

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

CIVIL ACTION No.

v.

HON.

THOMAS S. MULHOLLAND, and
JAMES C. MULHOLLAND, JR.,

JURY DEMANDED

Defendants.

COMPLAINT

Plaintiff, Securities and Exchange Commission (“Commission”), alleges and states as follows:

SUMMARY

1. Since approximately the 1990s, Defendants Thomas S. Mulholland (“T Mulholland”) and James C. Mulholland, Jr. (“J Mulholland”) (collectively, “the Mulhollands”) operated a real estate business which involved buying, maintaining, and renting residential real estate in Michigan.
2. To finance the real estate business, the Defendants raised money from individual investors through the offer and sale of securities in the form of demand notes (“Mulholland Notes”).

3. Beginning in at least January 2009, the Mulhollands' real estate business began to experience financial difficulties. Among other things, the business experienced significant cash flow problems and had difficulty meeting financial obligations, including repaying investors.

4. Despite the deteriorating financial condition of their real estate operation, the Mulhollands continued to solicit investors and to raise additional funds from them.

5. From January 2009 through January 2010, the Mulhollands raised approximately \$2 million from approximately 75 investors through the offer and sale of the Mulholland Notes.

6. The Mulollands defrauded these investors. They made misrepresentations of material facts and omitted to disclose material facts to these investors.

7. The Mulhollands told investors that their real estate business was profitable.

8. The Mulhollands told investors that they would earn 7% per year on their investment and that the returns would be generated by profits of the real estate business.

9. The Mulhollands told investors that their principal and interest were guaranteed and that they could get their money back upon 30 days' written notice.

10. These statements were false and/or misleading. The real estate business was a failure. It was losing money. The business experienced negative monthly cash flow from real estate operations during most of the relevant period, needed new investor funds to pay its bills and to pay interest to previous investors, and did not have the means to refund investors' principal within 30 days even if a small number of them requested to redeem their notes. The Mulhollands filed for bankruptcy in February 2010.

11. The Mulhollands fraudulently concealed their perilous financial condition when they solicited new investors from January 2009 through January 2010. The Mulhollands did not

disclose to investors that they were experiencing financial hardship, that they were having difficulty meeting financial obligations critical to the real estate operation, or that they were contemplating filing for bankruptcy.

12. Despite their deteriorating financial condition and the continuing decline in the real estate market, both J Mulholland and T Mulholland continued to raise new investor funds throughout 2009 and into the beginning of 2010 – including within weeks of their bankruptcy filings – relying on the above misrepresentations and omissions to make the sales.

13. Through their actions, J Mullholand and T Mulholland have violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)], Sections 10(b) and 15(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b) and §78o(a)(1)], and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5].

DEFENDANTS

14. **James C. Mulholland, Jr.**, age 55, resides in St. Pete Beach, Florida. Between 1981 and 1991, J Mulholland worked for multiple registered broker-dealers. In 1991, the State of Michigan’s Corporation and Securities Bureau entered a consent order revoking his securities agent registration and fining him \$8,000 for engaging in the offer and sale of unregistered promissory notes. In 2004, J Mulholland became associated with Invest Financial Corporation (“Invest”), a registered broker-dealer located in Tampa, Florida. J Mulholland resigned from Invest in July 2005 and, in 2006, the Financial Industry Regulatory Authority, Inc. (“FINRA”) suspended him and fined him \$10,000 for offering and selling the Mulholland Notes to

customers without notice to or permission from Invest. Also in 2006, the State of Michigan Office of Financial and Insurance Regulation revoked J Mulholland's insurance license for offering and selling Mulholland Notes to his insurance clients. During the time of the offering and sales of the Mulholland Notes that are the subject of this Complaint, J Mulholland was not registered with the Commission as a broker or dealer or associated with an entity registered with the Commission as a broker or dealer.

