

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FILED IN CLERK'S OFFICE  
U.S.D.C. Atlanta

SEP 11 2006

By JAMES N. HATTEN, Clerk  
Deputy Clerk

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DENNIS A. MARTIN,

Defendant.

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: CIVIL ACTION  
: FILE NO.  
: 1:06-CV-1078-TCB  
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FINAL JUDGMENT AS TO DEFENDANT DENNIS A. MARTIN

The Securities and Exchange Commission, ("Commission" or "SEC") filed its Complaint against Dennis A. Martin ("Martin") on May 5, 2006. A temporary restraining order and order freezing Martin's assets was entered by this Court the same day. On May 18, 2006, this Court preliminarily enjoined Martin from further violations of the antifraud provisions of the federal securities laws, and continued the freeze of assets. On May 19, 2006, defendant Martin was served by personal service of the Summons and Complaint to him, while he was incarcerated at the Fulton County Jail on Rice Street in Atlanta. Martin's answer was due in this matter on or before June 8, 2006. Martin did not seek an extension of time in which to file his answer. Defendant Martin has

failed to answer or otherwise respond as required by the Federal Rules of Civil Procedure. The clerk entered a default against the defendant on June 22, 2006. The SEC has now moved the Court for a final judgment by default against Martin. The Court hereby grants the SEC's motion and has set forth relevant findings of fact and conclusions of law below, in addition to permanent injunctive relief, and the imposition of disgorgement, prejudgment interest and civil penalties.

#### **FINDINGS AND CONCLUSIONS**

An entry of default against Martin was properly entered by the Clerk on June 22, 2006. Given the failure of the defendant to answer or otherwise defend the allegations against him, the following allegations of the SEC's Complaint are now deemed to be true, and are made the findings of this Court:

##### **1) Findings of Fact**

Martin resides in Marietta and was, from April 2004 through April 2006 a registered representative doing business as "First Financial Group," an unincorporated entity. During the same time, Martin was an independent contractor with LPL, a registered broker-dealer. As such, Martin maintained an independent office, where he was the sole employee. On April 20, 2006, LPL terminated Martin for cause for the incidents

giving rise to the allegations in the SEC's complaint in this matter. (Complaint, ¶ 9-10).

This matter involves the misappropriation of customers' funds by Martin, a registered representative of a broker registered with the SEC. Martin accomplished this fraud by obtaining authorization under false pretenses to sell securities from customers' accounts and to invest the proceeds in different investments. Martin, however, never purchased the authorized investments on behalf of his customers and instead misappropriated the proceeds. (Complaint, ¶ 1).

At various times from February 2005 through May 2006, Martin recommended to at least five, and as many as 15, customers that they sell variable annuity contracts that they owned and within a short time purchase new variable annuity contracts with higher principal amounts, which would increase the minimum guaranteed death benefit. Martin also recommended that his customers invest the proceeds from the sale of their variable annuity contracts in a money market fund or in a closed-end fund for a short time prior to purchasing the new variable annuity contracts. (Complaint, ¶ 2).

After his customers authorized the transactions as represented, Martin submitted forged documents to the

variable annuity companies surrendering the contracts and directing those companies to mail the proceeds directly to him, unbeknownst to his customers. Martin then forged his customers' names on the checks and deposited them into a bank account in the name of First Financial Group, a fictitious name under which Martin does business. Martin provided his customers with false statements and confirmations reflecting that he had invested the proceeds in a closed-end fund. Martin did not invest any money in the closed-end fund. (Complaint, ¶ 3).

Additionally, Martin instructed one customer, who wished to purchase a certificate of deposit, to make a \$100,000 check payable directly to First Financial Group, Martin's d/b/a, rather than to Linsco/Private Ledger Corp. ("LPL"), the broker-dealer with which Martin was associated during the relevant time. On March 1, 2006, Martin deposited this check into his First Financial Group bank account. Martin never purchased the certificate of deposit. (Complaint, ¶ 4).

Through his conduct, Martin has violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78j(b)] and Rule

10b-5 [17 C.F.R. §§ 240.10b-5] promulgated thereunder.  
(Complaint, ¶ 5).

Martin, unless enjoined by this Court, will continue to engage in the acts, practices, and courses of business alleged herein, and in acts, practices and courses of business of similar purport and object.

