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U.S. DISTRICT COURT

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DISTRICT OF UTAH

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

SECURITIES AND EXCHANGE
COMMISSION,

PLAINTIFF,

v.

MICHAEL P. ZENGER

DEFENDANT.

COMPLAINT

Case: 2:14-cv-00065
Assigned To : Jenkins, Bruce S.
Assign. Date : 01/31/2014
Description: Securities and Exchange Commission v. Zenger

Plaintiff, Securities and Exchange Commission (the "Commission"), for its Complaint against defendant Michael P. Zenger, ("Zenger" or "Defendant"), alleges as follows:

INTRODUCTION

1. This matter involves a fraudulent scheme operated by Zenger in 2013. Zenger raised \$200,000 from two investors for the purported purpose of raising capital, apparently through a partnership arrangement, to trade futures contracts, commodities, and government securities.

2. Zenger told investors that he would use their money for the sole purpose of trading futures contracts, commodities, and government securities.

3. While Zenger used some investor money as represented, Zenger misappropriated approximately \$100,000 of the \$200,000 he raised to pay personal expenses.

4. Zenger omitted to disclose to investors that their money would be used for his personal expenses.

JURISDICTION AND VENUE

5. 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], Sections 21 and Section 27 of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §§ 78u and 78aa].

6. Defendant, directly and indirectly, has 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.

7. 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)], 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 the Defendant resides in and transacts business in this district.

8. Defendant, 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.

9. Defendant’s conduct took place in connection with the offer, purchase and/or sale of investment contracts issued by Zenger, which are securities.

DEFENDANT

10. **Michael Zenger (“Zenger”)**, age 35, is a Utah resident living in Lehi, Utah.

STATEMENT OF FACTS

11. Beginning in June 2013, Zenger solicited investor funds for the purported purpose of raising capital to trade futures contracts, commodities, and government securities.

12. While Zenger did use some investor money to purchase and sell futures contracts, Zenger misappropriated approximately \$100,000 of the \$200,000 he raised from investors to pay for such personal expenses as airplane rentals, monthly credit card bills, payments to BMW and Mercedes Benz, purchases at Saks Fifth Avenue, Nordstrom and Costco, and to pay other personal expenses.

13. Zenger also spent investor money to pay a civil judgment entered against him after Zenger filed for bankruptcy and was successfully sued by the bankruptcy trustee

14. Zenger told investors that he would use their money for the sole purpose of trading futures contracts, commodities, and government securities.

15. Zenger stated that any profits or losses from Zenger’s trading activity would be disclosed to the investor.

16. Zenger told investors that although their money was deposited into Zenger’s personal bank account and then transferred into trading accounts titled solely in Zenger’s name, Zenger would not remove any of the investors’ money without their consent.

17. Zenger claimed that any profit generated by Zenger’s trading activity would be split between the investor and Zenger according to the terms outlined in their respective investment contracts.

18. Zenger represented to investors that he was a successful trader and that he was trading his personal money, in addition to any money they invested with him. Zenger told one investor that he started with \$65,000 of his personal money and doubled his money in his first year of trading.

19. Zenger assured investors that he would make trading decisions on their behalf, including what to trade, when to trade, and how much to trade.

20. Zenger pooled investor funds which were used for the common purpose of trading futures contracts, commodities, and government securities. Investors understood that Zenger might pool their funds with his own personal money, and potentially other investor's money, although investors stated that they assumed Zenger would be able to account for their individual profits and losses.

21. Zenger provided a written investment contract to at least one investor, entitled "Managing Partner/Partner Agreement" which specified that Zenger was the "managing partner" for the investor and would "act as managing partner or as dealer" for the investor. The contract specified that Zenger would act on behalf of the investor, make all decisions related to buying and selling futures contracts, commodities, and government securities, and was responsible for the "execution, clearance and/or carrying" of the transactions.

22. In addition to specifying how Zenger and the investor will share the profits of Zenger's trading activity, the investment contract guarantees that, at a minimum, the principal amount invested will be returned to the investor upon the investor's demand.

23. Zenger did not provide any additional written information or disclosures to investors.

24. On June 3, 2013, Zenger's first investor wired \$100,000 into Zenger's personal bank account at J.P. Morgan Chase Bank, N.A., ("Chase") and Zenger transferred that \$100,000 into a trading account at Mirus Futures, in Zenger's name.

25. On June 13, 2013, Zenger's second investor transferred \$100,000 into Zenger's personal bank account at Chase and Zenger transferred that \$100,000 into a second personal trading account at the same firm.

26. Both trading accounts were funded exclusively by investor funds.

27. In his account opening documents, Zenger falsely certified to Mirus Futures that the money in his trading accounts belonged to him personally, that he did not trade on behalf of any other person or entity, and that he did not have a profit sharing agreement with anyone else.

28. On October 2, 2013, Zenger moved \$52,000 from one trading account into his other trading account thereby commingling the money of his investors.

