

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

06 Civ. 6153 (LDW / ETB)

Plaintiff,

- against -

SPIRO GERMENIS, ORACLE SERVICES INC., and
ORACLE EVOLUTION, LLC,

Defendants,

ORACLE E FUND, LP, ORACLE J FUND, LP, and
ORACLE EVOLUTION CAPITAL, LLC,

Relief Defendants.

**DECLARATION OF STEPHEN JOHNSON
IN SUPPORT OF MOTION
FOR APPROVAL OF DISTRIBUTION PLAN**

STEPHEN JOHNSON declares under penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. I am over 18 years old. I am a Branch Chief in the Division of Enforcement of the New York Regional Office of the Securities and Exchange Commission (the "Commission"). I have been employed by the Commission for six years, and I have more than ten years additional experience in the securities industry. I investigate securities fraud and other violations of the federal securities laws.

2. I make this declaration in support of the plaintiff Commission's Motion for Approval of Distribution Plan, Appointment of Fund Administrator, and Order Directing Distribution. I have personal knowledge of the facts set forth here, based on documents obtained by the Commission in the course of its investigation and litigation in this matter. These records include: (a) bank account statements for accounts controlled by Defendant Spiro Germenis; (b)

records obtained by the Commission from the office used by Germenis to operate Oracle Services Inc., (“Oracle Services”), the Oracle J Fund (“J Fund”), and the Oracle E Fund (“E Fund”); (c) account statements for broker-dealer accounts in which investment money was purportedly or actually held; (d) copies of personal checks evidencing investments; and (e) subscription agreements, which indicate both the amount of the investment as well as its purported destination (i.e. the investment vehicle intended by the investor). I also have participated in interviews of approximately 20 investors.

THE MONEY INVESTED WITH GERMENIS

3. Based on the foregoing, I have determined that Germenis raised at least \$9,083,295 from at least 27 investors - individuals who invested either in the J Fund, the E Fund, or through individual accounts Germenis managed through Oracle Services, an investment adviser. Of that sum, records show that least \$1,260,000 of that money was returned to investors through redemptions and purported dividends. Of the remaining \$7,823,295, all but approximately \$229,000 is missing.

4. While it is very difficult to determine exactly how much of the missing \$7.8 million was lost through legitimate trading conducted by Germenis, it is clear that most of it, at least \$6.5 million, was never invested. Regarding the E Fund and J Fund, this is evident, in part, through records clearly showing that with slight exceptions, the money, upon being received by Germenis from investors, was never invested, but rather was deposited into various bank or brokerage accounts controlled by Germenis, and then transferred by Germenis to his personal bank accounts. Records further show that Germenis then used this money to support Germenis’s lavish lifestyle. Germenis used these investor funds to pay for a wide range of personal expenses, ranging from the mortgage on his house and the lease for his Porsche, to his dry

cleaning and entertainment expenses. Likewise, other records show that investment accounts set up in the name of the E and J Funds rarely received deposits for the amounts of money that were purportedly invested.

5. When the Commission filed its Complaint in this matter in November 2006, only approximately \$229,000 remained from the fraud in bank or brokerage accounts set up by Germenis at several different financial institutions.

SIMILARLY SITUATED INVESTORS

6. I participated in approximately 20 investor interviews. These interviews revealed that Germenis's fraud was carried out in a substantially similar manner among all of the investors. Germenis personally solicited almost all of the investments; and Germenis single-handedly ran the entire fraudulent operation from the outset until its demise. Germenis handled all of the investments and interacted with all of the investors about their investments, which included giving them false performance figures. Germenis made similar promises to all of the investors – that if they invested through him, he himself would manage their investments and make them grow. Whether Germenis “invested” their funds directly in the E Fund, J Fund, or individually managed accounts, he represented that he would ultimately invest their money primarily in publicly-traded securities. Once these investors turned their money or previously-established investments accounts over to Germenis, he misappropriated their money in the same way. Rather than investing their assets, he commingled the assets in bank accounts that he controlled, and uniformly spent down those funds, making withdrawals from the funds to pay for his lavish personal expenses or to make redemptions to investors.

COMMINGLING OF FUNDS BY GERMENIS

7. Through my review of the records obtained during the Commission's investigation, it is clear that throughout his fraud, Germenis commingled a substantial portion of the funds he raised from investors for the E Fund, the J Fund, and individually managed accounts.

