

ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
TOPEKA DIVISION**

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DISTRICT COURT
DISTRICT OF KANSAS
2006 SEP 14 A 9:45

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DELOACH
DEPUTY
TOPEKA, KS.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

SEAFORTH MERIDIAN, LTD.,
SEAFORTH MERIDIAN ADVISORS, LLC,
SEAFORTH MERIDIAN MANAGEMENT, LLC,
ALAIN A. ASSEMI,
TIMOTHY J. CLYMAN,
JOHN D. FRIEDRICH, and
SCOTT F. KLION, a/k/a JAMES S. TUCKER and
DAVID TANNER

Defendants,

and

HENRI B. GONTHIER, and
FREDERICK L. WINKLER,

Relief Defendants.

COMPLAINT

06-4107-RDR

Plaintiff Securities and Exchange Commission alleges:

SUMMARY

1. This case concerns the misappropriation and loss of investor funds by Alain A. Assemi, Timothy J. Clyman, John D. Friedrich, and Scott F. Klion (a/k/a James S. Tucker and David Tanner)(collectively the "Seaforth Principals"). Using a purported hedge-fund they created and control—Seaforth Meridian Ltd.—the Seaforth Principals defrauded at least 70 investors of approximately \$18 million through their fraudulent offer and sale of securities called "limited partnership interests."

2. From at least May 2004 until October 2005, the Seaforth Principals claimed they could generate investor returns by a conservative investment strategy and relying on their own experience and expertise. In reality, the Seaforth Principals either misappropriated or cannot account for or explain the disappearance of approximately \$13.5 million of investor funds sent offshore, at least \$6 million going to a known recidivist fraudster. And the claims of expertise and experience omitted important information. For example, Klion (who goes by "James Tucker" in this scheme), is also a recidivist fraudster previously enjoined by the Commission in 1999 for defrauding over 1,400 victims of approximately \$3 million. And Assemi, who recently moved to Switzerland, was sued for securities fraud in 2004.

3. While telling investors that their investment losses were the result of a "lack of liquidity" in their offshore investment strategy and other non-specific and implausible excuses, the persons responsible for the scheme, the Seaforth Principals, received undisclosed kickbacks totaling \$600,000.

4. The Seaforth Principals are responsible for numerous misrepresentations and omissions of material fact concerning, among other things: (a) misappropriation and use of investor funds; (b) the sufficiency of financial controls; (c) the risk of loss of investor funds; (d) management's investment strategies and objectives; and (e) management's background, experience and financial expertise.

5. In order to protect the public interest, the Commission seeks to stop this fraudulent scheme and to preserve assets pending the final disposition of this litigation. The Commission therefore requests that the Court issue the following orders: 1) an immediate order that (i) freezes the remaining assets of the scheme, (ii) appoints a

temporary receiver, (iii) prohibits Defendants and Relief Defendants from destroying records, and (iv) orders the repatriation of offshore funds; (2) injunctions against future violations of the specified federal securities laws; (3) disgorgement and prejudgment interest; (4) civil money penalties; and (5) any other equitable relief that the Court may deem appropriate.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77v(a)] and Section 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78aa]. Defendants, 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.

7. Venue is proper because Seaforth Meridian filed regulatory and disclosure documents in Topeka, Kansas, relating to the sale of securities; and at least one initial Seaforth investor resided in Beattie, Kansas.

RELATED PERSONS, ENTITIES, AND CIVIL CASES

Defendants

8. **Seaforth Meridian Ltd.** ("Seaforth Meridian") is a Florida limited partnership created and controlled by the Seaforth Principals.

9. **Seaforth Meridian Management, LLC.** ("Seaforth Management") a Florida limited liability company, is the "general partner" of Seaforth Meridian and manages Seaforth Meridian's operations and investments.

10. **Seaforth Meridian Advisors, LLC.** ("Seaforth Advisors") a Florida limited liability company, is Seaforth Meridian's investment adviser.

11. **Assemi**, age 39, previously of Concord, California, is the Managing Director of Seaforth Meridian and a managing general partner of Seaforth Management and Seaforth Advisors. He is also a principal of Meriton, a purported Swiss investment fund that received \$6 million of Seaforth Meridian investor funds. In or about September 2005, facing a civil suit for securities fraud in New York and an SEC contempt action in Kansas, Assemi relocated to Walchilch, Switzerland.

12. **Clyman**, age 51, a resident of Encinitas, California, is a managing member of Seaforth Meridian, Seaforth Management, and Seaforth Advisors. Until May 2004, he was a licensed securities broker.