From at least February 2005 through at least March 2006, Martin recommended to between 5 and 15 customers that they sell securities, generally variable annuities, and/or purchase securities. Based on Martin's statements, the customers authorized the transactions as represented. However, Martin did not invest the proceeds as authorized. Instead, Martin submitted forged documents to the variable annuity companies surrendering the contracts and directing those companies to mail the proceeds directly to him, unbeknownst to his customers. Martin then forged his customers' names on the checks and deposited them into a bank account in the name of First Financial Group, a fictitious name under which Martin does business.  
(Complaint, ¶ 11). Additionally, Martin obtained at least one check from a customer for the purpose of purchasing securities. Martin did not purchase the security and instead misappropriated those funds. Martin obtained substantial funds from his customers, which he was not

entitled to and which the customers did not authorize, through his scheme. (Complaint, ¶ 12).

On March 20, 2006, Martin recommended that a customer, Martin's former father-in-law, surrender a variable annuity contract that the customer owned through Pacific Life Insurance Company ("Pacific Life") and purchase a new variable annuity contract with a higher principal amount, which would increase the minimum guaranteed death benefit. The higher principal amount on the new contract would consist of the principal amount on the original contract plus the earnings the original contract had generated. At that time, the customer's original contract had increased in value from the principal amount of \$150,000 to approximately \$198,787. (Complaint, ¶ 13). The customer's name was signed without authorization by the customer on a Pacific Life withdrawal request form directing Pacific Life to mail the proceeds from the sale of the customer's contract directly to Martin. The customer's name was forged on a check made payable to the customer from Pacific Life in the amount of \$198,077.57 and deposited in into a bank account in the name of "First Financial." (Complaint, ¶ 14). On March 29 and again on April 3, 2006, the customer asked Martin via e-mail where his money was located. Martin replied that he had invested the customer's money in

a "conduit IRA account" but refused to state where the account was located. (Complaint, ¶ 15).

On April 20, 2006, after learning that LPL was investigating the matter, Martin admitted to the customer that he had "screwed up" and had pledged the customer's money as collateral on a mortgage. Martin told the customer that he could repay the money within two to three weeks, but asked the customer to tell LPL that the money had already had repaid. (Complaint, ¶ 16).

In February 2005, Martin recommended that two other customers K. and M. Brewer ("the Brewers") surrender 80 percent of the variable annuity contracts that they owned through AXA Equitable Life Insurance Company ("AXA Equitable") and within a few weeks purchase new variable annuity contracts with higher principal amounts, which would increase the minimum guaranteed death benefit. Martin represented that the higher principal amounts on the new contracts would purportedly consist of the principal amount on the original contracts plus the earnings the original contract had generated. The Brewers agreed to the transaction as described by Martin. (Complaint, ¶ 17). In February 2005, the Brewers surrendered a total of \$495,361.20. The Brewers, however, never signed the withdrawal request form authorizing the surrender and never

received a check for the proceeds. (Complaint, ¶ 18). On May 3, 2005, after several inquiries from the Brewers, Martin told them that he had invested the proceeds from the surrender of their contracts in a fixed income closed-end fund, which did not mature until September 2005.

(Complaint, ¶ 19). The Brewers later received statements directly from Martin that disclosed the investment as First Trust Corporate Closed-End Fund, which in fact is a corporate junk bond unit investment trust. Martin did not actually invest money in this fund on behalf of the Brewers. (Complaint, ¶ 20). At some time prior to October 25, 2005, Martin withdrew the remaining \$91,698.32 from the Brewers' accounts without their authorization. (Complaint, ¶ 21).

In early 2006, Martin told the Brewers that instead of purchasing new contracts when the closed-end fund matured in September 2005, he had rolled over their investment into a second closed-end fund that matured on February 22, 2006. (Complaint, ¶ 22). The Brewers did not authorize Martin to roll over their money into the second closed-end fund and, in fact, Martin never purchased the closed-end fund on behalf of the Brewers. (Complaint, ¶ 23).

In July and again in August 2005, Martin recommended to two other customers Kt. and B. Brewer ("Kt and B



Brewer") that they surrender the variable annuity contracts that they owned through AXA Equitable and over a period of six months purchase new variable annuity contracts with higher principal amounts, which would increase the minimum guaranteed death benefit. (Complaint, ¶ 24). Martin represented that the higher principal amount on the new contracts would consist of the principal amount on the original contracts plus the earnings the original contract had generated. (Complaint, ¶ 25). Martin recommended that Kt and B Brewer invest the proceeds from the sale of the contracts in a "conduit IRA" before purchasing new contracts. Martin told Kt and B Brewer that a conduit IRA was a "temporary hold IRA," through which he would invest on their behalf in a closed-end fund at an interest rate of seven percent. (Complaint, ¶ 26).

