

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MATTHEW D. SAMPLE,

Defendant,

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Case No. 3:14-CV-1218

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against Defendant Matthew D. Sample (“Sample”), alleges:

Summary

1. From in or about October 2009 through June 2012, Sample was a hedge fund manager who fraudulently raised almost \$1 million from five investors. Sample solicited investors into The Lobo Volatility Fund, LLC (“Lobo”) based upon his representations that he would use their money to trade options by employing a proprietary trading strategy. Sample used approximately \$500,000 of the investor funds for trading purposes, but diverted at least one-third of the funds for his personal use and to make payments to other investors. In addition, Sample’s trading strategy failed, resulting in the loss of all remaining investor funds. But rather than giving investors an accurate accounting, he provided one or more false documents that made it appear as if his trading had been successful. Additionally, in order to satisfy an investing couple’s request to withdraw a portion of their capital balance, Sample raised money from a new investor under false pretenses, and then used that new investor’s funds to make a partial repayment to the couple.

2. Through this misconduct, Sample violated 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 thereunder [17 C.F.R. § 240.10b-5], and Sections 206(1), (2) and (4) of the Investment Advisers Act of 1940 (“Adviser’s Act”) [15 U.S.C. § 80b-6(1), (2) and (4)] and Rule 206(4)-8 thereunder [15 U.S.C. § 275.206(4)-8].

Jurisdiction and Venue

3. The Commission brings this action under Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], seeking to restrain and enjoin Sample permanently from engaging in the acts, practices, and courses of business alleged herein.

4. This Court has jurisdiction over this action under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa], and Sample consents to venue in the Northern District of Texas.

5. Sample directly or indirectly made use of means or instruments of transportation and communication, and means or instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices and courses of business alleged herein.

Parties

6. Plaintiff Commission is an agency of the United States of America charged with enforcing the federal securities laws.

7. Defendant, Matthew Dale Sample, is an individual residing in San Diego, California. Between August 2007 and July 2010, Sample was associated with a broker-dealer firm that is registered with the Commission. Since April 2012, Sample has been employed by an

investment advisory firm. For a period of his employment, the firm was registered with the Commission.

Facts

8. Lobo is a Delaware limited liability company, formed in December 2008 by Sample to operate as a hedge fund. Lobo's managing member and investment manager are Lobo GM, LLC ("Lobo GM") and Roadrunner Capital Management, LLC ("Roadrunner Capital"), respectively.

9. From in or about October 2009 through June 2012, Sample raised approximately \$1 million through the sale of "limited liability units" of Lobo to investors in Santa Fe, New Mexico, and elsewhere. Sample claims that he intended to make profits for himself and Lobo's investors by using an improved version of an options trading program that he had unsuccessfully utilized in the past. However, Sample fraudulently misused investor funds and used only approximately half of the original \$1 million for trading purposes.

Misrepresentations concerning intended use of investor funds

10. According to Lobo's subscription agreement, Roadrunner Capital, as manager, was entitled to a monthly management fee equal to 1/12 of 1% of Lobo's net asset value, 20% of trading profits, and limited expenses. The agreement explicitly precluded Lobo from paying either Lobo GM or Roadrunner Capital any salary, fringe benefits, or reimbursement for overhead expenses.

11. Contrary to the representations in the subscription agreement, however, almost immediately after receiving funds from the Lobo investors, Sample diverted a significant percentage of the funds for his own personal use. Sample spent approximately one-third, or

\$332,151, of the investor funds on transfers to personal accounts, credit card payments, retail purchases, meals, and entertainment.

Subsequent false statements and fraudulent actions

12. From approximately October 2009 to at least April 2013, Sample gave investors in Lobo verbal and/or written assurances that he was trading profitably and/or their funds were being held in capital accounts for them. For example, at the end of the 2011 tax year, Sample created at least two false IRS Forms K-1, which he provided to respective investors. One such K-1 was given to a New Mexico couple who had invested approximately \$700,000 in Lobo (“New Mexico Investors”). The K-1 falsely reflected a capital balance of \$739,180 in the New Mexico Investors’ account, but in reality, Sample had lost or misappropriated most or all of their funds.

13. In the months prior to and including June 2012, the New Mexico Investors made repeated requests to Sample, instructing him that they wished to withdraw approximately \$500,000 of the funds they had invested. Sample provided various false excuses to the New Mexico Investors as to why he could not make a distribution to them. One such false excuse given by Sample was that he could not withdraw funds from a certain account because of contractual restrictions with the financial institution. Another false excuse given by Sample was that he had to liquidate a particular investment in order to obtain the funds.

