

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.

SECURITIES AND)
EXCHANGE COMMISSION,)
)
Plaintiff,)
v.)
)
DONALD W. KLEIN and)
KCM HOLDINGS, CORP.,)
)
Defendants.)
_____)

COMPLAINT

Plaintiff Securities and Exchange Commission alleges as follows:

I. INTRODUCTION

1. From at least May 2009 through January 2010, Defendants Donald W. Klein and KCM Holdings Corp. engaged in fraudulent restricted stock schemes and a market manipulation scheme involving the company's stock.

2. The Defendants paid a bribe to a purported corrupt broker to induce the purchase of shares of KCM Holdings in the open market.

3. They also paid illegal kickbacks to a purported trustee of a pension fund to purchase restricted shares of KCM Holdings. In addition to the kickbacks, KCM Holdings issued shares of stock as compensation to a middleman who introduced Klein to the purported pension fund trustee. A purported friend of the trustee helped arrange the deals.

4. Unbeknownst to the Defendants, the corrupt pension fund trustee was a creation of the FBI. The purported friend of the pension fund's trustee who helped

arrange the deals was an undercover FBI agent, and the middleman was a witness cooperating with the FBI.

5. Klein and KCM Holdings attempted to conceal the kickbacks by entering into a sham consulting agreement between KCM Holdings and a bogus consulting company purportedly created to receive the kickback.

6. The Defendants created these schemes in an effort to generate the appearance of market interest in KCM Holdings, induce public purchases of the stock, and artificially increase its trading price.

7. As a result of the conduct described in this Complaint, the Defendants violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5. Unless restrained and enjoined, they are reasonably likely to continue to violate the securities laws.

8. The Commission respectfully requests that the Court enter: (a) a permanent injunction restraining and enjoining the Defendants from violating the federal securities laws; (b) an order directing the Defendants to pay disgorgement with prejudgment interest; (c) an order directing the Defendants to pay civil money penalties; and (d) an order barring Klein from participating in any offering of a penny stock.

II. DEFENDANTS

9. During the relevant time period, Klein was KCM Holdings' president and CEO. He resides in Frisco, Texas.

10. KCM Holdings Corp. is a Nevada corporation with its principal place of business in Frisco, Texas. It purports to be a holding company in the business of

“strategic business venture incubation.” During the relevant time period, its common stock was quoted on OTC Link operated by OTC Markets Group, Inc. under the symbol “KCM Holdings.” Its securities have never been registered with the Commission.

11. KCM Holdings’ stock is a “penny stock” as defined by the Exchange Act. At all times relevant to this Complaint, the stock’s shares traded at its high of 0.16 per share and its average trading was at .03 per share. During the same time period, KCM Holdings’ stock did not meet any of the exceptions to penny stock classification pursuant to Section 3(a)(51) and Rule 3a51-1 of the Exchange Act. For example, the company’s stock: (a) did not trade on a national securities exchange; (b) was not an “NMS stock,” as defined in 17 C.F.R. § 242.600(b)(47); (c) did not have net tangible assets (i.e., total assets less intangible assets and liabilities) in excess of \$5,000,000; and (d) did not have average revenue of at least \$6,000,000 for the last three years. *See* Exchange Act, Rule 3a51-1(g).

III. JURISDICTION AND VENUE

12. The Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(d) and 77v(a), and Sections 21(d) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d) and 78aa.

13. This Court has personal jurisdiction over the Defendants, and venue is proper in the Southern District of Florida, because many of the Defendants’ acts and transactions constituting violations of the Securities Act and the Exchange Act occurred in the District. For example, on June 11, 2009, Klein, on behalf of KCM Holdings, met with the cooperating witness and the undercover FBI agent in Broward County to finalize the scheme. Also, on June 19, 2009, Klein sent the subscription agreement and

consulting agreement via express delivery to the undercover FBI agent in Broward County.

14. The Defendants, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce, or of a means or instrumentality of interstate commerce, or of the mails, in connection with the conduct alleged in this Complaint.

IV. THE FRAUDULENT SCHEMES

15. Beginning in May 2009, Klein began discussing possible fraudulent transactions involving KCM Holdings with the cooperating witness.

16. On June 11, 2009, Klein met with the cooperating witness and the FBI agent in Broward County. The agent posed as a contact for the corrupt, fictitious pension fund trustee.

A. The First Restricted Stock Transaction and Kickback

17. In June 2009, Klein entered into a business arrangement with the cooperating witness and the agent. The parties agreed the pension fund would purchase \$20,000 worth of KCM Holdings stock in exchange for a 30 percent kickback by the company to the pension fund trustee through a bogus consulting company.

18. In addition, Klein agreed the cooperating witness, as a middleman, would receive shares of KCM Holdings for introducing the parties to the deal.

19. To conceal the kickback, Klein and KCM Holdings agreed to pay money constituting the kickback to a bogus consulting company, and arranged to enter into a phony consulting agreement. Klein understood the bogus consulting company would not be performing any actual consulting services.

20. On June 12, 2009, KCM Holdings, through Klein as its President, entered into the phony consulting agreement.

21. On June 19, 2009, pursuant to a subscription agreement between the pension fund and KCM Holdings, the pension fund agreed to purchase 2,000,000 restricted shares of KCM Holdings stock for \$20,000. On that same day, the bogus consulting company entered into a consulting agreement with KCM Holdings. The bogus consulting agreement was used to provide an air of legitimacy as demonstrated by the following exchange caught on wiretap:

Cooperating Witness: You need to make it clear that the consulting agreement is an agreement that is all it is. You are getting back money and everybody's (expletive) is covered by smokescreen and paper.

Klein: Very to the point.

22. On June 22, 2009, the FBI wired \$20,000 to KCM Holdings' bank account. The next day, KCM Holdings sent a kickback of \$6,000 via check to the bogus consulting company, with the notation "consulting."