Kt and B Brewer agreed to follow Martin's recommendation, provided that they would not incur any penalties. Martin told Kt and B Brewer that First Financial would refund any penalties they incurred. (Complaint, ¶ 27). A total of \$75,327.49 was surrendered from Kt and B Brewer's annuities. Kt and B Brewer, however, never signed the withdrawal request form authorizing the surrender and never received a check for the proceeds. (Complaint, ¶ 28).

Based on Martin's recommendation, in August 2005, Kt Brewer liquidated his LPL brokerage account and provided the proceeds of approximately \$68,946 to Martin to invest in the closed-end fund on his behalf. (Complaint, ¶ 29). Kt and B Brewer received statements from AXA Equitable and LPL reflecting the withdrawals, however, they did not receive any documentation from September 2005 through December 2005 showing the deposit of their money in the closed-end fund. (Complaint, ¶ 30). In January 2006, Martin finally provided false documents to Kt and B Brewer showing the deposit of their money in the closed-end fund. In fact, Martin did not actually invest money in the fund on behalf of Kt and B Brewer. Martin misappropriated the funds. (Complaint, ¶ 31).

On January 24, 2006, Martin recommended that Kt and B Brewer purchase a Lehman Brothers certificate of deposit with a 20 year maturity. Martin told them that there would not be any penalties for early withdrawal because First Financial was offering a "penalty waiver" as a special offer to attract new clients. (Complaint, ¶ 32). Based on Martin's recommendation and instruction, on or about February 27, 2006, Kt Brewer made a check payable to First Financial in the amount of \$100,000 for Martin to invest in

the certificate of deposit. Martin did not purchase the certificate of deposit as represented. (Complaint, ¶ 33). Instead, Martin misappropriated the funds. The check was deposited into a bank account in the name of First Financial. (Complaint, ¶ 34).

**2) JURISDICTION AND VENUE**

This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa]. (Complaint, ¶ 6). Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2); Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)]; and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Some of sales of the investments occurred in this district. Martin's residence and place of business are situated in this district. (Complaint, ¶ 7). Martin has made use of the mails, the means and instruments of transportation and communication in interstate commerce, and the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices and courses of business alleged in the Complaint. (Complaint, ¶ 8).

**3) Disgorgement, Prejudgment Interest And Civil Penalties**

In support of its motion for default judgment, the SEC has provided the Court with the sworn Declaration of John G. Westrick, pursuant to 28 U.S.C. §1746. Westrick is the SEC Staff Attorney who was primarily responsible for the SEC's investigation in this matter. In his declaration, Westrick stated that he reviewed withdrawal forms, and checks drawn on the accounts of Martin's former investment customers provided to the SEC enforcement staff by LPL, the deposition of LPL official Brad Jacobs relating to LPL's internal investigation into the conduct of Martin while affiliated with LPL, and other documents including but not limited to sworn declarations of investors filed with this Court at the time the SEC filed its Complaint seeking emergency relief.

Westrick's review of these checks and other documents establish that from late 2004 through approximately March, 2006, Martin signed approximately 40 checks made payable to his customers which debited funds from the customers' accounts at AXA Equitable Life Insurance Company, LPL, MetLife Investors USA Insurance Company, a Hartford account at JP-Morgan Chase Bank and Pacific Life Insurance Company, among others. Martin's customers' funds were then

deposited, over the same period of time, into an account in the name of First Financial Group. Martin had signatory authority over the First Financial Group account. The approximately 40 checks debited from Martin's customers' accounts and deposited into the First Financial Group account total \$5,130,835.21. Martin either forged the customers' signature as an endorsement on the check, and/or deposited the customers' funds into the account under Martin's control, without authorization from the customers. Based upon the declarant's review of the documents provided by LPL, and other documents obtained in the SEC's investigation in this matter, Martin defrauded his brokerage customers of \$5,130,835.21, and that is the amount Martin is ordered to disgorge.