15. **Thomas S. Mulholland**, age 55, resides in Saginaw, Michigan. In 2010, the State of Michigan Office of Financial and Insurance Regulation revoked T Mulholland's insurance license for offering and selling Mulholland Notes to his insurance clients. At the time of the offering that is the subject of this Complaint, T Mulholland was not registered with the Commission as a broker or dealer or associated with an entity registered with the Commission as a broker or dealer.

JURISDICTION

16. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa]. Venue is proper in this Court pursuant to 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].

17. The acts, transactions, practices, and courses of business constituting the violations alleged herein occurred within the jurisdiction of the United States District Court for the Eastern District of Michigan and elsewhere.

18. Defendants, directly and indirectly, have made, and are making, use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, transactions, practices, and courses of business alleged herein.

FACTS

Overview of the Investment

19. Since the 1990's, J Mulholland and T Mulholland have raised money from investors to invest in residential real estate in Michigan. As of December 2008, the Mulhollands had raised approximately \$16 million from investors and had acquired a total of approximately 300 properties and apartment building units.

20. From January 2009 through January 2010, J Mulholland and T Mulholland raised an additional \$2 million for their real estate operation from more than 75 investors in Michigan and Florida. The Mulhollands raised the additional funds by selling securities to these investors in the form of the Mulholland Notes.

21. The Mulhollands told investors that they would use the investors' funds to purchase, maintain, and rent residential real estate. They promised investors an annual return of 7% on their investment and that their interest was generated by profits from their real estate operation. The Mulhollands told investors that their principal and interest was "guaranteed" and that the Mulhollands would return their money upon 30 days' written notice.

22. The Mulhollands used the name of their once-active company, Mulholland Financial Services, Inc. ("MFSI"), in the offer and sale of the Mulholland Notes. The Mulhollands incorporated MFSI in Michigan in 1989 and they owned and controlled MFSI until

they voluntarily dissolved it in April 2006. To raise investor funds from January 2009 through January 2010, the Mulhollands issued the Mulholland Notes through MFSI and did so even after the company was dissolved. MFSI is not registered with the Commission in any capacity.

The Mulhollands Recruited Investors

23. Many of the investors that the Mulhollands recruited were clients of their insurance business. To attract additional investors, the Mulhollands solicited friends and relatives of their insurance clients, relied on word-of-mouth referrals from current investors, and sought referrals from an accountant.

24. Many of the Mulhollands' investors were retirees and most of them had limited, if any, investment experience. The Mulhollands knew this and were able to persuade many investors to sell their interests in their long term investments and use the proceeds to invest in the Mulholland Notes.

25. Several investors sold their holdings within variable annuities and IRAs to purchase a Mulholland Note. J Mulholland persuaded one investor to invest proceeds from a life insurance policy held by her deceased aunt. T Mulholland persuaded a married couple to invest a majority of the proceeds from the sales of their home and vacation cottage during the construction of their new home, all of which they needed to complete the construction.

26. Several of the investors used substantially all of their savings to purchase their Mulholland Notes.

27. As part of the Mulhollands' effort to recruit investors, they held themselves out as brokers. T Mulholland also represented to at least one investor that the Mulhollands' company, MFSI, was "similar to AG Edwards," the large U.S. brokerage firm. They also represented on

their business cards, which they had distributed to at least one investor in 2009, that they were “Chartered Financial Consultants” who offered various services, including “Real Estate Investments,” “IRAs,” and “Life Insurance.”

The Mulhollands Offered and Sold Investments

28. The Mulhollands typically offered the Notes by meeting directly with the investors at their homes or at one of the Mulhollands’ offices.

29. The Mulhollands told investors that they would use the investors’ funds to purchase, maintain, and rent residential real estate. They told investors that they would earn interest of 7% per year on their investment and that their interest was generated by profits from their real estate operation.

30. The Mulhollands assured many investors that their principal and interest was “guaranteed” and that their money was “safe.” The Mulhollands also told investors that that they could get their money back upon 30 days’ written notice.