13. **Friedrich**, age 35, a resident of Far Rockaway, New York, is a managing general partner of Seaforth Meridian, Seaforth Management, and Seaforth Advisors. Friedrich also previously held a license as a securities broker.

14. **Klion** (a/k/a David Tanner and James S. Tucker) age 38, is a U.S. citizen and a resident of St. Maarten, Netherlands, Antilles. Using the Tucker alias, Klion is a managing member of Seaforth Management and Seaforth Advisors and provided financing to start Seaforth Meridian. Klion was twice previously enjoined for securities fraud.

Relief Defendants

15. **Henri B. Gonthier**, age 58, a resident of Sarasota, Florida, manages a real estate firm and operates his own investment and consulting firm. Gonthier received at least \$41,000 in Seaforth Meridian investor funds for no apparent consideration.

16. **Frederich L. Winkler**, age 64, a resident of Wellesley, Massachusetts, is a hotelier in Florida. Winkler received at least \$29,000 in Seaforth Meridian investor funds

for no apparent consideration.

Other Relevant Entities and Persons

17. **Quantum**, a purported investment fund based in the United Kingdom, received approximately \$7.5 million of Seaforth Meridian investors' funds. Quantum is not registered with the Financial Services Authority ("FSA"), the financial services regulator in the United Kingdom.

18. **Meriton**, a purported investment fund based in Switzerland, received approximately \$6 million of Seaforth Meridian investors' funds.

19. **Raymond Coia**, age 41, of the United Kingdom, is the principal of Quantum. On November 17, 2003, the FSA permanently barred Coia from performing any function related to a regulated activity. Coia is currently the subject of ongoing criminal proceedings in the UK.

Related Cases Involving Seaforth Principals

20. In SEC v. Tanner d/b/a Capital Enhancement Club, et al., No. 05-4057-RDR (D. Kan. May 4, 2005) ("CEC"), following tracing \$9 million of defrauded investor funds paid to Seaforth Meridian, the court-appointed receiver obtained a turnover order against Seaforth Meridian. Seaforth paid approximately \$4.1 million of the \$9 million owed and, as described below, offers a variety of contradictory and implausible excuses for the inability to pay the balance. On August 21, 2006, in the CEC case, the Commission filed *Plaintiff's Consolidated (1) Status Report and (2) Unopposed Motion for Additional Time to Complete Settlement with Spencer Parties* [Doc 262], describing the evidence supporting the fact that David Tanner is, in reality, recidivist fraudster Scott L. Klion.

21. In the pending case *Dover Ltd., et al. v. A.B. Watley, Inc., et al.*, No. 1:04-cv-07366-FM (S.D.N.Y. Sept. 15, 2004) an investor alleged Assemi defrauded her using material misrepresentations and omissions regarding a purported risk-free investment yielding a return of 50% in approximately 4 months (150% per-year).

22. In *SEC v. Scott L. Klion, individually and d/b/a Cen-Tex Alchemy Guild et. al.* No. W98CA186 (W.D. Tex., June 3, 1998) the court enjoined Klion against future violations of the federal securities laws and ordered disgorgement and penalties after he perpetrated an international investment scheme and defrauded over 1,400 victims of approximately \$3 million.

STATEMENT OF FACTS

Genesis of Seaforth Meridian

23. In or about May 2004, the Seaforth Principals retained an attorney to assist them in the formation of the three Seaforth entities and in the preparation of a Private Placement Memorandum ("PPM"), the primary offering document of Seaforth Meridian. Klion paid the attorney retainer and the PPM was prepared from information provided by the Seaforth Principals.

24. The attorney engagement was also to include the preparation of monthly reports for investors detailing report capital contributions and returns on investment. An accountant was supposed to monthly verify investors' contributions, returns, and profit or loss—all information to be provided by Seaforth Meridian.

25. The basic transaction contemplated in the PPM was that Seaforth Meridian would utilize the investment experience and expertise of the Seaforth Principals to invest funds contributed by investors. For their efforts, the Seaforth Principals were to earn 55% of either "monthly net revenue" or "cumulative net income

over and above the aggregate of the previous calendar months' net income" depending on which portion of the PPM one chooses to believe.

Misrepresentations and Omissions

26. Starting with Seaforth Meridian's inception in May 2004, and while raising a substantial amount of investor funds, including \$9 million from Klion's CEC scheme, the Seaforth Principals made repeated misrepresentations and omissions and acted contrary to their own representations in the PPM.

