

JUDGE CASEY

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

**ASHBURY CAPITAL PARTNERS, L.P., ASHBURY
CAPITAL MANAGEMENT, L.L.C., AND
MARK YAGALLA,**

Defendants.
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COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendants Ashbury Capital Partners, L.P. ("Ashbury L.P."), Ashbury Capital Management, L.L.C. ("Ashbury L.L.C."), and Mark Yagalla ("Yagalla") (collectively, the "Defendants") alleges as follows:

PRELIMINARY STATEMENT

1. The Commission brings this action to halt an ongoing scheme in which Yagalla, Ashbury L.L.C., and Ashbury L.P., have been defrauding investors who hold unregistered limited partnership interests in Ashbury L.P., a hedge fund. The Defendants have represented

that the proceeds raised from investors through the sale of Ashbury L.P. limited partnership interests would be used for short-term trading of equities and other investments in securities on behalf of the fund and the partners. Yagalla, by himself and through Ashbury L.P. and Ashbury L.L.C., has portrayed himself to potential investors as a successful trader and has boasted that, by trading securities over the last nine years, he has achieved an average of 80% return on his investments. In reality, Yagalla has misappropriated a substantial portion of funds of Ashbury L.P. for his own personal use and other improper purposes, and has depleted the assets of the fund, which has not engaged in any securities trading since at least June 2000. To conceal the misappropriation of fund assets and trading losses, Defendants have sent investors falsified monthly statements significantly overstating the holdings and performance of investor accounts, and have distributed monthly updates that misrepresent the performance and status of the fund. Now, in a desperate attempt to replenish some of the fund's lost assets, Yagalla is scrambling to raise more money for Ashbury L.P. by soliciting other funding sources, possibly including other investors, and by attempting to divest himself of assets at below-market prices if necessary.

2. The Defendants, directly or indirectly, have engaged, are engaging, and are about to engage, in violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5. In addition, defendant Ashbury L.L.C., aided and abetted by Yagalla and Ashbury L.P., directly or indirectly, have violated Sections

206(1) and (2) of the Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. §§ 80b-6(1) and (2).

3. Unless they are temporarily restrained and preliminarily and permanently enjoined, the Defendants will continue to engage in the transactions, acts, practices and courses of business alleged herein, and in transactions, acts, practices, and courses of business of a similar type and object.

JURISDICTION

4. The Commission brings this action pursuant to authority conferred by Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), and Section 209(d) of the Advisers Act, 15 U.S.C. § 80b-9(d), seeking to temporarily restrain, and preliminarily and permanently enjoin the Defendants from engaging in the wrongful conduct alleged in this complaint. The Commission also seeks a final judgment ordering the Defendants to disgorge their ill-gotten gains and to pay prejudgment interest thereon, and ordering Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9. The Commission also seeks equitable relief during the pendency of this action, including an order: (a) freezing the Defendants assets; (b) directing each of the Defendants to provide an accounting; (c) appointing a receiver over Ashbury L.P., Ashbury L.L.C., and Yagalla; and (d) providing for expedited discovery and prohibiting the destruction of documents.

5. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Section 22(a) of the Securities Act, 15 U.S.C. §77v(a), Sections 21(d), 21(e) and 27 of the Exchange Act, 15 U.S.C. §§77u(d), 77u(e) and 78aa, and Section 214 of the Advisers Act, 15 U.S.C. § 80b-14.

6. The Defendants, directly and indirectly, singly or in concert, have made use of the means and instrumentalities of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint. Certain of the transactions, acts, practices and courses of business occurred within the Southern District of New York, including the solicitation of investors in this District.

THE DEFENDANTS

7. **Ashbury L.P.**, a limited partnership organized under the laws of the State of Delaware, maintains executive offices at 3801 Kennett Pike, Suite C-305, Greenville, Delaware. According to a Form D and an amended Form D filed with the Commission in connection with the offering dated July 30, 1998 and March 10, 1999 (the "Form D Filings"), Ashbury L.P. is a "private hedge fund which seeks to achieve capital appreciation through a portfolio devoted primarily to short-term trading opportunities in domestic equities."

8. **Ashbury L.L.C.**, a Delaware limited liability corporation, is located at 326 Oyster Cove Drive, Grasonville, Maryland, and at 450 Park Avenue, 12th Floor, New York, New York 10022. According to the Form D Filings, Ashbury L.L.C. is the general and managing

partner of Ashbury L.P. Ashbury L.L.C. provides investment management and advisory services to Ashbury L.P., and receives a 1% quarterly fee based on Ashbury L.P.'s net assets and a 20% annual fee based on Ashbury L.P.'s net profits.