8. For example, on April 28, 2006, Germenis deposited an investment of \$130,864 by an E Fund investor (Investor 2) into a Northfork Bank account held in the name of the E Fund. (References to investors by number, for example, Investor 2, correspond to the investor number shown on the redacted investor list attached hereto as Exhibit A, Proposed Distribution.) Shortly thereafter, on May 4, 2006 and May 5, 2006, Germenis deposited, into that same E Fund account, investments of \$449,975 and \$134,239 made respectively by Investors 1 and 13, who had engaged Germenis to manage individual investment accounts. Also on May 5, 2006, Germenis transferred a total of \$562,000 from that E Fund account to a Northfork Bank account held in the name of the J Fund. That J Fund account, shortly beforehand, had received the following investments: \$24,829.71 from a J Fund (Investor 7) on April 20, 2006, and \$19,975 from a J Fund investor (Investor 16) on May 4, 2006. Thus, it is clear that Germenis was commingling the funds of E Fund and J Fund investors and investors of individually managed accounts.

9. In addition to the transactions described in Paragraph 8, Germenis on numerous other occasions transferred money back and forth between the J Fund and E Fund Northfork bank accounts discussed above. For example, between June 13, 2006, and October 5, 2006, Germenis made 12 transfers in the tens or hundreds of thousands of dollars (and totaling \$1,017,000) from the J Fund Account to the E Fund Account. It is clear that the money

transferred from the J Fund account to the E Fund account included a \$900,000 investment by a J Fund investor (Investor 22). In the midst of these transfers, the E Fund Account received two investments from an E Fund investor (Investor 21) totaling \$425,000. Therefore, it is again clear that Germenis commingled E Fund and J Fund investments.

10. Likewise, subsequent to the transfer of \$562,000 described in Paragraph 8, Germenis made four additional transfers from the E Fund account to the J Fund account totaling \$505,000 between May 11, 2006 and September 18, 2006.

DISPOSITION OF THE FUNDS AT THE END OF AND AFTER THE FRAUD

11. By the beginning of October 2006, Germenis had depleted almost all of the money in bank and brokerage accounts that contained investor assets. The only sizeable sum of money left in any of the accounts was approximately \$227,000, the bulk of which represented an investment of \$200,000 made by Investor 19 on April 1, 2006. Investor 19 had intended to invest in the J Fund, and he sent his funds to a Shoreline brokerage account held in the name of the J Fund. The additional \$27,000 comprised interest and profits made from some of the rare trading Germenis had conducted with investor funds. In a manner quite similar to that of Investor 19, a number of other investors invested their money through Germenis after April 2006, although in what appears to be a matter of happenstance, those funds were deposited into other bank or brokerage accounts held in the name of the E and J Funds.

12. Germenis's scheme began to unravel in September and October 2006, and Germenis ultimately disappeared on October 12, 2006. While, at that point, Germenis had already misappropriated almost all of the funds invested with him, it appears that he simply didn't have the time or the opportunity to remove either the approximately \$227,000 residing in the Shoreline account, or other very small sums, totaling approximately \$2,100, remaining in

other miscellaneous accounts maintained by Germenis in connection with his purported investment operations. (See attached, Exhibit B, Account Balances, September 2006, indicating September 2006 month-end amounts in each of those accounts.) All of this money was frozen pursuant to an order entered by this Court in November 2006, and extended thereafter.

13. Subsequent to the entry of the Final Judgment in this case, and pursuant to an order by this Court, the approximately \$229,000 that was frozen in November 2006, along with interest that had accrued, was transferred to the CRIS in the end of 2009, and with further interest earned, less distributions to the Tax Administrator, now totals approximately \$242,500.

ASSET SEARCH CONDUCTED BY THE COMMISSION

14. Both before and after filing the complaint in this matter, the Commission made a diligent search to find assets held by the Defendants and the Relief Defendants. During its investigation, the Commission, by examining numerous records, created a detailed analysis showing the flow of assets in the fraud – from who invested and how much each investor invested, to exactly how Germenis spent or otherwise misappropriated that money. Through this analysis, the Commission has been able to account for almost all of the money that it knows to have been invested. Specifically, the Commission has been able to determine that the money was primarily spent by Germenis for his personal use in supporting his luxurious lifestyle, paid to other investors, or rarely, lost through investments. There is no appreciable sum of money that is missing and unaccounted for.

15. There has been no trace either of Germenis or of any activity by his entities since his disappearance in October 2006. Nonetheless, in connection with this motion, the Commission conducted an asset search through a comprehensive electronic data base created for the purpose of locating assets. That search turned up no current assets for either Spiro Germenis

or his wife, Maria Germenis. Moreover, the Commission has no reason to believe that any assets of the Defendants and the Relief Defendants will otherwise be discovered: Germenis is a fugitive whose whereabouts have been unknown since his fraud unraveled in October 2006; and the other Defendants and Relief Defendants are entities that were solely owned, operated, and controlled by Germenis and that have no known assets.

16. To the extent that Germenis expended investor funds to support his luxurious lifestyle, these expenditures were on items that were consumed, rather than for the purchase of assets. For example, Germenis incurred large entertainment expenses and leased an expensive automobile. Therefore, it appears that his spending was not converted into assets which could be used to satisfy investor claims.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at New York, New York, on December 2, 2010.


STEPHEN JOHNSON