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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

FILED
CHARLOTTE, N. C.

NOV 21 2005

U. S. DISTRICT COURT
W. DIST. OF N. C.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

VINCENT A. LENARCIC, JR., and
NEW VISION INVESTMENT FUNDS, LLC,

Defendants,

and

QMA INVESTMENT MANAGEMENT, LLC,

Relief Defendant.

CIVIL ACTION
NO.

3:05CV487-H

COMPLAINT

1. The plaintiff Securities and Exchange Commission ("Commission") files this complaint and alleges the following:

SUMMARY

2. This matter involves the misappropriation of at least \$807,000 of investor assets from Fundamental Growth Investors, LP ("Fundamental Growth"), a hedge fund organized as a limited partnership.

3. Vincent A. Lenarcic, Jr., who is associated with, and the managing member of, a registered investment adviser, QMA Investment Management, LLC (which has approximately \$16 million under management, and has had up to \$200 million under

management), owns and controls New Vision Investment Funds, LLC (“New Vision”), Fundamental Growth’s general partner.

4. Lenarcic and New Vision made false and misleading statements to Fundamental Growth’s limited partners concerning the use of the fund’s assets and its performance, misappropriated partnership funds, and made further false statements to conceal this fraud.

5. From in or about April 1999 to in or about March 2000, Fundamental Growth raised almost \$2.5 million by offering and selling limited partnership units and representing to investors that partnership proceeds would be used to purchase listed securities or money market instruments.

6. From in or about June 2000 to in or about December 2003, Lenarcic and New Vision defrauded Fundamental Growth’s limited partners by selling securities in Fundamental Growth’s account and funneling the proceeds to QMA and New Vision.

7. Lenarcic and New Vision used the misappropriated funds to pay the debts, wages and operating expenses of QMA and New Vision. There was no business justification for these transfers.

8. The assets of Fundamental Growth were virtually depleted by December 2003.

9. To cover up the fraud, Lenarcic had QMA and New Vision issue promissory notes to Fundamental Growth on or about December 1, 2003.

10. Lenarcic and New Vision have, directly or indirectly, engaged in acts, practices, and courses of business which constituted and will 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”) and Rule 10b-5 thereunder [15. U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]; and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. 15 U.S.C. §§ 80b-6 (1) and (2)].

11. Relief defendant QMA has, as a result of the scheme, directly or indirectly obtained funds to which it has no legitimate claim, and has been unjustly enriched thereby.

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

JURISDICTION AND VENUE

13. The Commission brings this action pursuant to authority conferred upon it by Sections 20(b), (c) and (d) of the Securities Act [15 U.S.C. §§ 77t(b)-(d)], 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 unjust enrichment and other equitable relief, and for civil money penalties.

14. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d) and 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 214 of the Advisers Act [15 U.S.C. §80b-14].

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

16. Venue lies in this Court pursuant to 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 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 Securities Act, Exchange Act and Advisers Act have occurred within the Western District of North Carolina.

DEFENDANTS, RELIEF DEFENDANT AND RELATED PARTY

17. Vincent A. Lenarcic, Jr., 59, resides in Charlotte, North Carolina, and is the managing partner of, and holds a majority interest (over 50%) in, QMA. Lenarcic also serves as the managing member of New Vision in which he also holds a majority interest. He is also the general partner and investment adviser of Fundamental Growth. Lenarcic has been in the securities industry for over thirty years.

18. New Vision Investment Funds, LLC is a Delaware limited liability company and maintains its principal place of business in Charlotte, North Carolina. It was formed in 1998 and is an unregistered investment adviser. Lenarcic is New Vision's managing member. Initially, New Vision had four members: Lenarcic (45% interest); William G. Staton (22.5% interest); Staton's wife (22.5% interest) and another individual (10% interest). In December 2000, Lenarcic and the Statons entered into a buyout agreement pursuant to which the Statons relinquished their interest in both New Vision

and QMA to Lenarcic. As a result of this buyout, Lenarcic had control of Fundamental Growth, New Vision and QMA.

19. QMA Investment Management, LLC, is a North Carolina limited liability company and was formed in 1988 as Staton Investment Management, LLC. It changed its name to QMA in January 2001. QMA registered as an investment adviser with the Securities and Exchange Commission in January 2003. QMA is based in and has its principal place of business in Charlotte, North Carolina, and Lenarcic is its managing partner.