14. On or about June 23, 2012, Sample schemed to make a capital distribution to the New Mexico Investors by knowingly depositing a \$100,000 check drawn on a closed bank account into one of his business accounts. As he knew or was severely reckless in not knowing, the check was worthless, and the financial institution refused to negotiate it.

15. On or about June 25, 2012, Sample raised \$50,000 from a new Lobo investor. Sample falsely told the new investor that his funds would be used by Lobo to trade securities in an effort to make a profit for the investor. Sample instructed this new Lobo investor to wire the funds to an account affiliated with Sample and not Lobo. On the same day, Sample used the new investor's funds to make a payment disguised as a \$50,000 capital distribution to the New Mexico Investors - half of a \$100,000 distribution that Sample had promised them. But Sample never repaid the \$50,000 that he transferred from the new Lobo investor to the New Mexico Investors.

16. On or about June 26, 2012, Sample wrote another \$50,000 check to the New Mexico Investors from an account affiliated with Sample, and not Lobo. The check represented the remaining \$50,000 that Sample had promised the New Mexico Investors, but the check failed to clear the financial institution due to insufficient funds. In total, Sample returned only \$50,000 of the New Mexico Investors' original \$700,000.

Claims for Relief

First Claim

Fraud

(In violation of Section 17(a) of the Securities Act)

17. Plaintiff Commission re-alleges and incorporates paragraphs 1 through 16 of this Complaint by reference as if set forth verbatim.

18. Sample, directly or indirectly, singly or in concert with others, in the offer or sale of securities, by use of the means or instruments of transportation and communication in interstate commerce, or by use of the mails: (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of a material fact or omitted 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; or (c) engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchasers.

19. With respect to violations of Sections 17(a)(2) and (3) of the Securities Act, Sample was at least negligent in his actions and inaction. With respect to violations of Section 17(a)(1) of the Securities Act, Sample acted knowingly or severely recklessly in his actions and inaction. By reason of the foregoing, Sample violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

Second Claim

Fraud

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

20. Plaintiff Commission re-alleges and incorporates paragraphs 1 through 16 of this Complaint by reference as if set forth verbatim.

21. Sample, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of securities, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or with reckless disregard for the truth: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of a material fact or omitted 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; or (c) engaged in acts, practices, or courses of business which operate or would operate as a fraud and deceit upon purchasers of securities, or upon other persons.

22. Sample acted knowingly or severely recklessly in his actions and inaction. By reason of the foregoing, Sample 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].

Third Claim

Fraud

(In violation of Sections 206(1), (2) and (4) of the Advisers Act and Rule 206(4)-(8))

23. Plaintiff Commission re-alleges and incorporates paragraphs 1 through 16 of this Complaint by reference as if set forth verbatim.

24. Sample, directly or indirectly, singly or in concert with others, by the use of any means or instrumentality of interstate commerce or of the mails: (a) employed devices, schemes, or artifices to defraud any client or prospective client; (b) engaged in any transaction, practice, or course of business which operated as a fraud or deceit upon any client or prospective client; (c) engaged in any act, practice, or course of business that is fraudulent, deceptive or manipulative; or (d) made any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle.

25. With respect to violations of Sections 206 (2) and (4) of the Advisers Act, Sample was at least negligent in his actions and inaction. With respect to violations of Section 206 (1), Sample acted knowingly or severely recklessly in his actions and inaction. By reason of the foregoing, Sample violated and, unless enjoined, will continue to violate Sections 206(1), (2) and (4) of the Advisers Act [15 U.S.C. § 80b-6(1), (2) and (4)] and Rule 206(4)-8 thereunder [15 U.S.C. § 275.206(4)-8].

Relief Requested

Plaintiff respectfully requests that this Court enter a judgment:

I.

Permanently enjoining Sample from violating 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 thereunder [17 C.F.R. § 240.10b-5], and Sections 206(1), (2) and (4) of the Advisers Act [15 U.S.C. § 80b-6(1), (2) and (4)] and Rule 206(4)-8 thereunder [15 U.S.C. § 275.206(4)-8].

II.

Permanently enjoining Sample from directly or indirectly soliciting or accepting funds from any person or entity for any unregistered offering of securities.

III.

Ordering Sample to disgorge an amount equal to the funds and benefits obtained illegally, or to which he is otherwise not entitled, plus prejudgment interest on that amount.

IV.

Ordering Sample to pay third-tier civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and Section 209(e) of the Advisers Act [15 U.S.C. § 275.209(e)] for the violations alleged herein.

V.

Granting such further relief as this Court may deem just and proper.

Dated: April 4, 2014

Respectfully submitted,

/s/ Bret Helmer

BRET HELMER

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