27. To appeal to investors who rely on a fixed income to generate monthly payments for living expenses, the PPM stated that Seaforth Meridian employs a strategy intended to create an ongoing monthly cash revenue stream and that the primary investment objective is "growth of capital and production of income." In reality, Seaforth Meridian sent approximately \$13.5 million of a total of \$18 million (75%) of investor funds to Quantum (\$7.5 million) and Meriton (\$6 million), two suspect offshore funds with no verifiable history of paying monthly returns, generating growth of capital, or production of income.

28. To assure investors of the safety of the investment strategy, the PPM claimed its "business" was "buying and selling 'A' rated or better fixed-income bonds as well as trading securities of medium to large capitalized companies, including stocks, warrants, rights and options of U.S. and non-U.S. entities." It further claimed it would "concentrate the majority of its collective efforts upon fixed-income bond and instrument trading" and would "execute only issues that have a CUSIP/ISIN number (a designation allowing for electronic quotation by brokers) and are listed on Bloomberg, Euroclear, and/or Clearstream (electronic quotation services). In reality, the Seaforth Meridian

principals could not furnish any evidence that Quantum and Meriton purchased fixed-income bonds or legitimate recognized security, or that Quantum or Meriton have a CUSIP/ISIN number or appear on an electronic quotation service.

29. The PPM claims that the division of revenue (or income) would be 55% to Seaforth Management and 45% to the investors. In reality, Seaforth Meridian paid the "General Partner" (Seaforth Management) more than \$600,000 and Quantum and Meriton paid Seaforth Management approximately \$600,000 in undisclosed kickbacks. These payments are inconsistent with the claimed sharing of profits. And since Quantum and Meriton never demonstrated actual income or revenue from their unspecified investment activity, payments to Seaforth Management or investors were actually discretionary decisions not based on income or revenue as described in the PPM.

30. The PPM further claimed the Seaforth Principals would undertake due diligence regarding the prospective investments, including obtaining prospectuses and financial statements. In reality, the only due diligence was that Assemi claims to have made a \$25,000 "sample test" investment in Quantum where the "profit was very nice" before committing approximately \$7.5 million of investor funds. But any real and meaningful due diligence would have shown that the person behind Quantum (Coia) was actually a recidivist fraudster permanently banned by the FSA. For Meriton (\$6 million), Assemi purportedly relied on a \$25,000 sample test and a letter of guarantee from an accountholder at Citibank. In reality, Seaforth Meridian's bank records show no evidence of a test investment with Quantum and the guarantee is worthless.

31. Additional significant misrepresentations and omissions include:

(a) While touting Tucker as having “banking and brokerage experience in equity lending as well as establishing global entities for investment management purposes,” the PPM failed to disclose that Tucker is really Klion, who in 1999 was sued by the Commission for defrauding over 1,400 victims of approximately \$3 million.

(b) The PPM further failed to disclose that Klion, this time using the alias David Tanner, was responsible for the CEC scheme which defrauded thousands of investors of more than \$15 million.

(c) A later version of the PPM, dated “August 2005,” after the CEC receiver demanded the return of investor funds, conceals Klion/Tucker’s involvement in the scheme by removing all references to him or his purported expertise.

(d) The PPM states that Assemi, among others, was “not aware of any past, present, or pending material litigation, threats of litigation or complaints against [him].” In reality, Assemi was sued for investment fraud in New York on September 15, 2004—a case that was ongoing at the time the PPM was distributed to investors.

(e) The PPM omitted an important conflict of interest—that Assemi was actually a managing director of Meriton.

(f) The PPM touted the involvement of three Seaforth Principals (Assemi, Clyman, and Friedrich) in determining the strategies for investing Seaforth Meridian Funds and performing the necessary due diligence. In reality,

Clyman and Friedrich—the two former securities professionals—deferred to Assemi for critical decisions regarding the use of millions of investor proceeds.

(g) The PPM omitted that two professionals—the attorney retained to draft the PPM and prepare monthly statements and the accountant hired to verify this work and conduct an annual audit of Seaforth Meridian—were fired by the Seaforth principals in December 2004 after the professionals demanded verification of the legitimacy of the Quantum and Meriton investments.

Lulling

32. Throughout the offering period through late-2005, the Seaforth Principals sent to investors false and misleading monthly account statements and newsletters showing supposed profits and emphasizing the safety of the investors' principal. Some investors received nominal payments represented as profits. But during this period, the Seaforth Principals had no financial basis for determining the assets or profits of Seaforth Meridian or individual investors. In late 2005, shortly after the \$9 million turnover order was entered against Seaforth Meridian in the CEC case, the mailing of monthly account statements and newsletters stopped.