20. Fundamental Growth Investors, LP is a Delaware limited partnership and maintains its principal place of business in Charlotte, North Carolina. Fundamental Growth was formed in 1997. In 1998, Lenarcic and Staton purchased New Vision from Portfolio Capital Management and assumed control of both New Vision and Fundamental Growth. Fundamental Growth's general partner is New Vision, which is managed by Lenarcic.

FACTS

A. Fundamental Growth's Formation and Purported Investment Objectives

23. Although Fundamental Growth was formed in December 1997, it did not begin the hedge fund operations in question until early 1999. New Vision and Lenarcic managed the business of Fundamental Growth, and Lenarcic made all the investment decisions.

24. According to Fundamental Growth's Confidential Private Placement Memorandum ("PPM") dated March 2, 1999, the investment objective of Fundamental Growth was "to seek long-term growth of capital with annual rates of return significantly

higher” than the S&P 500 with “less investment risk and volatility.”

25. The PPM stated that Fundamental Growth was to invest “all or substantially all” of its assets in securities listed on markets “regulated by the Securities and Exchange Commission,” “short-selling” composite securities and investing in money market instruments. The PPM also authorized New Vision to engage affiliates to conduct the business of Fundamental Growth.

26. Fundamental Growth’s limited partnership agreement, distributed to potential investors along with the PPM and a subscription agreement, expanded the investment criteria by permitting Fundamental Growth to invest in securities not limited to securities listed on U.S. regulated exchanges and include contracts, which were defined in the partnership agreement to include commodity futures or forward contracts or other commodity contracts. The agreement authorized Fundamental Growth to accept promissory notes in furtherance of the stated goal to purchase securities and contracts.

27. The partnership agreement prohibited Fundamental Growth from making loans to partners, which included the general partner-- New Vision.

28. In addition, the partnership agreement provided that the general partner could be reimbursed quarterly for business expenses equal to 0.25% of the capital account value. The general partner could also receive an annual management fee, called an “incentive allocation,” based upon Fundamental Growth’s performance relative to the S&P 500. According to the calculation, the general partner was to receive the incentive allocation at 11:59 pm on December 31st of each year. The agreement also provided that the management of Fundamental Growth could be transferred to affiliates of New Vision.

29. By May 1999, Fundamental Growth had approximately 19 investors and

capital contributions of almost \$2.5 million.

B. Fraudulent Conduct of Lenarcic and New Vision

1. Misappropriation of Assets

30. Through a process of liquidating securities in Fundamental Growth's account and then transferring the proceeds to either New Vision or QMA, Lenarcic and New Vision were able to misappropriate at least \$807,000 from Fundamental Growth.

31. Lenarcic and New Vision began misappropriating at first small amounts of money from Fundamental Growth's limited partners in June 2000.

32. On June 16, 2000, Lenarcic and New Vision sold approximately \$100,000 of securities held in Fundamental Growth's brokerage account.

33. On June 19, 2000, Lenarcic and New Vision transferred \$15,000 to Fundamental Growth's bank account, and on the following day they wrote a check to New Vision for \$1,000.

34. In 2001, Lenarcic and New Vision began transferring Fundamental Growth's funds to QMA.

35. As time went on, these fraudulent transfers increased in both frequency and amount.

36. For example, in May 2001, Lenarcic and New Vision transferred \$5,000 to QMA and \$16,000 to New Vision.

37. By September 2002, according to an internal financial report, Lenarcic and New Vision had transferred a total of \$465,138 to New Vision (part of which was used to pay the Statons \$80,000 in connection with Lenarcic's agreement to purchase the Statons' interest in QMA and New Vision) and \$139,124 to QMA.

38. The fraudulent transfers continued in 2003. Between January and May 2003, Lenarcic and New Vision wrote checks from Fundamental Growth's account to New Vision and QMA, in aggregate amounts of \$38,000 and \$71,000, respectively.

39. For example, on Thursday, January 30, 2003, Lenarcic and New Vision sold the approximately \$156,000 in remaining securities held by Fundamental Growth and then wired \$96,000 to Fundamental Growth's bank account. On Monday, February 3, 2003, Lenarcic and New Vision wrote a check drawn from Fundamental Growth's bank account payable to New Vision for \$10,000 and on February 4, 2003, Lenarcic and New Vision, acting through Lenarcic, wrote another check to QMA for \$20,000.

40. Lenarcic's and New Vision's misappropriation continued for the duration of 2003, as reflected, for example, by transfers to New Vision and QMA in the amounts of \$45,000, \$30,000 and \$6,000 which took place in March, April and May, respectively. By December 2003, Fundamental Growth's assets had dwindled to \$398.97 from a high of \$2.5 million in 1999.