31. T Mulholland told investors throughout 2009 that he and his brother ran a “successful and profitable real estate operation.”

32. In December 2009, just weeks before they filed for bankruptcy, J Mulholland told an investor that the Mulhollands were doing well and would be “expanding their investments.”

33. Once investors decided to invest with the Mulhollands, they signed a Mulholland Note, which was in turn signed by both J Mulholland and T Mulholland.

34. The Mulholland Notes echoed several of the representations that the Mulhollands made to investors. The Notes stated that investors would earn 7% annual interest and that investors could get their principal and accrued interest returned within 30 days of a written

demand. The Mulholland Notes also stated that the Mulhollands “jointly and severally promise[d]” to repay the investors their principal and interest.

35. Other than the Notes and a property list given to one investor upon his request, the Mulhollands did not provide any documentation to investors. They did not provide investors any financial information about MFSI or the investment itself. No valid registration statement was filed or in effect with the Commission in connection with the offer and sale of the Mulholland Notes.

36. Upon executing a Note, the investors typically provided checks made payable to “Mulholland Financial” to one of the Mulhollands, who would then deposit the funds in one of two MFSI bank accounts. The Mulhollands pooled the investors’ funds in the MFSI accounts, which the Mulhollands also used as the operating accounts for the real estate operation. Nearly all of the income and expenses associated with their real estate operation flowed through these accounts. Similarly, the principal and interest payments to investors were made from these MFSI accounts.

37. The Mulhollands sent investors monthly account statements purporting to represent the amount of their principal investment, the date of the investment, any interest that accrued during the period, and the total amount due to the investor. Many investors relied on these statements to confirm that the Mulhollands’ real estate operation was generating sufficient income from its real estate investments to pay the investors back.

The Collapse of the Mulhollands' Real Estate Business

38. By January 2009, the Mulhollands' real estate operation was experiencing financial hardship. The rental income generated from the properties was inadequate to pay the Mulhollands' operational expenses, let alone repay investors.

39. The Mulhollands' real estate operation was a failure during the relevant period. In fact, for 11 of the 13 months from January 2009 through January 2010, their operational expenses exceeded their revenue.

40. The Mulhollands' took out mortgages on nearly all of their properties. As of 2009, given the mortgages encumbering their real estate portfolio and the substantial decline in property values, the Mulhollands had inadequate equity in the properties to repay investors.

41. Despite the deteriorating financial condition of their real estate operation, the Mulhollands continued to raise new investor funds.

The Mulhollands Misrepresented Material Facts to Investors

42. Given the financial difficulties the Mulhollands' business was experiencing during this period, their representations to investors about the success and financial health of their real estate operation were false and/or misleading. The Mulhollands fraudulently concealed their perilous financial condition when they solicited new investors.

43. T Mulholland's statement to investors in 2009 that he and his brother ran a "successful and profitable real estate operation" was false. The real estate business was losing money during this period.

44. J Mulholland's statement to an investor in December 2009 that the Mulhollands were doing well and would be "expanding their investments" was false. The real estate business was failing and the Mulhollands were about to file for bankruptcy.

45. The Mulhollands' statements to investors that they would earn interest of 7% per year on their investment were misleading. The Mulhollands were losing money on the real estate business and had no reasonable basis to believe that the financial condition of the business would improve enough to pay interest of 7% to investors.

46. The Mulhollands' statements to investors that their interest was generated by profits from their real estate operation were false. Likewise, the monthly account statements the Mulhollands sent to investors reflecting the interest they had earned were false. The investors had not earned any actual interest because the real estate business was unprofitable.

47. During eleven of the thirteen months from January 2009 through January 2010, the Mulhollands' real estate business generated negative cash flow from operations, meaning that the business did not bring in enough rental income to cover its operational costs. In total during the period, operational expenses exceeded operational income by more than \$850,000.