Westrick also calculated prejudgment interest for Martin to be calculated on the amount of \$5,130,835.21 from March 23, 2006 (the date of the last known unauthorized deposit of a client's funds by Martin) through August 31, 2006, at the interest rates used by the Internal Revenue Service for unpaid balances (which changes quarterly, and for the relevant period herein ranged from a low of 7% annually to a high of 8% annually). During that period, the total prejudgment interest on \$5,130,835.21 totals \$124,593.79, for a combined total of \$5,255,429.

Given the egregious conduct of Martin, the SEC seeks civil penalties against him pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. First tier penalties for any violation (arising from conduct that as here, occurred after February 1, 2001) may be imposed up to the larger of \$6,500 for a natural person or \$60,000 for any other person, or the amount of ill-gotten gain. When the violation involves fraud, second tier penalties may be imposed up to \$60,000 for a natural person or \$300,000 for any other person, or the amount of the ill-gotten gain. A third tier civil penalty of up to the larger of \$120,000 for a natural person or \$600,000 for any other person, or the amount of ill-gotten gain may be imposed when any provision of the Securities Act or the Exchange Act is violated, if the violation involved fraud or deceit and the violation resulted in substantial losses or created a significant risk of substantial losses to other persons.

Civil monetary penalties pursuant to the Securities Act and the Exchange Act are required to be adjusted for inflation. Martin's conduct herein occurred from 2004 through 2006, after the time that the adjustment became effective in early 2001. 17 C.F.R. 201.1001, Adjustment of civil monetary penalties - 1996. LEXSEE 66 FR 8761 at 8762. The amounts of civil monetary penalties applicable

herein are, therefore, the amounts adjusted for inflation for the relevant time of the violations.

The Court will order defendant Martin to pay a substantial statutory civil penalty in an amount it determines to be appropriate. Martin's violations clearly involved fraud and deceit and resulted in substantial losses to investors, of nearly \$5.2 million. This Court imposes statutory civil penalties against Martin based upon the repeated nature of his violations, his integral activity in the forged and/or unauthorized closing of the annuities, his misrepresentations about the nature of a safety of the investments that would be made, and his later forgeries and other misrepresentations to cover and conceal the fraud. Martin was more than central to the scheme—he was the scheme. Specifically, Martin repeatedly made representations concerning safety and return of his customers' variable annuity contracts, and then transferred the investors' funds to an account he controlled, where the funds were then systematically spent on Martin's personal and business obligations. Martin thereafter forged customers' names to authorizations to the annuity companies, falsely directed the funds be sent to him (unbeknownst to his customers), forged his customers' names on the checks from the annuity companies, deposited the

funds to accounts he controlled, and used the funds for his personal gain. Given the repeated incidents of forgery and other fraud, and the relatively lengthy period over which the scheme occurred, Martin engaged in violations which resulted in substantial losses to his brokerage customers. A substantial civil penalty is appropriate.

**INJUNCTIVE AND OTHER RELIEF**

**I.**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Martin and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;



(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

**II.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Martin and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of

a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

**III.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that disgorgement against Martin is \$5,130,835.21 representing profits he gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$124,593.79, for a total of \$5,255,429. Defendant Martin shall satisfy this obligation by paying the total amount within ten (10) ten business after the entry of this Final Judgment to the Clerk of this Court, together with a cover letter identifying Martin as the defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Martin shall simultaneously transmit photocopies of such payment and letter to the SEC's counsel in this action, Edward G. Sullivan, Esq., at Securities and Exchange Commission, 3475 Lenox Road, NE, Suite 1000, Atlanta, Georgia 30326. By

making this payment, Martin relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Martin. The Court shall deposit the funds into an interest bearing account with the Court Online Banking System ("COLB") or any other type of interest bearing account that is utilized by the Court. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the COLB until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States.

**IV.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Martin shall pay a civil penalty in the amount of \$250,000.00 pursuant to Section 20(d) of the Securities Act [15 U.S.C. 77t(d)] and Sections 21(d)(3) and 21A of the Exchange Act [15 U.S.C. 78u(d)(3) and 78u-1]. Defendant Martin shall make this payment within ten (10) business days after entry of this Final Judgment by certified check,

bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Martin as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant Martin shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961. The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Funds provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Final Judgment shall be treated as penalties paid to the government.

V.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VI.

**IT IS FURTHER ORDERED** that there being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: Sept. 11, 2006.

Handwritten signature of Timothy A. Batten, Sr. in cursive script, written over a horizontal line.

TIMOTHY A. BATTEN, SR., JUDGE  
UNITED STATES DISTRICT COURT