23. On June 24, 2009, KCM Holdings issued 2 million restricted shares of its stock to the pension fund, and on July 14, 2009, KCM Holdings sent the cooperating witness a stock certificate for 400,000 shares of restricted KCM Holdings stock for purported consulting services.

24. Klein, acting as president of KCM Holdings, executed the stock certificate.

B. The Second Restricted Stock Transaction and Kickback

25. Shortly after completing the first restricted stock transaction, the parties entered into a second, similar transaction. Again, the parties agreed the pension fund would purchase \$20,000 worth of KCM Holdings stock in exchange for a 30 percent kickback by KCM Holdings to the pension fund trustee.

26. As with the first transaction, Klein agreed the cooperating witness, as a middleman, would receive shares of KCM Holdings for introducing the parties to the deal.

27. To conceal the kickback, Klein and KCM Holdings agreed to pay the money to the same bogus consulting company used in the previous scheme, relying upon the prior consulting agreement.

28. On July 13, 2009, pursuant to a subscription agreement between the pension fund and KCM Holdings, the pension fund agreed to purchase approximately 500,000 restricted shares of company stock for \$20,000. On that same day, the bogus consulting company issued a phony invoice to KCM Holdings in the amount of \$6,000.

29. The following day, the FBI wired \$20,000 to KCM Holdings' bank account.

30. On July 16, 2009, KCM Holdings sent a kickback of \$6,000 via check to the bogus consulting company, again with the notation "consulting fees."

31. On July 20, 2009, KCM Holdings issued a stock certificate for 500,000 shares of restricted stock to the pension fund.

32. Klein, acting as president of KCM Holdings, executed the stock certificate.

C. The Market Manipulation and Bribe

33. In January 2010, Klein and the cooperating witness began discussing a possible market manipulation scheme involving KCM Holdings' common stock, in order to create the false impression in the market that the stock was developing an active public market that would support a rising stock price.

34. According to the scheme, Klein would make undisclosed payments to the cooperating witness's corrupt broker, who was really a fictitious person. Then, the corrupt broker would buy shares of KCM Holdings' common stock in the open market.

35. The broker would also use money held in his customers' discretionary accounts to buy the publicly-traded shares, in exchange for an undisclosed inducement payment of 33% of the total price paid to purchase the securities.

36. As part of the scheme, the parties agreed the broker would engage in matched trades of KCM Holdings stock with a specific stockholder who was affiliated with Klein.

37. In addition, Klein told the cooperating witness he would "coordinate press" and agreed to strategically time press releases regarding KCM Holdings to mask the fraud.

38. On January 19, 2010, Klein coordinated the wiring of \$3,000 to the cooperating witness's account with the understanding the cooperating witness would then forward the money to the broker.

39. This money was a "down payment" on inducement payments that were to be paid to the Broker in exchange for the purchase of KCM Holdings stock in the open market in the Broker's customer discretionary accounts.

40. On the same day, Klein provided the cooperating witness with an advance copy of a KCM Holdings press release.

41. On January 21, 2010, the FBI purchased 80,000 shares of KCM Holdings on the open market for a total cost of \$5,040. The average daily trading volume for KCM Holdings' shares was approximately 528,410 shares per day for the previous ten trading days, and the FBI's purchase constituted approximately 34% of the volume for that day.

42. Of the shares the FBI purchased, Klein arranged for a matched sell order for 60,000 shares of KCM Holdings common stock - representing almost 26% of the day's volume - for a total of \$3,780.

43. On January 21, 2010, KCM Holdings issued the press release it had provided to the cooperating witness two days earlier. The company issued this press release to create the false impression the buying activity was spurred by positive news about KCM Holdings.

COUNT I

Fraud In Violation of Section 17(a)(1) of the Securities Act

44. The Commission realleges and incorporates paragraphs 1 through 43 of this Complaint.

45. From May 2009 through January 2010, the Defendants, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, as described in this Complaint, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

46. By reason of the foregoing, the Defendants, directly and indirectly, violated and, unless enjoined, are reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a).

COUNT II

Fraud in Violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act

47. The Commission realleges and incorporates paragraphs 1 through 43 of this Complaint.

48. From May 2009 through January 2010, the Defendants, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities, as described in this Complaint:

(a) obtained money or property by means of untrue statements of material facts or omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(b) engaged in transactions, practices, or courses of business which operated or would have operated as a fraud or deceit upon purchasers or prospective purchasers of such securities.

49. By reason of the foregoing, the Defendants, directly and indirectly, violated and, unless enjoined, are reasonably likely to 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 in Violation of Section 10(b) and Rule 10b-5 of the Exchange Act

50. The Commission realleges and incorporates paragraphs 1 through 43 of this Complaint.

51. From May 2009 through January 2010, the Defendants, directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, in connection with the purchase or sale of securities, knowingly, willfully or recklessly:

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

52. By reason of the foregoing, the Defendants, directly or indirectly, violated and, unless enjoined, are reasonably likely to 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.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Declaratory Relief

Declare, determine, and find that the Defendants have committed the violations of the federal securities laws alleged in this Complaint.

II.

Permanent Injunctive Relief

Issue a Permanent Injunction restraining and enjoining the Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act, as indicated above.

III.

Disgorgement

Issue an Order directing all Defendants to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts or courses of conduct alleged in this Complaint.

IV.

Penalties

Issue an Order directing the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d).

V.

Penny Stock Bar

Issue an Order barring Klein from participating in any offering of a penny stock, pursuant to Section 20(g) of the Securities Act, 15 U.S.C. § 77t(g), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), for the violations alleged in this Complaint.

VI.

Further Relief

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

VII.

Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

June 30, 2011

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