29. On October 7, 2013, Zenger liquidated \$142,000 from his trading account at Mirus Futures and deposited the proceeds into his personal bank account at America First Credit Union.

30. On October 21, 2013, Zenger deposited \$90,000, with a new trading firm, AMP Global Clearing, LLC ("AMP") and explained to an investor that he switched from Mirus Futures to AMP because it offered lower transaction fees.

31. Zenger provided to both investors, or volunteered to provide, log on information to his trading account so that they could view account activity.

32. Zenger represented to each investor that the funds in the trading account were that of each individual investor. However, the funds were actually all that remained of the total \$200,000 invested.

33. On December 3, 2013, Zenger paid one investor, who had requested the return of his principal, \$79,000 and promised to repay the balance invested.

34. In or around December 2013, Zenger changed the log on information to the trading account at AMP Global so that investors could not view the trading account information. When questioned about the inability to log on, Zenger told the investor that the Securities and Exchange Commission had frozen Zenger's trading accounts and the investor's access was blocked, although Zenger could see his account balances. The Securities and Exchange Commission had not frozen Zenger's account.

35. In or around January 2014, Zenger told an investor that the principal amount he invested, \$100,000, was safe in Zenger's trading account.

MATERIAL MISREPRESENTATIONS AND OMISSIONS

36. Contrary to the representations Zenger made to investors, Zenger did not use investor funds for the exclusive purpose of buying and selling futures contracts, commodities, or government securities.

37. Bank records reflect that Zenger actually spent investor money on items such as airplane rentals, monthly credit card bills, payments to BMW and Mercedes Benz, purchases at Saks Fifth Avenue, Nordstrom and Costco, and other personal expenses.

38. Bank records also reflect that Zenger used investor funds to pay a civil judgment entered against him after Zenger filed for bankruptcy and was successfully sued by the bankruptcy trustee.

39. Contrary to representations made by Zenger that his trading strategy was successful and that he had doubled his personal money, Zenger lost approximately \$20,000 in trading activity and did not trade any personal funds.

40. Contrary to Zenger's representations to an investor in or around January 2014, that his \$100,000 investment was safe in Zenger's trading account, only \$19,000 remained in both Zenger's trading and bank accounts.

41. Contrary to Zenger's representations that the Commission had frozen Zenger's trading and bank accounts so Zenger could not repay investors, the Commission had not frozen Zenger's trading or bank accounts.

42. The misrepresentations and omissions detailed above are material to a reasonable investor.

43. Zenger acted with scienter. Zenger owned and controlled all trading accounts and bank accounts for which investor funds were deposited. Zenger knew exactly what was done with investors' capital.

44. Zenger authorized transfers of investor funds to pay his personal expenses.

45. Zenger told investors that their investments would be deployed to trade futures contracts, commodities, and government securities, yet Zenger spent investor money for airplane rentals, monthly credit card bills, payments to BMW and Mercedes Benz, purchases at Saks Fifth Avenue, Nordstrom and Costco, and other personal expenses. Zenger also used investor funds to pay a civil judgment entered against him that arose after Zenger filed for bankruptcy and was successfully sued by the bankruptcy trustee.

46. Zenger knew that his representations to investors regarding the use of their 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)]

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

48. Defendant, 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.

49. By reason of the foregoing, Defendant, 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)]

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

51. Defendant, 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.

52. By reason of the foregoing, Defendant, 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]**

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

54. Defendant, 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.

55. By reason of the foregoing, Defendant 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].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I.

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

II.

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure orders that temporarily, preliminarily and permanently enjoin Defendant and his 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 Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

III.

Issue, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, orders that temporarily, preliminarily and permanently enjoin Defendant and his 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 transferring, changing, wasting, dissipating, converting, concealing, or otherwise disposing of, in any manner, any funds, assets, claims, or other property or assets owned or controlled by, or in the possession or custody of the Defendant.

IV.

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure orders that temporarily, preliminarily and permanently restrain and enjoin Defendant, and his 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 destroying, mutilating, concealing, transferring, altering, or

otherwise disposing of, in any manner, books, records, computer programs, computer files, computer printouts, correspondence, including e-mail, whether stored electronically or in hard copy, memoranda, brochures, or any other documents of any kind that pertain in any manner to the business of Defendant.

V.

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

VI.

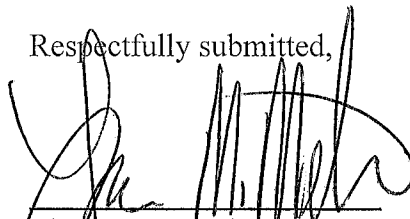
Enter an order directing Defendant to disgorge all ill-gotten gains received during the period of violative conduct and pay prejudgment interest on such ill-gotten gains.

VII.

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 January 31st, 2014.

Respectfully submitted,



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