9. **Yagalla**, age 23, resides in Wilmington, Delaware. Yagalla is the principal of Ashbury L.L.C. and has represented himself as the President, Chief Executive Officer and portfolio manager of Ashbury L.P. In an offering brochure for Ashbury L.P., Yagalla claims that he "has over five years experience managing and trading public and private securities" and "has introduced himself to many people in the investment business and has developed a significant understanding of Wall Street."

DEFENDANTS' FRAUDULENT OFFER AND SALE OF SECURITIES

10. Since approximately July 1998, the Defendants have been conducting a continuous, unregistered offering of limited partnership interests in Ashbury L.P. (the "Offering"). According to the Form D Filings, the aggregate offering amount for the Ashbury L.P. limited partnership interests is \$1 billion. Since July 1998, Defendants actually have raised several million dollars from over twenty investors through the Offering.

11. When investing in Ashbury L.P., limited partners (*i.e.*, the investors) have entered into Limited Partnership Agreements ("Partnership Agreements") with Ashbury L.L.C. The Partnership Agreements provide, among other things, that (a) Ashbury L.L.C. will manage Ashbury L.P. and have discretion to make investments on behalf of the partnership; (b) Ashbury L.L.C. shall receive a 1% quarterly fee based on Ashbury L.P.'s net assets and also shall receive,

under certain circumstances, 20% Ashbury L.P.'s net profits; (c) limited partners shall receive allocations during specified fiscal periods in proportion to the assets in each's partnership account; (d) limited partners may make additional capital contributions (*i.e.*, investments) upon the consent of Ashbury L.L.C. and on dates specified by Ashbury L.L.C.; and (e) limited partners may withdraw any part of their capital accounts at any time provided that such partial withdrawals do not exceed 75% of their investments and, in any event, may withdraw their entire capital on 30 days notice. A "Confidential Organizational Summary" prepared for Ashbury L.P. by Ashbury L.L.C. this calendar year (the "Offering Brochure"), contains similar statements about limited partnership investments in Ashbury L.P. To induce investments in Ashbury L.P., Yagalla has told prospective investors, among other things, that he has been a successful trader since he was nine years old and that he has a track record over the last nine years of averaging 80% returns on his investments.

12. As set forth in more detail below, Yagalla, Ashbury L.L.C., and Ashbury L.P. have made material misrepresentations, both orally and in writing, about: (1) the investment strategy for Ashbury L.P. and the use of investor proceeds; (2) the safety of investments in Ashbury L.P.; (3) how Yagalla and Ashbury L.L.C., as investment adviser to Ashbury L.P., would be compensated; and (4) the performance and status of Ashbury L.P. and of limited partner accounts.

Investment Strategy/Use of Proceeds

13. In various documents, the Defendants have represented that they will use investor proceeds to engage in short-term equity trading and other investments in securities on behalf of Ashbury L.P. and the partners. In Form D Filings, which were filed with the Commission by Ashbury L.P., Ashbury L.L.C., and Yagalla – and which Yagalla signed – Defendants represented, among other things, that: (1) Ashbury L.P. is a “private hedge fund which seeks to achieve capital appreciation through a portfolio devoted primarily to short-term trading opportunities in domestic equities;” and (2) all of the proceeds of the Offering would be used for Ashbury L.P.’s “Investment Program/Securities,” except for \$30,000 that would be applied to printing, legal, accounting, and miscellaneous expenses in connection with the issuance and distribution of the partnership interests. In the Partnership Agreements, Ashbury L.L.C. and Yagalla represented that “[t]he purpose of the Partnership is to serve as a fund through which the assets of its Partners will be utilized to invest, hold, and trade in securities and other financial instruments and rights and options relating thereto.” The Offering Brochure states, among other things, that Ashbury L.L.C. “will primarily employ a short-term trading strategy based on rapid asset turnover;” that “the Partnership will engage in the purchase and sale of securities such as common stocks, stock[] warrants and rights, preferred stocks, bonds, debentures, convertible securities and other debt obligations, options to purchase and/or sell securities and options on stock market indices.”

