

1 Scott W. Friestad (NY Bar No. 2292183)
2 friestads@sec.gov
3 David Fröhlich (DC Bar No. 425928)
4 frohlichd@sec.gov
5 Paul W. Sharratt (Mass. Bar No. 560090)
6 sharrattp@sec.gov

7 Lead Trial Attorney:
8 Kenneth W. Donnelly (DC Bar No. 462996)
9 donnelyk@sec.gov
10 Securities and Exchange Commission
11 100 F Street, N.E.
12 Washington, DC 20549-5949
13 Telephone: (202) 551-4946
14 Facsimile: (202) 772-9292

15 Local Counsel:
16 Molly M. White (Cal. Bar No. 171448)
17 whitem@sec.gov
18 Securities and Exchange Commission
19 5670 Wilshire Boulevard, 11th Floor
20 Los Angeles, CA 90036-3648
21 Telephone: (323) 965-3998
22 Facsimile: (323) 965-3908

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

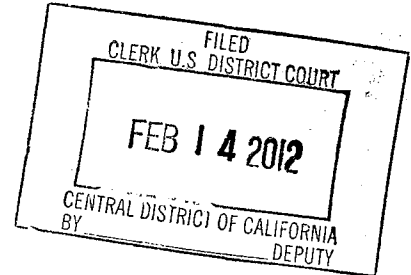
SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

BRENDA A. ESCHBACH,

Defendant.



Case No.

SACV12 0244 AG (JPR)
**COMPLAINT FOR VIOLATIONS
OF THE FEDERAL SECURITIES
LAWS**

1 Plaintiff, Securities and Exchange Commission (“the Commission”), alleges:

2 **STATEMENT OF JURISDICTION AND VENUE**

3 1. This case arises from the misappropriation by Brenda A. Eschbach of
4 over \$3 million in investment adviser client funds between 2003 and 2009. Instead
5 of making investments as directed by clients, Eschbach stole their funds. The
6 Court has jurisdiction, and venue is proper in this district, under Sections 20(b) and
7 22(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77t(b) and
8 77v(a)], Sections 21(d) and 27 of the Securities Exchange Act of 1934 (“Exchange
9 Act”) [15 U.S.C. §§ 78u(d) and 78aa], and Sections 209 and 214 of the Investment
10 Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-9 and 80b-14].

11 Eschbach has, directly or indirectly, made use of the means or instrumentalities of
12 interstate commerce, of the mails, or of the facilities of a national securities
13 exchange to engage in transactions, acts, practices, and courses of business that
14 violate Section 17(a)(1), (2) and (3) of the Securities Act [15 U.S.C. § 77q(a)],
15 Sections 10(b) and 15(a)(1) of the Exchange Act [15 U.S.C. §§ 78(b) and
16 78o(a)(1)], Exchange Act Rule 10b-5(a), (b), and (c) [17 C.F.R. § 240.10b-5], and
17 Section 206(1) and (2) of the Advisers Act [15 U.S.C. § 80b-6(1) and (2)].

18 Eschbach is found in this district, and her conduct constituting violations of the
19 federal securities laws took place in this district.

20 **DEFENDANT AND RELATED ENTITIES**

21 2. **Brenda A. Eschbach**, age 55, lives in Tustin, California. Beginning in
22 2000 and ending in 2009, she was employed or self-employed in the financial
23 services industry, engaged, for compensation, in the business of effecting
24 transactions in securities for the accounts of others and advising others, either
25 directly or through writings, as to the value of securities or the advisability of
26 investing in, purchasing, or selling securities.

27 3. From May 2000 through at least August 2007, Eschbach associated
28 with a nationally-recognized financial planning and brokerage services company,

1 hereinafter referred to as **Adviser**. Adviser provided investment advisory and
2 brokerage services as a registered investment adviser and broker-dealer with the
3 Commission. Starting in March 2003, Eschbach operated a franchise of Adviser in
4 Irvine, California. As an independent financial advisor, Eschbach maintained the
5 affairs of her office herself, including control of the business checking account and
6 hiring employees to assist in the provision of brokerage, insurance, and financial
7 planning services. Eschbach offered brokerage services and fee-based financial
8 planning services through Adviser.

9 4. In August 2007, Eschbach and another individual took steps to leave
10 their association with Adviser and founded **Aventine Investment Services, Inc.**
11 ("**Aventine**"), a now-defunct California corporation. Eschbach and the other
12 individual formed Aventine as a fee-based investment adviser. Eschbach owned
13 51% of Aventine and, from September 2007 until November 2009, offered
14 investment advisory services through Aventine while serving as its president and
15 chief executive officer. Aventine was registered as an investment adviser with the
16 Commission from September 13, 2007 through January 22, 2008, and as an
17 investment adviser with California from January 18, 2008 through December 12,
18 2009.

