

**IN UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**STEPHEN L. KIRKLAND and
THE KIRKLAND ORGANIZATION,
INC.,**

Defendants

Civil Action File No.

1:13-CV- 3150-JEC

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

The plaintiff, Securities and Exchange Commission (“Commission”), files this Complaint and alleges the following:

SUMMARY

1. Between late 2008 and late 2010, Stephen L. Kirkland (“Kirkland”) and The Kirkland Organization, Inc. (“TKO”) have repeatedly made false and misleading statements to investors and potential investors in the United States and abroad, including but not limited to: (a) if they invested with Kirkland and TKO through a managed account at Westover Energy Trading Partners, LLC (“Westover”), there would be no risk of losing their principal; (b) they would earn

2% to 3% per month; (c) a specified New York real estate developer/owner was a manager of Westover; and (d) the New York real estate developer/owner's substantial wealth would also be used to indemnify investors against loss.

2. Investors in the United States and England have invested at least \$800,000 with the defendants based upon those false representations. Some of the investors have demanded a return of their principal, but defendants have ignored these requests.

VIOLATIONS

3. Defendants Kirkland and TKO, by virtue of their conduct, directly or indirectly, have engaged in and unless enjoined, will engage in violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6 (1),(2)]. In addition, Defendant Kirkland is also liable as a "control person" under Section 20(a) of the Exchange Act for TKO's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

JURISDICTION AND VENUE

4. The Commission brings this action pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d)-(e)], and Sections 209(d) and 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(d)-(e)] to enjoin the defendants from

engaging in the transactions, acts, practices and courses of business alleged in this Complaint, and transactions, acts, practices and courses of business of similar purport and object, for disgorgement of illegally obtained funds and other equitable relief, and for civil money penalties.

5. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. 78u(d), 78u(e) and 78aa], and Section 214 of the Advisers Act [15 U.S.C. §80b-14].

6. The Defendants, directly and indirectly, have made use of the mails, and the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

7. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa], and Section 209 of the Advisers Act [15 U.S.C. § 80b-9], because certain of the transactions, acts, practices and courses of business constituting violations of the Exchange Act and the Advisers Act have occurred within the Northern District of Georgia. Moreover, Kirkland resides within and conducted his business within the Northern District of Georgia.

DEFENDANTS AND RELATED COMPANIES

8. Kirkland, 49, resides in Marietta, Georgia. He has a degree in ophthalmology from DeKalb Technical College, and purports to have worked as an optician and an independent insurance agent. Kirkland currently holds himself out

as an investment consultant, but has never been associated with any entity registered with the Commission. Kirkland filed a Chapter 13 voluntary petition for bankruptcy in the Northern District of Georgia in September 2012, which was thereafter converted to non-asset Chapter 7 (In re Stephen Lee Kirkland, 1:12-BK-71914 (N.D. Ga. Bkr.)).

9. TKO was a for-profit corporation organized in Georgia in 1992 by Thomas W. Kirkland (“Thomas Kirkland”), Kirkland’s father. It had no business or revenue for most of its existence. Between 2005 and 2010, Thomas Kirkland upon information and belief used the entity to conduct educational seminars involving identity theft or as an investment club. TKO has never been registered with the Commission or any state securities-related agency. TKO was administratively dissolved in 2011.

10. Westover Energy Trading Partners, LLC, (“Westover”) is a Delaware limited liability company with its principal place of business in New York, NY. Westover purportedly traded stock index funds and commodities while guaranteeing investors that they had no risk of loss. Westover has never been registered with the Commission or any state securities-related agency. Westover and several of its known associates are the subject of a cease-and-desist order issued by the State of Alabama Securities Commission in February 2013 for

offering unregistered investment contracts similar to the investments identified in this Complaint.

FACTS

11. Beginning as early as late 2008, TKO and Kirkland began soliciting investors for a program supposedly run by Westover that traded U.S. listed securities, primarily index funds, exchange traded funds, and commodities funds. In soliciting investors, Kirkland represented to some investors that investments in this program would earn 2% to 3% each month.

12. Kirkland further represented that TKO would reimburse investors for losses up to \$5,000 incurred in a single trading day and that Westover would reimburse them for any losses that exceeded \$5,000 on any trading day.

13. In addition, documents given to some potential investors represented that investors' principal would be further protected by "the substantial credit worthiness of the principals of Westover." The documents included the name of a specified New York real estate developer/owner and identified him as the leader of the principals of Westover. The documents also included the biography of the real estate developer/owner with the documents.

