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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

GONZALO ORTIZ

Defendant.

**19 Civ. 2066 ()
ECF Case**

**COMPLAINT AND
JURY DEMAND**

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against Defendant Gonzalo Ortiz (“Ortiz”) alleges as follows:

SUMMARY OF ALLEGATIONS

1. The Commission brings this civil enforcement action against Ortiz for defrauding an investor out of hundreds of thousands of dollars. From May 2015 to May 2017, Ortiz convinced an acquaintance, Investor A, to give him control over nearly \$570,000 of Investor A’s retirement savings based on materially false statements, including promises of a 50% annual return and claims that Ortiz had previously been successful investing in stocks.

2. Investor A initially gave Ortiz \$200,000 to invest, in two installments in May and June of 2015, in stocks on Investor A's behalf. Investor A did not authorize Ortiz to use any of these funds for personal expenses. Ortiz took approximately \$56,000 of this money and spent it on cars and other personal items. He lost the rest through trading. Ortiz gave Investor A a false account statement five months later, purporting to show that Ortiz had generated a return of over 50% on Investor A's money. This convinced Investor A to give Ortiz another \$200,000. Ortiz again spent, without authorization, approximately \$116,000 of this money for personal expenses, and lost approximately \$64,000 on trading.

3. In 2016, Ortiz convinced Investor A to give him control over another approximately \$114,000. These were Investor A's retirement funds. Later that year, after falsely claiming that he had lost all of Investor A's money through trading, Ortiz convinced Investor A to give him another \$50,000, promising to earn the money back and guaranteeing that he would not lose the principal. This time, Investor A insisted that he be permitted to monitor the new account holding these funds to ensure that it did not suffer losses. Ortiz then used the retirement account, which Investor A could not monitor, and the account holding the \$50,000, which Investor A could monitor, as part of a wash trading scheme where he traded the same stock between the two accounts. Because Ortiz would select thinly traded stock, he was able to control the price at which he bought and sold, and thereby was able to move money out of the retirement account. This caused Investor A to believe Ortiz was making substantial returns on the \$50,000 when Ortiz was in fact only siphoning money from the retirement account. Ortiz eventually withdrew a substantial portion of the funds that had been moved from the retirement account for personal expenses.

4. In total, Ortiz misappropriated approximately \$224,500 of Investor A's money for

personal use, and lost approximately \$290,000 through trading.

VIOLATIONS

5. By virtue of the conduct alleged herein, Ortiz, directly or indirectly, has engaged in transactions, acts, practices and courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder; and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-6(1), 80b-6(2)].

6. Unless Ortiz is permanently restrained and enjoined, he will again engage in the acts, practices, transactions and courses of business set forth in this Complaint and in acts, practices, transactions and courses of business of similar type and object.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

7. The Commission brings this action pursuant to authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)], and Section 209 of the Advisers Act [15 U.S.C. § 80b-9].

8. The Commission seeks a judgment permanently enjoining Ortiz from future violations of the securities laws that Ortiz violated, ordering Ortiz to disgorge his ill-gotten gains and to pay prejudgment interest thereon, and imposing civil money penalties, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], 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)].

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), 77v(a)], Sections 21(d),

21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa], and Section 209(d), 209(e)(1), and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d), 80b-9(e)(1), and 80b-14].

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2), Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Section 27 of the Exchange Act [15 U.S.C. § 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14]. Certain of the events constituting or giving rise to the alleged violations occurred in the Eastern District of New York. For example, Ortiz's bank account, into which he deposited the misappropriated funds from Investor A, was located in Brooklyn, New York.

11. In connection with the conduct alleged in this Complaint, Ortiz, directly or indirectly, made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails, or of the facilities of a national securities exchange.

DEFENDANT

12. **Ortiz**, age 45, resides in Hackensack, New Jersey. Ortiz engaged in day-trading. He has no securities licenses and has never been registered with a broker-dealer or associated with an investment adviser.

FACTS

13. Ortiz engaged in day trading for several years in his own accounts. Most recently, he opened a brokerage account at a broker-dealer ("Broker 1"), in which he engaged in day trading in the over-the-counter markets. As of April 30, 2015, Ortiz had netted \$4,434 on his year-to-date trading in this account, after trading approximately \$2.3 million in securities.

A. The First Investment

14. Ortiz and Investor A knew each other socially for several years. During a party in or around the spring of 2015, Ortiz told Investor A that he had done “very well” investing in stocks and that he had made profits for other individuals by trading stocks on their behalf. Ortiz offered to manage Investor A’s money, promising that Investor A would make a return of 50% per year.

