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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

PLAINTIFF,

v.

ARMAND R. FRANQUELIN, an individual, and
MARTIN A. POOL, an individual

DEFENDANTS,

and

JUDITH E. FRANQUELIN

RELIEF DEFENDANT

COMPLAINT

Civil No.: 1:13-cv-00096

Judge Clark Waddoups

Plaintiff, Securities and Exchange Commission (the “Commission”), for its Complaint against defendants Armand R. Franquelin (“Franquelin”) and Martin A. Pool (“Pool”), (collectively, “Defendants”), and relief defendant Judith E. Franquelin (“Judith” or “Relief Defendant”) alleges as follows:

INTRODUCTION

1. This matter involves the fraudulent and unregistered offerings of securities by The Elva Group, LLC (“Elva Group”) and its control persons, Armand R. Franquelin (“Franquelin”) and Martin A. Pool (“Pool”). From at least January 2006, through August 2010, Franquelin and Pool engaged in a Ponzi scheme and acted as unregistered broker-dealers by offering and selling more than \$12 million in Elva Group promissory notes to approximately 130 investors.

2. Franquelin and Pool encouraged investors to convert funds held in Individual Retirement Accounts (“IRAs”) into self-directed IRAs through Destiny Funding, LLC (“Destiny Funding”), another company owned by Franquelin and Pool, before investing those funds with Elva Group.

3. Franquelin and Pool raised money for the stated purpose of buying, developing, and selling residential real estate. Franquelin and Pool located potential investors by presenting real estate investment opportunities at financial seminars throughout the United States.

4. Investors were told that their investment was secure and they would earn a guaranteed return.

5. Instead of using investor funds as represented, Franquelin and Pool used investor funds to make interest payments to previous investors, to pay business expenses of Elva Group and to pay compensation to themselves.

6. Franquelin and Pool omitted to disclose to investors that their funds would be used to make interest payments to previous investors, to pay business expenses of Elva Group and to pay compensation to themselves.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction by authority of Sections 20 and 22 of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. §§ 77t and 77v] and Sections 21 and Section 27 of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §§ 78u and 78aa].

8. Defendants, directly and indirectly, singly and in concert, have made use of the means and instrumentalities of interstate commerce and the mails in connection with the transactions, acts and courses of business alleged herein, certain of which have occurred within the District of Utah.

9. Venue for this action is proper in the District of Utah under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and under Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain of the transactions, acts, practices, and courses of business alleged in this Complaint took place in this district and because certain of the Defendants reside in and transact business in this district.

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

11. Defendants’ conduct took place in connection with the offer, purchase and/or sale of promissory notes issued by Elva Group, which are securities.

DEFENDANTS

12. **Armand R. Franquelin**, age 56, resides in Ogden, Utah. Franquelin was a manager and control person of The Elva Group, LLC. Franquelin solicited investments on behalf of Elva Group and received compensation in connection with the solicitation.

13. **Martin A. Pool**, age 43, resides in Atlanta, Georgia. Pool was a manager and control person of The Elva Group, LLC. Pool solicited investments on behalf of Elva Group and received compensation in connection with the solicitation.

RELIEF DEFENDANT

14. **Judith E. Franquelin**, age 54, resides in Ogden, Utah. Judith Franquelin is married to Armand Franquelin and received nearly \$400,000 in investor funds.

RELATED PARTIES

15. **The Elva Group, LLC** was a Utah limited liability corporation with its principal place of business in Ogden, Utah. Elva Group has not registered any offering of its securities under the Securities Act or a class of securities under the Exchange Act. Elva Group issued promissory notes and raised investor capital from approximately January 2006, through August 2010. Elva Group was controlled by Franquelin and Pool. Elva Group's business registration with Utah is expired.

16. **Destiny Funding, LLC** ("Destiny Funding") was a Utah limited liability corporation with its principal place of business in Ogden, Utah. Destiny Funding was owned and controlled by Franquelin and Pool. Pool and Franquelin encouraged investors to convert funds held in IRAs into self-directed IRAs through Destiny Funding. Destiny Funding's business registration with Utah is expired.

STATEMENT OF FACTS

17. From January 2006, through August 2010, Franquelin and Pool raised at least \$12 million from approximately 130 investors by offering and selling promissory notes to investors residing in a number of different states.