33. On July 21, 2005, the CEC Receiver filed a motion relating to the turnover of property against Seaforth Meridian and others. On November 22, 2005 the CEC Receiver motion for Show Cause Order relating to Seaforth Meridian's failure to pay \$4.9 million of a \$9 million turnover order. In their defense, Seaforth Meridian, Assemi, Clyman, and Friedrich presented contradictory, false and misleading information. For example, in one contempt-related affidavit filed on November 23, 2005, Clyman declared that "[o]nce the Quantum Investment is liquidated, the remaining balance [\$4.9 million] . . .

will be turned over.” But five months later, on April 24, 2006, Friedrich declared that they were “awaiting the transfer by Standard Charter Bank Tokyo of re-certified Bonds to Newbridge Securities . . . This will enable the Limited Partnership to redeem its \$13.75 M USD investment and pay the balance due.” In reality, the money has yet to be turned over and Newbridge Securities provided to the Commission information showing that at the time of Friedrich’s affidavit, Newbridge’s clearing broker had already rejected the purported exotic bond transaction contemplated by Seaforth Meridian.

Investor Loss

34. Of the original \$18 million invested in Seaforth Meridian, \$4.1 million was paid to the CEC receiver, \$115,556 was paid to Seaforth Meridian attorneys, and only approximately \$105,000 remains in bank and brokerage accounts today. The Seaforth Meridian principals still cannot or refuse to explain truthfully the disappearance of \$13.5 million sent to Quantum and Meriton.

35. While refusing to pay investors or the CEC Receiver, a review of bank records, including some offshore accounts controlled by Quantum and Meriton, reveals that the Seaforth Principals pocketed at least \$600,000 in undisclosed kickbacks.

FIRST CLAIM

Violations of Section 17(a) of the Securities Act

(Against All Defendants)

36. Paragraphs 1 through 35 are realleged and incorporated by reference.

37. Defendants, directly or indirectly, singly or in concert with others, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, have: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions 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 transactions, practices or courses of business which operate or would operate as a fraud or deceit.

38. As part of and in furtherance of their scheme, Defendants 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 fact 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 statements and omissions set forth in paragraphs 1 through 35 above.

39. Defendants made the above-referenced misrepresentations and omissions knowingly or with recklessness regarding the truth. Defendants were also negligent in their actions regarding the representations and omissions alleged herein.

40. By reason of the foregoing, Defendants have violated, and unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM

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

(Against All Defendants)

41. Paragraphs 1 through 35 are realleged and incorporated by reference.

42. Defendants, 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.

43. As a part of and in furtherance of their scheme, Defendants, 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 36 above.

44. Defendants made the above-referenced misrepresentations and omissions knowingly or with recklessness regarding the truth.

45. By reason of the foregoing, Defendants have 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].

THIRD CLAIM

Claim Against Relief Defendants as Custodian of Investor Funds

46. Paragraphs 1 through 35 are realleged and incorporated by reference.

47. Relief Defendants received funds and property from one or more of the Defendants, which are the proceeds, or are traceable to the proceeds, of the unlawful activities of Defendants, as alleged in paragraphs 1 through 35, above.

48. Relief Defendants obtained the funds and property alleged above as part of and in furtherance of the securities violations alleged in paragraphs 1 through 36 and under circumstances in which it is not just, equitable or conscionable for them to retain the funds and property. As a consequence, Relief Defendants have been unjustly enriched.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Enter an Order instanter: (1) freezing the assets of Defendants and Relief Defendants, and directing that all financial or depository institutions comply with the Court's Order; (2) requiring Defendants and Relief Defendants to repatriate all funds and assets that were obtained from the activities described in the Complaint and are now

located outside the jurisdiction of the Court, and (3) ordering that all Defendants and Relief Defendants be restrained and enjoined from destroying, removing, mutilating, altering, concealing or disposing of, in any manner, any of their books and records or documents relating to the matters set forth in the Complaint, or the books and records and such documents of any entities under their control, until further order of the Court.

II.

Preliminarily and permanently enjoin all Defendants from 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].

III.

Enter an Order requiring all Defendants and Relief Defendants to disgorge an amount equal to the funds and benefits they obtained illegally or inequitably as a result of the violations alleged herein, plus prejudgment interest on that amount.

IV.

Order civil penalties against all Defendants pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] in an amount to be determined by the Court for the violations alleged herein.

V.

Grant such other relief as this Court may deem just or appropriate.

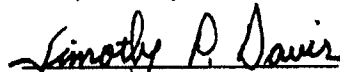
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Respectfully submitted,



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