48. Contrary to their representations to investors, the Mulhollands used the investor money they raised from January 2009 through January 2010 to shore up their money-losing business. To make matters worse, because they had negative operating cash flow, when investors asked for their money back, the Mulhollands funded the repayments with new investor money. All together, the Mulhollands used approximately \$1 million of new investor money to make payments to investors from January 2009 through January 2010. In other words, the Mulhollands were running a Ponzi scheme.

49. The Mulhollands' statements to investors that their principal and interest was "guaranteed" were false. The Mulhollands' statements to investors that they could get their money back upon 30 days' written notice were also false. The Mulhollands did not have sufficient cash resources to refund the investors' principal in the event that even a fraction of them requested their money back. They never maintained a reserve for investor redemptions. The properties they owned had insufficient equity to be used as a source to repay investors.

50. In addition to making false and misleading statements about the investments themselves, the Mulhollands also made false and misleading statements to investors touting their involvement in the financial industry.

51. J Mulholland did not disclose to investors that in 2006, FINRA suspended him and fined him \$10,000 for offering and selling the Mulholland Notes to customers without notice to or permission from Invest, the broker-dealer he worked for at the time. In addition, J Mulholland did not disclose to investors that in 2006, the State of Michigan Office of Financial and Insurance Regulation revoked J Mulholland's insurance license for offering and selling Mulholland Notes to his insurance clients.

52. T Mulholland represented to at least one investor that he was "associated" with MFSI and that MFSI was "similar to AG Edwards," though he has never been associated with any registered broker-dealer. T Mulholland also did not disclose to investors that in 2010 the State of Michigan Office of Financial and Insurance Regulation revoked his insurance license for offering and selling Mulholland Notes to his insurance clients.

53. The Mulhollands also represented on their business cards, which they had distributed to at least one investor in 2009, that they were "Chartered Financial Consultants" who

offered various services, including “Real Estate Investments,” “IRAs,” and “Life Insurance.” In fact, T Mulholland has never been designated as a Chartered Financial Consultant. Moreover, by 2009, the State of Michigan had revoked J Mulhollands’ licenses to sell securities and insurance in the State and he was prohibited from offering or selling securities in the State, which would have precluded him from engaging in the business that he advertised on his business cards.

54. Both of the Mulhollands, as well as several entities that they controlled, filed for bankruptcy in February 2010. Since the bankruptcy filing, many of the investors have demanded that the Mulhollands return their principal and outstanding “interest.” They have yet to receive any money from the Mulhollands. None of the bankruptcy estates have sufficient assets to repay even a fraction of the investors.

55. At the time that they made the above-referenced representations, the Mulhollands knew or were reckless in not knowing that such representations were false and misleading. At all times, J Mulholland and T Mulholland directed all of the activity for the real estate operation and controlled MFSI’s bank accounts. They were also aware of the precarious financial condition of their business and that they were using new investor funds to make payments to other investors.

56. J Mulholland knew that MFSI was not a registered securities broker, that he had been suspended by FINRA, and that the State of Michigan revoked his securities and insurance licenses

57. T Mulholland knew that MFSI was not a registered securities broker, that he has never been associated with a registered broker-dealer, that he has never been a Chartered Financial Consultant, and the State of Michigan revoked his insurance license.

COUNT I
Violations of Section 5(a) and (c) of the Securities Act
[15 U.S.C. § 77e(a) and (c)]

58. Paragraphs 1 through 57 above are realleged and incorporated herein by reference.

59. By their conduct from at least January 2009 through January 2010, J Mulholland and T Mulholland, directly or indirectly: (i) made use of means or instruments of transportation or communication in interstate commerce or of the mails to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement was in effect; (ii) for the purpose of sale or delivery after sale, carried or caused to be carried through the mails or in interstate commerce, by any means or instruments of transportation, securities as to which no registration statement was in effect; and (iii) made use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy, through the use or medium of a prospectus or otherwise, securities as to which no registration statement had been filed.