41. In total, Lenarcic and New Vision misappropriated and transferred approximately \$496,000 to New Vision and \$311,000 to QMA.

42. These transferred funds were not used for the business expenses of Fundamental Growth or in connection with Fundamental Growth's investments.

43. Lenarcic and New Vision have described most of these transfers to New Vision and QMA as "advances" in the memo section on the checks.

44. QMA recorded each transfer as an "advance from Fundamental Growth" in its ledger.

45. In contrast, payments made to New Vision from Fundamental Growth for either incentive allocations or operating expenses were described as such on Fundamental Growth's checks.

46. The transfers to QMA and New Vision were inconsistent with any quarterly business expense reimbursement or annual incentive allocations disclosed in the partnership agreement because the transfers from Fundamental Growth to QMA and New Vision typically took place monthly.

47. Finally, these transfers were not in proportion to normal business expenses and were substantially greater than what New Vision was entitled to for the annual incentive allocations.

48. However, the PPM explicitly sets forth that Fundamental Growth was to invest "all or substantially all" of its assets in securities listed on public exchanges, composite securities or money market accounts.

49. The promissory notes contravened the partnership agreement because they were not accepted in furtherance of purchasing securities or commodity contracts. Rather, they were stand-alone transactions described as "advances" and were not done concurrently with an investment in a security or commodity contract. Moreover, the "advances" to New Vision, Fundamental Growth's general partner, contravened the partnership agreement.

50. According to Lenarcic, New Vision and QMA used the transferred funds for business expenses. New Vision used \$80,000 to pay the Statons for their interest in QMA and New Vision. QMA's ledger reflects that QMA used the transferred funds to pay salaries and its other expenses.

2. **Misrepresentations and Omissions to Avoid Detection**

51. In correspondence with Fundamental Growth's limited partners, Lenarcic and New Vision misrepresented and omitted several material facts.

52. For example, in an October 11, 2000 letter, written on New Vision letterhead, Lenarcic and New Vision represented to the limited partners that Fundamental Growth's value was "up approximately 6.61%." This representation was not true. After an aggregate misappropriation by New Vision and Lenarcic of \$24,000, the value of Fundamental Growth's assets decreased approximately 1.1%, as of the quarter ended September 30, 2000.

53. In addition, even assuming that the misappropriation was a loan, the letter failed to disclose to the limited partners that Lenarcic and New Vision were disregarding prohibitions in the PPM and partnership agreement regarding loans to the general partner and the requirement that loans were to be made only in connection with an investment in a security or commodity contract. This omission created the appearance that Lenarcic and New Vision were investing Fundamental Growth's assets in compliance with the terms of such documents, when in fact they were not.

54. An April 20, 2001 letter, written on New Vision letterhead and signed by Lenarcic, compared Fundamental Growth's performance returns with that of the S&P 500 and the Dow Jones Industrial Average, attributed Fundamental Growth's return in part to "selective stock selection" and declared that "Fundamental [Growth]'s analysis along with a conservative selection process will distinguish us [Fundamental Growth]" from other money managers. Such statements were misleading in that they gave the appearance that Lenarcic and New Vision were continuing to operate in accordance with the PPM and the partnership

agreement. In fact, Lenarcic and New Vision made material omissions in this letter when they failed to disclose that they had, by then, already transferred over \$210,000 from Fundamental Growth to New Vision and QMA contrary to terms of the PPM and partnership agreement.

55. In a letter dated October 14, 2002, Lenarcic and New Vision again compared Fundamental Growth's returns with, among other indices, the S&P 500 and noted that they were proud that their "diligent work" in managing Fundamental Growth had been noticed. These representations falsely, in light of all of the circumstances, gave the appearance that they were managing Fundamental Growth's assets in accordance with the PPM and with the partnership agreement. In reality, this letter was misleading because Lenarcic and New Vision omitted and failed to disclose that by then they had, by then, misappropriated approximately \$604,000 from Fundamental Growth.

56. In December 2003, after having drained Fundamental Growth of at least \$807,000 in assets, QMA and New Vision belatedly issued to Fundamental Growth unsecured promissory notes for \$304,654.32 and \$541,607.68, respectively, in an effort by Lenarcic to recast the misappropriations as loans. Each note was executed by Lenarcic and was purportedly to pay 9% interest with the first payment due on July 1, 2005. Neither QMA nor New Vision has made any payments pursuant to the notes.