19 5. Aventine was not itself a registered broker-dealer, and from September
20 2007 through July 2009, Eschbach associated with a broker-dealer for compliance
21 and supervision purposes, referred to herein as **Broker**.

22 6. **EMA Investment Properties, Inc.** ("**EMA**") was a fake entity
23 Eschbach used to conduct her scheme in violation of the securities laws. EMA was
24 never incorporated, and its business name was never registered in any state. As
25 indicated in false account statements that Eschbach sent to clients, EMA
26 purportedly specialized in "private non-traded real-estate investments."

27 7. **Eschbach, Mondragon and Associates** is a fictitious business name
28 that Eschbach registered with Orange County, California in August 2003, originally

1 to do business as a franchisee of Adviser. Under this d/b/a name, Eschbach opened
2 a checking account for the payment of expenses related to her franchise. While
3 Eschbach's financial services business took on different names over time, Eschbach
4 controlled and used the Eschbach, Mondragon and Associates checking account to
5 effectuate her fraudulent scheme. In carrying on the fraud described in this
6 Complaint, Eschbach had clients write checks or wire funds to the fake EMA entity
7 using the account of Eschbach, Mondragon and Associates, after which she
8 misappropriated their funds.

9 **FACTUAL ALLEGATIONS**

10 8. As detailed below, from 2003 to 2009, Eschbach, through her
11 association with Adviser and later with Aventine, breached the trust of her
12 brokerage customers and investment advisory clients, and engaged in fraud that
13 violated the federal securities laws, by secretly misappropriating over \$3 million
14 from four clients: **Client NL** (an individual), **Client JS** (an individual), **Client P**
15 (an entity related to Clients NL and JS), and **Client HK** (an individual).

16 9. Eschbach solicited funds from each of these clients under false
17 pretenses; she intentionally failed to invest their funds in the securities as they had
18 directed her; she deposited or transferred their investment funds into her own
19 accounts for a personal, undisclosed, and unauthorized use; and she concealed her
20 misappropriation by, among other things, creating and mailing to them false and
21 misleading investment account statements.

22 10. Bank records reflect that Eschbach used the funds she misappropriated
23 for, among other things, living expenses, business expenses, credit card payments,
24 mortgage and tax payments, Mercedes lease payments, private school tuition for her
25 daughter, and trips to Las Vegas and Atlanta.

**Eschbach's Fraud and Misappropriation
Related to Clients NL, P, and JS**

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2 11. Each of Clients NL, P, and JS first began to use Eschbach's financial
3 planning services, and maintained brokerage accounts with Adviser through
4 Eschbach, during Eschbach's association with Adviser. In August 2007, when
5 Eschbach founded Aventine, she recommended that these clients move their
6 accounts from Adviser to individual accounts at a national broker-dealer. Each of
7 them followed her recommendation and moved their accounts.

8 12. Prior to March 2003, Eschbach recommended to Client NL non-
9 publicly traded real estate investment trusts (REITs) as part of NL's investment
10 portfolio. Client NL agreed with Eschbach's advice and directed Eschbach to make
11 the investment in the REITs recommended by Eschbach. Client NL's initial funds
12 were invested in such REITs through accounts with Adviser.

13 13. Beginning in March 2003, Eschbach recommended to Client NL
14 additional investments in non-publicly traded REITs. Client NL agreed to invest
15 \$125,000 more in such REITs, and Eschbach instructed that NL write a check
16 payable to Brenda Eschbach in the amount of \$125,000 so that she could facilitate
17 the investment. Rather than investing Client NL's additional funds, Eschbach
18 misappropriated the funds, converting them to her personal use.

19 14. From March 2003 until August 2008, Eschbach continued to
20 recommend REITs to Client NL, and Client NL continued to provide Eschbach
21 additional funds for such investments, all of which Eschbach misappropriated
22 instead of making the investments directed by Client NL.

23 15. During this period, beginning in August 2003, Eschbach instructed
24 Client NL to make investment checks payable to EMA, and Eschbach would
25 deposit Client NL's checks in the bank account she controlled in the name of
26 Eschbach, Mondragon and Associates before misappropriating the funds.
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1 16. Ultimately, Client NL believed that Eschbach had invested for Client
2 NL's accounts over \$1.5 million in non-publicly traded REITs, when in fact
3 Eschbach had stolen all of these funds for her personal use.