60. No valid registration statement was filed or was in effect with the Commission in connection with J Mulholland's and T Mulholland's offer and sale of the Mulholland Notes.

61. By reason of the foregoing, J Mulholland and T Mulholland have violated Sections 5(a) and (c) of the Securities Act [15 U.S.C. § 77e(a) and (c)].

COUNT II
Violations of Section 17(a)(1) of the Securities Act
[15 U.S.C. § 77q(a)(1)]

62. Paragraphs 1 through 57 above are realleged and incorporated herein by reference.

63. By their conduct from January 2009 through January 2010, J Mulholland and T Mulholland, in the offer or sale of the Mulholland Notes, by the use of any means or instruments of transportation or communication in interstate commerce and by the use of the mails, directly or indirectly, have employed devices, schemes or artifices to defraud.

64. J Mulholland and T Mulholland acted with scienter.

65. By reason of the foregoing, J Mulholland and T Mulholland violated Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT III
Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act
[15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

66. Paragraphs 1 through 57 above are realleged and incorporated herein by reference.

67. By their conduct from January 2009 through January 2010, J Mulholland and T Mulholland, in the offer or sale of the Mulholland Notes, by the use of any means or instruments of transportation and communication in interstate commerce and by the use of the mails, directly or indirectly, have 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; or have engaged in transactions, practices or courses of business which have been operating as a fraud or deceit upon purchasers of securities in the Legisi program.

68. By reason of the foregoing, J Mulholland and T Mulholland violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT IV
Violations 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]

69. Paragraphs 1 through 57 above are realleged and incorporated herein by reference.

70. By their conduct from January 2009 through January 2010, J Mulholland and T Mulholland, in connection with the purchase or sale of the Mulholland Notes, by the use of any means or instrumentalities of interstate commerce or by the use of the mails, directly or indirectly: (a) employed a device, scheme or artifice to defraud; (b) made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in an act, practice, or course of business which has been or is operating as a fraud or deceit upon other persons, including purchasers and sellers of such securities.

71. J Mulholland and T Mulholland acted with scienter.

72. By reason of the foregoing, J Mulholland and T Mulholland have violated 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].

COUNT V
Violations of Section 15(a)(1) of the Exchange Act
[15 U.S.C. §78o(a)(1)]

73. Paragraphs 1 through 57 above are realleged and incorporated herein by reference.

74. By engaging in the conduct set forth above from at least January 2009 through January 2010, while acting as a broker or dealer, J Mulholland and T Mulholland effected transactions in, and induced and attempted to induce the purchase or sale of, securities when they were not registered with the Commission as brokers or dealers or associated with an entity registered with the Commission as a broker or dealer.

75. By reason of the foregoing, J Mulholland and T Mulholland violated, and unless restrained and enjoined will continue to violate, Section 15(a)(1) of the Exchange Act.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court enter a judgment:

A. Making findings of fact and conclusions of law that the Defendants committed the alleged violations.

B. Permanently enjoining J Mulholland and T Mulholland, their agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from further violations of Sections 5(a), 5(c), 17(a)(1), 17(a) (2) and 17(a) (3) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)(1), (2) and (3)]; and Sections 10(b) and 15(a)(1) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78o(a)(1)] and Rule 10b-5(a), (b), and (c) promulgated thereunder [17 C.F.R. § 240.10b-5(a), (b), and (c)];

C. Ordering J Mulholland and T Mulholland to disgorge, jointly and severally, their ill-gotten gains, derived directly or indirectly from the conduct complained of herein, together with prejudgment interest thereon;

D. Ordering J Mulholland and T Mulholland to pay appropriate civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

E. Retaining jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and to carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of the Court; and

F. Granting such further relief as the Court may deem appropriate.

Respectfully submitted,

DATED: October 22, 2012

s/ John E. Birkenheier
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