14. Documents that Kirkland gave to some investors represented that the New York real estate developer/owner was "the most visible" of three managers of Westover who "imparts his knowledge and expertise and lends his financial

support, as well as the benefit of his numerous real estate industry and financial market connections....”

15. Kirkland told at least one investor that, in exchange for TKO’s role in soliciting investors and directing such investors to Westover, TKO was to be compensated a percentage of profits above the guaranteed minimum profits each month.

16. Although the New York real estate developer/owner at one time was a client of Westover, he was never upon information and belief a principal of that firm and never had any affiliation with Kirkland or TKO.

17. Kirkland’s representations regarding the guarantee by Westover were false. In truth, Kirkland was not authorized to represent that Westover guaranteed any losses.

18. Between late 2008 and 2010, Kirkland and TKO raised at least \$800,000 from at least 10 investors in the United States and Great Britain.

19. At least some of the investors have demanded a return of their principal from Kirkland and TKO, but have not received such funds.

20. Although Thomas Kirkland created and was the CEO of TKO, Kirkland exercised complete control over TKO with respect to the investment opportunities described herein.

COUNT I--FRAUD

**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]**

21. Paragraphs 1 through 20 are hereby re-alleged and are incorporated herein by reference.

22. From at least late 2008 through at least late 2010, Defendants Kirkland and TKO, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- 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 would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

23. Defendants Kirkland and TKO knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such

conduct, the Defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

24. By reason of the foregoing, Defendants Kirkland and TKO, directly and indirectly, have violated and, unless 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].

COUNT II—FRAUD BY INVESTMENT ADVISER

Violations of Sections 206(1) and 206(2) of the Advisers Act
[15 U.S.C. § §80b-6(1), (2)]

25. Paragraphs 1 through 20 are hereby re-alleged and are incorporated herein by reference.

26. From at least late 2008 through at least late 2010, Defendants Kirkland and TKO while acting as an investment adviser, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce: (a) acted knowingly or recklessly, have employed devices, schemes, or artifices to defraud; and (b) have engaged in transactions, practices, or courses of business which operated as fraud or deceit upon a client or prospective client.

27. By reason of the transactions, acts, omissions, practices and courses of business set forth herein, Defendants Kirkland and TKO violated, and unless enjoined will violate Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1),(2)].

COUNT III—CONTROL PERSON LIABILITY

Control Person Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 C.F.R. § 240.10b-5], Pursuant to Section 20(a) of the Exchange Act

28. Paragraphs 1 through 20 are hereby re-alleged and are incorporated herein by reference.

29. As the person who, directly or indirectly, controlled TKO during the relevant period, Kirkland is liable jointly and severally and to the same extent as the entity that he controlled for the violations of the antifraud provisions committed by that entity.

30. As the control person of TKO, Kirkland directly or indirectly induced the act or acts which constituted violations by TKO of the antifraud provisions of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 C.F.R. § 240.10b-5] by knowingly, intentionally, and/or recklessly making untrue statements of material facts and omitting to state material facts.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully prays for:

I.

Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that the Defendants named herein committed the violations alleged herein.

II.

Permanent injunctions enjoining Defendants Kirkland and TKO, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, by personal service or otherwise, and each of them, whether as principals or as aiders and abettors, from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder, and Sections 206(1) and (2) of the Advisers Act [15 U.S.C. §§ 80b-6 (1),(2)] and with respect to defendant Kirkland, from, while acting as a control person, inducing violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] .

III.

An order directing Defendants Kirkland and TKO to pay disgorgement of all ill-gotten gains or unjust enrichment and to pay prejudgment interest on the amount ordered to be disgorged, to effect the remedial purposes of the federal securities laws.

IV.

An order pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(e)] imposing civil penalties against Defendants Kirkland and TKO.

V.

Issue an Order that retains jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

VI.

Grant such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

RESPECTFULLY SUBMITTED,

/s/Edward G. Sullivan

Edward G. Sullivan

Senior Trial Counsel

Georgia Bar No. 691140

COUNSEL FOR PLAINTIFF
U. S. SECURITIES AND EXCHANGE COMMISSION
950 East Paces Ferry Road, N.E., Suite 900
Atlanta, Georgia 30326
(404) 842-7612
sullivan@sec.gov