, in part, to prevent speakers from making misleading success claims. Company compliance personnel monitored the speakers and, later, Investools hired "secret shoppers" to perform a similar function.

23. Investools did not adequately police its sales personnel from 2004 to approximately June 2007. Reports from compliance personnel attending sales presentations indicated that workshop speakers were claiming to be successful securities traders. Company management was specifically aware, for example, that Miller was



repeatedly telling workshop attendees that his personal securities trading was very profitable. However, Investools did not take the next step—examining Miller’s and other workshop speakers’ brokerage statements to determine whether their success claims were accurate.

**Investools Did Not Prevent its Speakers from Misleading Investors about a Survey of its Customers’ Trading Success**

24. Certain Investools speakers also improperly relied on the results of a customer survey the Company paid a marketing firm to conduct. The survey found that customers who used the Company’s web-based Investor Toolbox for six or more hours per week averaged an annual investment return of 35.6 percent. The results of the survey were unreliable because the survey respondents self-reported their investment returns without providing any substantiation.

25. Investools speakers recited the survey finding to attendees at free events and workshops. In 2006, however, Investools management placed limitations on what speakers could say about the survey. The Company permitted speakers to continue reciting the survey finding, as long as they disclosed that the results were “self-reported.” However, after placing this limitation on its speakers, the Company failed to adequately police them. Certain Investools speakers ignored the limitation and continued to recite the results of the survey, while omitting to disclose the self-reported aspect of the survey and the lack of substantiation of such investment returns.

26. The marketing firm conducted a follow-up survey, using the same metric. In the second survey, respondents self-reported (again without substantiation) that their annual investment return was, on average, 13 percent. Investools’ management failed to ensure that the Company’s speakers substituted the 13-percent return for the outdated

survey finding, and as a consequence, certain speakers continued to refer to the higher (35.6 percent) return in their presentations to investors.

### **FIRST CLAIM**

#### **Drew and Miller Violated Exchange Act Section 10(b) and Exchange Act Rule 10b-5**

27. The Commission re-alleges and incorporates paragraphs 1 through 26 as if fully set forth herein.

28. Drew and Miller, by use of the means or instrumentalities of interstate commerce or the mails, in connection with the purchase or sale of securities, directly or indirectly: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or 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/or (c) engaged in acts, practices or courses of businesses which operated or would operate as a fraud or deceit upon persons.

29. By reason of their actions alleged herein, Drew and Miller each violated Exchange Act Section 10(b) and Rule 10b-5 thereunder [15 U.S.C. §78j(b); 17 C.F.R. §240.10b-5]; and unless enjoined, Drew and Miller will again violate Exchange Act Section 10(b) and Rule 10b-5 thereunder.

### **SECOND CLAIM**

#### **Investools is Liable, as a Controlling Person Under Exchange Act Section 20(a), for its Speakers' Violations of Exchange Act Section 10(b) and Exchange Act Rule 10b-5**

30. The Commission re-alleges and incorporates paragraphs 1 through 29 as if fully set forth herein.

31. At all relevant times, Investools was a controlling person of its free event and workshop speakers, including Drew and Miller, for the purposes of Section 20(a) of the Exchange Act [15 U.S.C. §78t(a)].

32. By reason of its actions alleged herein, Investools is liable as a controlling person for its speakers', including Drew and Miller's, violations of Exchange Act Section 10(b) and Rule 10b-5 thereunder [15 U.S.C. §78j(b); 17 C.F.R. §240.10b-5]; and unless enjoined, Investools will violate Exchange Act Section 10(b) and Rule 10b-5 thereunder.

**RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that this Court:

**I.**

Permanently enjoin Drew and Miller, their agents, servants, employees, attorneys, assigns and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. §78j(b); 17 C.F.R. §240.10b-5].

**II.**

Enjoin, for a period of five years, Drew and Miller, their agents, servants, employees, attorneys, assigns and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from receiving, directly or indirectly, any form of compensation for their participation in the development, presentation, promotion, marketing, or sale of any Securities Investing Seminar. "Securities Investing Seminar" means classes, workshops, or seminars (and products or services that are offered adjunct thereto) given to actual or

prospective securities investors concerning securities trading and designed to influence their securities trading.

**III.**

Permanently enjoin Investools, its agents, servants, employees, attorneys, assigns and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder [15 U.S.C. §78j(b); 17 C.F.R. §240.10b-5].

**IV.**

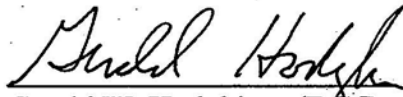
Order Drew, Miller, and Investools to pay civil money penalties pursuant to Exchange Act Section 21(d)(3) [15 U.S.C. §78u(d)(3)].

V.

Grant such other relief as this Court may deem just and proper.

Dated: December 10, 2009  
Washington, DC

Respectfully submitted,



Gerald W. Hodgkins (DC Bar No. 447678)  
Daniel H. Rubenstein (DC Bar No. 415853)  
Jennifer S. Byrne

SECURITIES AND EXCHANGE  
COMMISSION  
100 F. Street, N.E.  
Washington, D.C. 20549  
(202) 551-4719 (Hodgkins)  
[Hodgkinsg@sec.gov](mailto:Hodgkinsg@sec.gov)

Attorneys for Plaintiff