14. Yagalla, on behalf of himself and the other Defendants, has made oral representations to investors that the proceeds of their investment would be used for equity trading and other investments in securities on behalf of Ashbury L.P. Yagalla also has solicited Ashbury L.P. limited partners to solicit others to invest in Ashbury L.P. In so doing, Yagalla has caused Ashbury L.P. limited partners to state to prospective investors that the proceeds of an investment in Ashbury L.P. would be used for investing and that Yagalla was a successful securities trader.

15. Each of the representations identified in paragraphs 13 and 14, above, was materially false and misleading. During at least the past several months, Yagalla and, through him Ashbury L.L.C. and Ashbury L.P., have diverted a substantial portion of the proceeds raised from investors away from Ashbury L.P. Consequently, those proceeds have not been used for the purposes represented to investors. Yagalla misappropriated Ashbury L.P.'s funds to pay for lavish personal expenses, to repay other investors, and for other improper purposes. Ashbury L.P. has not engaged in any equity trading since at least June 2000.

Safety of Investment

16. Yagalla and, through him Ashbury L.P. and Ashbury L.L.C., have mislead investors about the safety and risks of investing in Ashbury L.P. Yagalla, for example, told at least one Ashbury L.P. investor, who invested a total of \$50,000 with Yagalla between July 1999 and January 2000, that: (1) an investment in Ashbury L.P. was a safe investment in which the investor's funds would be returned to the investor within seven days of his request; and (2) the investor could receive monthly checks from Ashbury L.P. at any time on the interest his account

was earning. The Partnership Agreement states that limited partners may withdraw up to 75% of their investment any time, and all of their investment on 30 days notice.

17. Each of the representations identified in paragraph 16, above, was materially false and misleading. An investment in Ashbury L.P. was not safe and the Defendants had no bona fide ability to redeem investors' capital as represented because, among other things, Yagalla was misappropriating fund assets and now has depleted the fund. At present, Defendants cannot repay any more than a fraction of the proceeds they raised from limited partners.

Compensation

18. The Defendants misrepresented the compensation that would be paid to Ashbury L.L.C. In Limited Partnership Agreements and the Offering Brochure, the Defendants represented that Ashbury L.P. would pay Ashbury L.L.C. a quarterly fee computed at an annual rate of 1.0% of the net assets of the Partnership, and that Ashbury L.L.C. could receive up to 20% each year of the net profits of Ashbury L.P. In addition, Yagalla orally told at least one Ashbury L.P. investor that while Yagalla usually charges all investors a fee of 20% of their profits annually, he would not take any fees from this investor.

19. Each of the representations identified in paragraph 18, above, was materially false and misleading. Yagalla and Ashbury L.L.C. misappropriated investor funds and therefore took much more out of Ashbury L.P. than the adviser management fee.

Fund Performance and Assets

20. Defendants have deceived investors about the performance and status of Ashbury L.P. and about the performance and status of their limited partnership accounts. For example, in an investor newsletter dated August 1, 2000, the Defendants represented that Ashbury L.P. collected “huge appreciations in some of [its] core holdings,” and that the fund had “taken some profits.” In an investor newsletter dated September 1, 2000, the Defendants represented that: (1) Ashbury L.P. “continued to remain focused on the ‘information revolution’ and those stocks tied to the growth of this industry; (2) Ashbury L.P. expects a “15%-20% return on the NASDAQ market”; and (3) Ashbury L.P. is “looking to communications, semiconductors, and the internet as the areas to invest.” Since at least June 2000, Defendants have sent investors falsified monthly account statements – presented on Ashbury L.P. letterhead and signed by Yagalla – that show that the assets in limited partner accounts have appreciated and that Ashbury L.P. continues to generate trading profits. For example, the Defendants sent one limited partner, who invested a total of \$50,000 in July 1999 and January 2000, monthly account statements for August 2000 and September 2000 that reported account balances of \$97,235.68 and \$100,658.38, respectively, and net monthly income of \$2,454.83 and \$3,422.70, respectively.

21. Each of the representations identified in paragraphs 20 was materially false and misleading. The Defendants ceased trading in securities in Ashbury L.P. by at least June 2000. Due to Defendants’ diversion of fund assets to Yagalla for his personal expenses over at least the past several months and other improper purposes, and due to trading losses experienced by

Ashbury L.P., the assets of Ashbury L.P. and the holdings of the accounts of limited partners have been substantially depleted. At present, Defendants cannot repay any more than a fraction of the proceeds they raised from limited partners.

22. Over at least the past week, Yagalla has attempted to raise money for Ashbury L.P. by soliciting other funding sources, which possibly include other Ashbury L.P. investors, and by planning to divest himself of personal assets including automobiles, jewelry, a helicopter, nursing homes, and oil wells, at below market prices if necessary.