15. On or around May 28, 2015, Ortiz and Investor A signed an agreement by which Investor A agreed to give Ortiz \$100,000 to invest on his behalf, and Ortiz agreed to repay this amount within 365 days, “in addition to all gains generated from the capital,” capped at \$100,000 per year. Under the agreement, Ortiz promised to pay at least 50% of the first investment “as generated gains” in addition to the original amount. Ortiz would receive the rest of the gains generated as compensation.

16. Both parties understood that the money would be used by Ortiz to invest in securities. Investor A never authorized Ortiz to use the funds for personal expenses.

17. On the same date, Investor A wired \$100,000 to Ortiz’s account at Broker 1. Over the next several weeks, Ortiz used a substantial portion of this money for personal expenses, transferring \$25,000 to his personal bank account for personal use, and spending another \$9,888 on personal expenses including on car and other personal expenses. In late June, Ortiz transferred \$45,000 essentially all of the remaining funds of the first investment to an account at a second broker-dealer (“Broker 2”).

B. The Second Investment

18. On or around June 19, 2015, Investor A wired Ortiz another \$100,000 to invest on his behalf, signing a second agreement containing the same terms as the May 28, 2015

agreement. These funds were deposited in an account at Broker 1 under Investor A's name, but Investor A never had access to this account. Four days after deposit, Ortiz transferred \$99,000 to his bank account, and then wired \$95,000 to his personal account at Broker 2.

19. Following the transfer of funds—\$45,000 from the initial \$100,000 investment and \$95,000 from the second \$100,000 investment—Ortiz traded excessively in the account at Broker 2, buying and selling over \$35 million in securities and holding some positions for less than one day. Ortiz also periodically withdrew money from the account at Broker 2, transferring approximately \$25,000 back into his personal bank account. Of these funds, he used \$17,000 for personal expenses, and paid Investor A \$8,000, claiming that this was part of the returns on Investor A's investment.

20. In total, Ortiz used approximately \$56,000 of the \$200,000 of Investor A's investment funds on personal expenses, and he experienced significant trading losses.

21. By the end of October 2015, only \$256 remained in Ortiz's account at Broker 2. Despite this, on or around October 25, 2015, Ortiz sent Investor A an account statement that falsely represented that Investor A's \$200,000 had generated a return of \$102,464.24, or 51%, as a result of trading in three securities.

C. The Third Investment

22. On or around November 27, 2015, Ortiz and Investor A signed a third agreement, in which Investor A agreed to provide Ortiz another \$200,000 to invest on his behalf. Ortiz agreed to repay this amount within 180 days, "in addition to all gains generated from the capital," capped at \$100,000 per year. Ortiz also promised to pay at least 50% of the original \$200,000 invested "as generated gains." Under the agreement, Ortiz would receive the rest of the gains generated as compensation. As before, Investor A did not give Ortiz permission to use

any of the funds for personal use. Investor A wired \$200,000 to Ortiz's bank account on November 27, 2015.

23. On November 27 and November 30, 2015, Ortiz transferred a total of \$172,000 of the \$200,000 to his account at Broker 2, taking \$26,000 for his personal use, and giving Investor A \$2,000 as a portion of the purported returns. From December 2015 to October 2016, Ortiz withdrew, on net, approximately \$108,000 from his account at Broker 2, using \$90,000 of this money for his personal use, and paying Investor A \$20,000 as a portion of the purported returns. During this time, Ortiz was also trading heavily and incurring losses. By November 2016, no money remained in the account at Broker 2. Despite this, Ortiz falsely told Investor A that he was continuing to generate significant profits on Investor A's behalf.

D. The Retirement Fund and the Additional \$50,000 Investment

24. In or around April 2016, Ortiz convinced Investor A to rollover the holdings of Investor A's retirement account, valued at approximately \$114,000, into a new retirement account at Broker 1. While this account was in Investor A's name, Ortiz was the only person who had access to the new account.

25. At some time in late 2016, Ortiz falsely told Investor A that he had lost all \$400,000 of Investor A's first three investments through trading. He did not tell Investor A that he had misappropriated for his own personal use over \$170,000 of the funds Investor A had invested through Ortiz to date.

26. Despite the trading losses, Ortiz convinced Investor A to give him another chance, guaranteeing that he would be able to get Investor A some money back. On or around December 12, 2016, Investor A gave Ortiz the last of his savings, \$50,000, to invest on his behalf. Ortiz deposited this money in a new account at Broker 2 under Investor A's name. Ortiz promised that

he would not allow the account to drop below \$50,000. Investor A had electronic access to this account to allow him to monitor the activity in the account.