4 17. In June 2005, Eschbach recommended that Client P, a company owned
5 by Clients NL and JS, also invest in non-publicly traded REITs. Based on
6 Eschbach's recommendation, Client P agreed to invest \$200,000 in such REITs.
7 Eschbach instructed Client P to write a check payable to EMA. Client P provided
8 such a check, and Eschbach deposited Client P's funds in the bank account she
9 controlled in the name of Eschbach, Mondragon and Associates. Instead of making
10 the investment Client P had directed, Eschbach misappropriated Client P's funds.

11 18. In January 2006, Eschbach recommended to Client JS that he also
12 invest in non-publicly traded REITs. Client JS had previously invested in a REIT
13 that had performed well in his Adviser account and, based on Eschbach's newest
14 recommendation, provided \$100,000 more, directing Eschbach to invest the funds
15 in the REIT she had recommended. As instructed by Eschbach, Client JS provided
16 his \$100,000 through a check made payable to EMA. As with the funds earlier
17 provided by Clients NL and P, instead of making the agreed investment, Eschbach
18 simply misappropriated Client JS's funds, converting them to her personal use.

19 19. In June 2007, Eschbach recommended that Client JS invest in another
20 REIT. Still unaware of Eschbach's scheme, he directed Eschbach to roll over into
21 the newly-recommended REIT the earlier \$100,000 he thought he had invested in
22 the first REIT, along with the "profits" Eschbach falsely communicated to him as
23 having been earned and reinvested in the first REIT. Adding to this, Client JS also
24 provided Eschbach a check for an additional \$190,000 to invest in the second REIT.

25 20. After receiving Client JS's check for the additional \$190,000,
26 Eschbach deposited it and, again, misappropriated the funds.

27 21. While associated with Adviser, Eschbach disguised the fact that she
28 had misappropriated funds from Clients NL, P, and JS. Eschbach prepared and sent

1 in the mail to each of the clients fake periodic account statements, ostensibly from
2 EMA. The statements purported to set forth account identifying information, the
3 cost basis of shares or units owned, quarterly or monthly distributions, and the total
4 value of the investments as of the statement date.

5 22. The statements falsely indicated that EMA specialized in non-publicly
6 traded real estate investments, stated that Eschbach was the “transfer agent,” and
7 listed the telephone number, address, and suite number of Eschbach’s Adviser
8 franchise. The statements also falsely indicated that REIT investments had been
9 made in the client’s accounts, as each of them had directed, when in fact those
10 investments were not made.

11 23. From the fake EMA statements, it appeared that the various REIT
12 investments the client thought had been purchased through Eschbach increased in
13 value over time. The statements did not disclose the truth that Eschbach had
14 deposited or transferred the client’s investment funds into her own accounts.

15 24. After Eschbach became associated with Aventine, and Clients NL, P,
16 and JS had transferred their accounts from Adviser, Eschbach continued to disguise
17 her fraud by continuing to send the clients fictitious account statements, which now
18 set forth the address and telephone numbers associated with her Aventine office.
19 Eschbach also sent correspondence on Aventine letterhead to the clients that, again,
20 falsely reflected their investments in REITs.

21 **Eschbach’s Fraud and Misappropriation Related to Client HK**

22 25. Eschbach’s scheme to defraud Clients NL, P, and JS began to unravel
23 in mid-2009, leading Eschbach to defraud a fourth client, HK.

24 26. In April 2009, Client JS desired to purchase a home and requested a
25 redemption of his REIT investment. On April 15, 2009, Eschbach had him
26 complete paperwork for the redemption and told him that he would receive a
27 distribution by June 30, 2009.

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1 27. When the June 30 redemption date came and went without a
2 distribution, Client JS pushed Eschbach for an explanation. At that time, Eschbach
3 falsely assured him that his “funds have never been . . . comingled and all your
4 investments have been in your best interest.”

5 28. Doubting the explanation, Client JS hired legal counsel in July 2009 to
6 assist with retrieving his investment. Eschbach falsely asserted to his counsel that
7 she had sent a registered check for Client JS to Client P’s offices. In fact, no such
8 check was ever sent by Eschbach.

9 29. Based on Client JS’s experience, Client P also requested a redemption,
10 and Client NL asked Eschbach to deposit monthly distributions from REITs directly
11 into Client NL’s bank account rather than reinvesting them.

12 30. Desperate for funds to satisfy these demands, Eschbach met in August
13 2009 with Client HK about potential securities investments and persuaded Client
14 HK to invest \$500,000 in a non-publicly traded REIT. Eschbach had impressed
15 Client HK with her purported educational achievements, stating that she had both a
16 Ph.D. and MBA and that she managed over a billion dollars of investor funds.
17 These statements were false.

18 31. On August 21, 2009, agreeing to invest \$500,000, Client HK directed a
19 wire transfer of \$510,000 to the account of Eschbach, Mondragon and Associates,
20 \$500,000 of which was to be used for the REIT investment recommended by
21 Eschbach and \$10,000 of which was a fee charged by Eschbach.