57. In a letter sent to the limited partners in October 2004, Lenarcic and New Vision represented to the limited partners of Fundamental Growth that the assets of Fundamental Growth were invested in a "corporate note" earning interest at a rate of 9%. Lenarcic and New Vision misled investors because they omitted the material fact that the purported corporate note was, in fact, two promissory notes issued by two LLCs controlled

by Lenarcic. They also omitted from the letter that the purported “corporate note” and the money purportedly lent to QMA and New Vision, as reflected in the notes, contravened Fundamental Growth’s PPM, in that the PPM stated “all or substantially all” of its assets would be invested in securities listed on markets “regulated by the Securities and Exchange Commission,” “short-selling” composite securities and investing in money market instruments. The misrepresentations and omissions in the letter also concealed a violation of the partnership agreement, in that the agreement required that promissory notes issued had to be in furtherance of the stated goal to purchase securities and contracts, and these notes were not in furtherance of that goal.

58. By the end of 2004, the value of Fundamental Growth’s cash and securities accounts had been reduced to \$358.94. Since that time, Lenarcic has further misled investors. In March 2005, Lenarcic told one limited partner that he would soon receive his interest in Fundamental Growth, and told another Fundamental Growth limited partner that his investment was safe. These representations were false.

59. Lenarcic and New Vision received requests from limited partners and/or their counsel requesting to withdraw from Fundamental Growth. In March 2004, the wife of a limited partner threatened to report Lenarcic to state securities agencies if he did not liquidate her husband’s interest in Fundamental Growth. Lenarcic responded that neither the Commission nor North Carolina had jurisdiction over New Vision because it was a Delaware entity.

60. Since December 2004, New Vision has received correspondence from the attorneys of two investors demanding to have their interest in the fund liquidated. New Vision has not met the liquidation demands of the investors.

61. QMA had no legitimate claim to the funds it received from the fraudulent transfers by Lenarcic and New Vision, and provided no consideration in exchange for the funds and has been unjustly enriched thereby.

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

62. Paragraphs 1 through 61 are hereby realleged and are incorporated herein by reference.

63. From at least June 2000 to at least December 2003, Defendants Lenarcic and New Vision, in the offer and sale of the securities described herein, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above.

64. The Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

65. 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. By reason of the foregoing, the Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II—FRAUD
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 61 are hereby realleged and are incorporated herein by reference.

67. From at least June 2000 to at least December 2003, Defendants Lenarcic and New Vision, in the offer and sale of the securities described herein, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

a) obtained money and property by means of untrue statements of material fact and 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; and

b) engaged in transactions, 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.

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

COUNT III—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]

69. Paragraphs 1 through 61 are hereby realleged and are incorporated herein by reference.

70. From at least June 2000 to at least December 2003, Defendants Lenarcic and New Vision, 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.

71. The Defendants 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.

72. By reason of the foregoing, the Defendants, 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 V—FRAUD BY INVESTMENT ADVISER
Violations of Sections 206(1) and 206(2) of the Advisers Act
[15 U.S.C. § §80b-6(1), (2)]

73. Paragraphs 1 through 61 are hereby realleged and are incorporated herein by reference.

74. Lenarcic and New Vision were at all relevant times an “investment adviser” within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)].

75. Lenarcic and New Vision, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce: (a) have acted knowingly or recklessly, have employed devices, schemes, or artifices to defraud; or (b) have engaged in transactions, practices, or courses of business which operated as fraud or deceit upon a client or prospective client.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission, respectfully prays that the Court:

I.

Make findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure.

II.

Issue a permanent injunction enjoining defendants Lenarcic and New Vision, and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, and each of them:

a. from violating Section 17(a) of the Securities Act [15 U.S.C. 77q(a)];

b. from violating 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]; and

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

III.

Issue an Order requiring the defendants to provide an accounting, and requiring the defendants to disgorge all ill-gotten gains, and the relief defendant QMA to disgorge all unjust enrichment as alleged in the Commission's Complaint, plus pay prejudgment interest thereon;

IV.

Issue an Order requiring defendants Lenarcic and New Vision, pursuant to Section 20(d) of the Securities Act [15 U.S.C. 77t(d)] and Sections 21(d)(3) and 21A of the Exchange Act [15 U.S.C. 78u(d)(3) and 78u-1], to pay civil monetary penalties.


V.

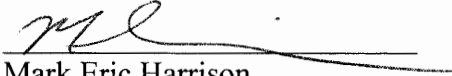
Issue an Order that retains jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

VI.

Grant such other and further relief as may be necessary and appropriate.

RESPECTFULLY SUBMITTED,


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