18. Franquelin and Pool, through Elva Group, issued promissory notes (“Elva Group Notes”) with fixed maturity dates ranging from 60 days to one year and promised returns ranging from 10% to 240% annually.

19. Franquelin and Pool also incorporated Destiny Funding, which they marketed as a vehicle to enable individuals to use self-directed IRA funds to invest in real estate. After individuals transferred IRA funds to Destiny Funding, Franquelin and/or Pool would solicit an investment into Elva Group.

20. Franquelin and Pool did not provide investors with a private placement memorandum or other written offering document.

21. Franquelin and Pool made a number of material misrepresentations and omitted to state material facts to investors in connection with the offer and sale of Elva Group securities.

22. Franquelin and Pool orally told investors that their funds would be pooled with other investor funds and used to develop real estate.

23. Franquelin and Pool told investors that they had a successful history of developing real estate, including investments in projects located in Mississippi and Louisiana.

24. Franquelin and Pool told investors that their investment in Elva Group was risk-free and had a guaranteed return.

25. Franquelin and Pool told some investors that Elva Group was an “investment vehicle” that pooled investor funds for use by persons or entities that applied to Elva Group for investment capital to develop real estate.

26. Franquelin and Pool told other investors that Elva Group directly invested in a real estate development and that their funds would be used to develop property located in Vernal, Utah.

27. On January 6, 2006, Franquelin and Pool, through Elva Group, obtained a \$2.4 million loan and purchased a large tract of land in Vernal, Utah. Franquelin and Pool named the property Haven Estates. Investor funds were purportedly going to be used to develop approximately 160 individual residential home sites and construct housing units to sell for a profit.

28. Franquelin and Pool, orally and through a power point presentation, claimed that residential housing in Vernal, Utah, was in short supply due to increased energy development in the area. As a result, Franquelin and Pool claimed that Elva Group was able to successfully build and sell homes in an extremely short period of time to generate a guaranteed profit.

29. Franquelin and Pool told some investors that their investment in Elva Group would be secured because the investor would have a first lien position in the Haven Estates. Elva Group Notes, issued to certain investors, confirmed Franquelin and Pool's verbal representations stating: the "holder's security interest in and to the collateral is and shall remain in a first lien position."

30. Franquelin and Pool signed Elva Group Notes, which represented that the investor would be in a first lien position. However, no investor was ever placed in a first lien position because the mortgage holder was, at all times, the first lien holder.

31. Bank records show that approximately \$4.75 million of the \$12 million raised from Elva Group investors were used by Franquelin and Pool to make "interest" payments to earlier investors.

32. Approximately \$900,000 in investor funds was also used to pay the business expenses of Elva Group such as employee salaries, travel expenses to enable Franquelin and Pool to locate new investors, office lease fees, and utilities.

33. Franquelin and Pool, collectively, took more than \$2.4 million in investor funds for their personal benefit. Franquelin's wife, Judith Franquelin, was paid nearly \$400,000 in investor funds by Franquelin and Pool.

34. Franquelin and Pool failed to tell investors that their funds would be used to make "interest" payments to earlier investors, to pay business expenses of Elva Group, or that Franquelin and Pool would pay themselves compensation from investor funds.

35. In approximately May, 2008, Elva Group defaulted on its loan to the mortgage company, and property in Vernal, Utah, known as Haven Estates, was foreclosed in February 2009.

36. Despite defaulting on Haven Estates' mortgage on or around May 1, 2008, Franquelin and Pool continued to solicit investor funds for the stated purpose of developing Haven Estates.

37. As early as May 2008, Elva Group failed to pay some investors the returns guaranteed in their promissory notes. Franquelin and Pool advised some investors, who complained that they had not been paid as promised, to reinvest their principal and interest owing because their investment was successfully generating a profit.

38. Franquelin and Pool acknowledged to certain investors that Elva Group had cash flow difficulties but reassured those investors that their Elva Group Notes would be reinvested, continue to accrue the same returns, but would mature at a later date than initially promised.

39. Through at least November 2009, Franquelin told some investors that Haven Estates was being developed, homes were being sold, and their investor returns would be paid from the profit of the Haven Estates.

40. Beginning around mid-2010, many Elva Group investors demanded payment on their Elva Group Notes. Franquelin and Pool, orally and through email, told investors that Elva Group money was invested in the Katota Project, a purported real estate development project in South Africa. This representation was false. No investor funds were ever invested in the Katota project.