22 32. Shortly after receipt of these funds, Eschbach ordered a wire transfer
23 within the Eschbach, Mondragon and Associates account causing most of the funds
24 to be transferred to Client JS, purportedly representing the redemption of his REIT
25 investment.

26 33. Eschbach tried to delay Client P’s redemption demands, but Client NL,
27 Client JS, and an employee of Client P each pressed Eschbach for the funds.

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1 41. By engaging in her conduct, Eschbach violated, and unless enjoined
2 will continue to violate, Section 17(a)(1), (2) and (3) of the Securities Act.

3 **SECOND CLAIM**

4 **Violations of Section 10(b) of the Exchange Act
5 and Rule 10b-5(a), (b), and (c) thereunder**

6 42. The Commission repeats and realleges ¶¶ 1 through 38 above.

7 43. Defendant Eschbach, by engaging in the conduct described above,
8 directly or indirectly, by the use of means or instrumentalities of interstate
9 commerce, of the mails, or of the facilities of a national securities exchange, in
10 connection with the purchase or sale of a security, with scienter: (a) employed
11 devices, schemes, or artifices to defraud; (b) made untrue statements of a material
12 fact or omitted to state a material fact necessary in order to make the statements
13 made, in the light of the circumstances under which they were made, not
14 misleading; and (c) engaged in acts, practices, or courses of business which
15 operated or would operate as a fraud or deceit upon other persons.

16 44. By engaging in her conduct, Eschbach violated, and unless enjoined
17 will continue to violate, Section 10(b) of the Exchange Act and Exchange Act Rule
18 10b-5(a), (b), and (c) thereunder.

19 **THIRD CLAIM**

20 **Failure to Register as a Broker-Dealer
21 Violations of Section 15(a)(1) of the Exchange Act**

22 45. The Commission repeats and realleges ¶¶ 1 through 38 above.

23 46. At times from 2003 through October 2009, Eschbach solicited Clients
24 NL, P, and JS concerning the purchase or sale of shares in non-publicly traded
25 REITs without the knowledge or approval of the broker or dealer she was then
26 associated with (first Adviser, later Broker) or, with respect to Client HK, when she
27 was neither registered as a broker or dealer nor an associated person acting under
28 the supervision of a registered broker or dealer.

1 47. Defendant Eschbach, by engaging in the conduct described above,
2 made use of the mails or the means or instrumentalities of interstate commerce to
3 effect transactions in, or to induce or attempt to induce, the purchase or sale of
4 securities, without being registered as a broker or dealer in accordance with Section
5 15(b) of the Exchange Act.

6 48. By engaging in her conduct, Eschbach violated, and unless enjoined
7 will continue to violate, Section 15(a)(1) of the Exchange Act.

8 **FOURTH CLAIM**

9 **Violations of Section 206(1) and (2) of the Adviser Act**

10 49. The Commission repeats and realleges ¶¶ 1 through 38 above.

11 50. Defendant Eschbach, as an investment adviser, by engaging in the
12 conduct described above, by use of the mails or means or instrumentalities of
13 interstate commerce, directly or indirectly: (a) with scienter, employed a device,
14 scheme, or artifice to defraud a client or prospective client; and (b) engaged in
15 transactions, practices, or courses of business which operated as a fraud or deceit
16 upon a client or prospective client.

17 51. By engaging in her conduct, Eschbach violated Section 206(1) and
18 206(2) of the Advisers Act.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, the Commission respectfully requests that this Court enter a
21 final judgment:

22 A. Permanently enjoining Eschbach from violating, directly or indirectly,
23 Section 17(a) of the Securities Act;

24 B. Permanently enjoining Eschbach from violating, directly or indirectly,
25 Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5;

26 C. Permanently enjoining Eschbach from violating, directly or indirectly,
27 Section 15(a) of the Exchange Act;

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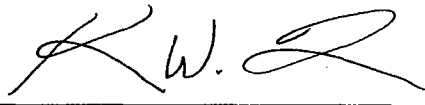
D. Permanently enjoining Eschbach from violating, directly or indirectly, Section 206(1) and (2) of the Advisers Act;

E. Ordering Eschbach to disgorge all profits or proceeds received as a result of the conduct described in this Complaint, plus prejudgment interest from the date of the misappropriation to the date of entry of judgment;

F. Ordering Eschbach to pay a civil monetary penalty pursuant to Section 20(d)(1) of the Securities Act, Section 21(d)(3) of the Exchange Act, and Section 209(e)(1) of the Advisers Act; and

G. Granting such other relief as this Court deems just and proper.

Dated: February 14, 2012


Kenneth W. Donnelly
Securities and Exchange Commission