FIRST CLAIM FOR RELIEF

**Violations of Section 17(a) of the Securities Act, and Section
10(b) of the Exchange Act, and Rule 10b-5 Thereunder**

(Against Defendants Ashbury L.P., Ashbury L.L.C. and Yagalla)

23. The Commission repeats and realleges the allegations contained in Paragraphs 1 through 22 by reference as if fully set forth herein.

24. Defendants, directly and indirectly, singly and in concert, knowingly or recklessly, by the use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or by the use of the mails, in the offer or sale, and in connection with the purchase or sale, of securities, have: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of, or otherwise made untrue statements of material fact, or omitted to state material facts necessary to make the statements, in light of the circumstances under which they were made, not misleading; and (c) engaged in

transactions, acts, practices and courses of business which operated as a fraud or deceit upon purchasers of securities or other persons.

25. As part of and in furtherance of this violative conduct, the Defendants, directly or indirectly, made the representations alleged in Paragraphs 11 through 22, above.

The false statements and omissions made by Defendants, more fully described in Paragraphs 11 through 22, above, were material.

26. The Defendants knew, or were reckless in not knowing, that the material misrepresentations, more fully described in Paragraphs 11 through 22, above, were false or misleading.

27. By reason of the acts, omissions, practices, and courses of business set forth in this Complaint, the Defendants have violated and, unless restrained and enjoined, will again violate, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5.

SECOND CLAIM FOR RELIEF

Violations of Sections 206(1) and 206(2) of the Advisers Act

(Against Ashbury L.L.C., Aided and Abetted by Yagalla and Ashbury L.P.)

28. The Commission realleges and incorporates paragraphs 1 through 27 by reference as if fully set forth herein.

29. Since approximately July 1998, Ashbury L.L.C., for compensation, engaged, and is continuing to engage, in the business of advising Ashbury L.P., either directly or through

publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

30. As described more fully in paragraphs 11 through 22 above, Ashbury L.L.C., with substantial assistance rendered by Yagalla and Ashbury L.P., by use of the mails, telephone or other means or instrumentalities of interstate commerce, directly or indirectly, employed devices, schemes or artifices to defraud clients and/or prospective clients, and engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon clients and/or prospective clients.

31. As part of and in furtherance of this violative conduct, Ashbury L.L.C., with substantial assistance rendered by Yagalla and Ashbury L.P., knowingly or recklessly made the false and misleading statements and omissions, and engaged in fraudulent schemes, as alleged in paragraphs 11 through 22.

32. By reason of the foregoing, Ashbury L.L.C. violated Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and (2), and Yagalla and Ashbury L.P. aided and abetted Ashbury L.L.C.'s violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully requests that this Court grant:

I.

Orders temporarily and preliminarily, and a Final Judgment permanently, restraining and enjoining Ashbury L.P., Ashbury L.L.C., Yagalla, their agents, servants, employees, attorneys

in-fact, 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 17(a) of the Securities Act, 15 U.S.C. § 77q(a), 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, and Sections 206(1) and (2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and (2).

II.

An Order directing that the assets of Ashbury L.P., Ashbury L.L.C. and Yagalla be frozen.

III.

An Order appointing a temporary receiver for Ashbury L.P. and Ashbury L.L.C.

IV.

An Order directing Ashbury L.P., Ashbury L.L.C. and Yagalla to each file with this Court and serve upon Commission, within five business days, or within such extension of time as the Commission agrees in writing, verified written accountings, signed by Yagalla under penalty of perjury.

V.

An Order permitting expedited discovery.

VI.

An Order enjoining and restraining Ashbury L.P., Ashbury L.L.C. and Yagalla, and any person or entity acting at their direction or on their behalf from destroying, altering, concealing,

or otherwise interfering with the access of the Commission to relevant documents, books and records.

VII.

A Final Judgment requiring Ashbury L.P., Ashbury L.L.C. and Yagalla to disgorge their ill-gotten gains from the fraudulent conduct alleged in this Complaint, and to pay prejudgment interest thereon.

VIII.

Final Judgments imposing against Ashbury L.P., Ashbury L.L.C. and Yagalla civil monetary penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. §77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C. §78u(d)(3), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9 for the violations alleged herein.

IX.

Such other and further relief as the Court deems appropriate.

Dated: October 17, 2000
 New York, New York

Respectfully Submitted,



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Regional Director

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