27. Ortiz then began wash trading thinly traded microcap stocks as a scheme to siphon money from the retirement account at Broker 1 into the new account at Broker 2. The scheme worked as follows: Ortiz would purchase a thinly traded stock in the retirement account at Broker 1, which he would then sell while buying the same stock in the account at Broker 2. He would next sell the stock in the Broker 2 account and buy the stock in the Broker 1 retirement account at a higher price. Because the stocks were thinly traded, Ortiz could increase the price when he made a bid from the Broker 1 account for the stock in the Broker 2 account, thereby creating a “profit” when the Broker 2 account sold the stock to the Broker 1 account.

28. For example, on March 7, 2017, Ortiz bought in the Broker 1 retirement account 5,000 shares of a stock at \$0.45 per share for \$2,250 total (not including fees). On March 8, 2017, he sold those 5,000 shares from the Broker 1 account and bought 5,000 shares in the Broker 2 retirement account for \$0.34 for \$1,700 total (not including fees). Thus, he caused the Broker 1 account to incur \$550 in trading losses. He then sold the 5,000 shares from the Broker 2 account for \$0.43 and bought the shares in the Broker 1 retirement account, for a total of \$2,150 (not including fees). Thus, he made it appear that the account at Broker 2 had made \$450 by trading. This activity caused the Broker 2 account—in which Investor A was able to see the balance to appear to be growing. However, Investor A’s Broker 1 retirement account which Investor A did not monitor—was incurring losses.

29. In or around February 2017, Investor A accessed the Broker 2 account. Because of Ortiz’s scheme, the Broker 2 account showed a gain of approximately 20% (for a balance of \$59,945.36). Investor A did not see that the Broker 1 retirement account had declined from

\$112,011.18 at the end of December 2016 to \$50,518.41 by February 28, 2017 (a drop of 55%) due to Ortiz's trading scheme.

30. In April 2017, Investor A again looked at the Broker 2 account and discovered it had dropped to \$37,000.

31. Unlike with the earlier investments, with the final investment of \$50,000, Investor A authorized Ortiz to withdraw living expenses for himself of approximately \$2,000 per month. During the period from mid-December 2016 to May 2017, Ortiz therefore would have been authorized to take a total of six months of living expenses, or \$12,000 at most, from the Broker 2 account. Instead, Ortiz took a total of \$54,250 from the Broker 2 account for his personal use during this period of time.

32. Investor A confronted Ortiz, who promised that, by May 30, 2017, the Broker 2 account value would be at least \$80,000. At the end of May, however, the account only had \$21,139.56.

33. By May 2017, Ortiz had, in total, misappropriated for personal use approximately \$224,500 of the \$565,000 that Investor A had entrusted to him, and lost approximately \$290,000 through trading.

FIRST CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act

34. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 33 of this Complaint.

35. From in or about May 2015 through May 2017, Ortiz, directly or indirectly, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in connection with the offer or sale of securities: (a) employed devices, schemes and

artifices to defraud; (b) obtained money or property by means of untrue statements of material fact, or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, acts, practices and courses of business which operated or would operate as a fraud or deceit upon the purchaser.

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

SECOND CLAIM FOR RELIEF

Violation of Section 10(b) of the Exchange Act and Rule 10b-5

37. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 33 of this Complaint.

38. From in or about May 2015 through May 2017, Ortiz, directly or indirectly, by use of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of securities:

(a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact, or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, acts, practices and courses of business which operated or would have operated as a fraud or deceit upon any person.

39. By reason of the foregoing, Ortiz, directly or indirectly, has 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 [17 C.F.R. § 240.10b-5] thereunder.

THIRD CLAIM FOR RELIEF

Violations of Sections 206(1) and 206(2) of the Advisers Act

40. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 33 of this Complaint.

41. From in or about May 2015 through May 2017, Ortiz, while acting as an investment adviser, directly or indirectly, by use of the mails or any means or instrumentality of interstate commerce or of the mails, employed devices, schemes or artifices to defraud Investor A, and engaged in transactions, acts, practices or courses of business which operated as a fraud or deceit upon Investor A.

42. By reason of the foregoing, Ortiz, directly or indirectly, has violated, and, unless restrained and enjoined, will continue to violate Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court grant the following relief:

I.

Permanently restrain and enjoin Ortiz, his agents, servants, employees and attorneys and all persons in active concert or participation with him, who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]; Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder; and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), 80b-6(2), and 80b-6(4)].

II.

Order Ortiz to disgorge all ill-gotten gains obtained as a result of the violations alleged in this Complaint, as well as prejudgment interest thereon.

III.

Order Ortiz to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], 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)], in an amount to be determined by the Court.


IV.

Such other and further relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Rule 39 of the Federal Rules of Civil Procedure, Plaintiff demands for this case to be tried to a jury.

Dated: April 9, 2019
New York, New York

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