41. The misrepresentations and omissions detailed above would be material to a reasonable investor.

42. Franquelin and Pool acted with scienter. They controlled Elva Group's bank accounts and authorized all transfers of funds. They made all business decisions Elva Group. Franquelin and Pool also knew that the representations made to investors regarding the use of investor funds were false.

FIRST CAUSE OF ACTION
EMPLOYMENT OF A DEVICE, SCHEME OR ARTIFICE TO DEFRAUD
Violation of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]

43. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 42 above.

44. Defendants Pool and Franquelin, and each of them, by engaging in conduct described above, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, with scienter, employed devices, schemes, or artifices to defraud.

45. By reason of the foregoing, Defendants Franquelin and Pool, directly or indirectly, violated, and unless restrained and enjoined by this Court, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

SECOND CAUSE OF ACTION
FRAUD IN THE OFFER AND SALE OF SECURITIES
Violations of Section 17(a)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)]

46. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 42 above.

47. Defendants Franquelin and Pool, and each of them, by engaging in the conduct described above, directly and indirectly, in the offer and sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, obtained money or property by means of untrue statements of material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

48. By reason of the foregoing, Defendants, directly or indirectly, violated, and unless restrained and enjoined will continue to violate, Section 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

THIRD CAUSE OF ACTION
FRAUD IN CONNECTION WITH THE PURCHASE AND SALE OF SECURITIES
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]

49. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 42 above.

50. Defendants Franquelin and Pool, and each of them, by engaging in the conduct described above, directly or indirectly, by the use of means or instrumentalities of interstate commerce or use of the mails, in connection with the purchase or sale of securities, with scienter, (1) employed devices, schemes, or artifices to defraud; (2) made untrue statements of material

fact or omitted to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made not misleading; or (3) engaged in acts, practices, or courses of business that operated or would operate as a fraud and deceit upon other persons.

51. By reason of the foregoing, Defendants violated, and unless restrained and enjoined will continue to violate 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].

FOURTH CAUSE OF ACTION
OFFER AND SALE OF UNREGISTERED SECURITIES
Violation of Sections 5(a) and (c) of the Securities Act [15 U.S.C. § 77e(a) and (c)]

52. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 42 above.

53. Defendants Franquelin and Pool, and each of them, by engaging in the conduct described in the paragraphs above, directly or indirectly, through use of the means or instruments of transportation or communication in interstate commerce or the mails, offered to sell or sold Elva Group securities or, directly or indirectly, or carried such securities through the mails or in interstate commerce, for the purpose of sale or delivery after sale.

54. No registration statement has been filed with the Commission or has been in effect with respect to these securities.

55. By reason of the foregoing, the Defendants, directly or indirectly, violated, and unless enjoined will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

**FIFTH CAUSE OF ACTION
OFFER AND SALE OF SECURITIES BY AN UNREGISTERED BROKER OR DEALER
Violation of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)]**

56. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 42 above.

57. Defendants Pool and Franquelin, and each of them, directly or indirectly, made use of the mails or the means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase and sale of securities in Elva Group without being registered as a broker or dealer with the Commission or associated with a broker-dealer registered with the Commission.

58. By reason of the foregoing, Defendants, and each of them, violated, and unless restrained and enjoined will continue to violate, Section 15(a) of the Exchange Act [15 U.S.C. 78o(a)].

**SIXTH CAUSE OF ACTION
UNJUST ENRICHMENT**

59. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 43, above.

60. As a result of the unlawful conduct of Defendants, Relief Defendant has thus been unjustly enriched, and it would be unjust and inequitable for her to retain those funds and/or property.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue findings of fact and conclusions of law that Defendants committed the violations charged herein.

II.

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure orders that permanently enjoin Defendants and their officers, agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from engaging in transactions, acts, practices, and courses of business described herein, and from engaging in conduct of similar purport and object in violation of Sections 5(a), 5(c) and 17(a) of the Securities Act, and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder.

III.

Enter an order directing Defendants, and each of them, to pay civil money penalties pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

IV.

Enter an order directing Defendants to disgorge all ill-gotten gains received during the period of violative conduct and pay prejudgment interest on such ill-gotten gains.

V.

Declare and impose a constructive trust on all property received by Relief Defendant and require her to disgorge the property she obtained from Defendants as a result of the illegal conduct alleged herein.

VI.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and 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 this Court.

Dated July 2, 2013.

Respectfully submitted,

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