

2. Investors were told that their funds would be used to purchase apartment complexes and rehabilitate and convert the individual apartment units for sale as condominiums. Investors were promised annual returns ranging from 12% to 50%, and were told that they would be paid from the proceeds of the sales of the converted condominium units. Investors were told that their investments were safe because they were personally guaranteed by Malarz and, in some cases, Sienkiewicz. Investors were told that Malarz and Sienkiewicz would contribute specific amounts of their own money to the real estate development projects and would not realize a return on their own investments until all other investors had been repaid.

3. Malarz Equity Investments, LLC (“Malarz Equity”) was the primary entity through which the scheme was perpetrated. Malarz and Lin’s wife, Relief Defendant Gloria Lin, were the members of Malarz Equity, and Lin was an officer of Malarz Equity. Malarz and Lin raised at least \$6.71 million from at least 23 investors through the sale of the Malarz Equity promissory notes. The investors’ funds were deposited in Malarz Equity’s bank accounts along with \$1,087,000 of Malarz’s personal funds and \$765,712 from other sources.

4. Contrary to the representations made to investors, Malarz used at least \$3,421,685 of the funds in these accounts for his personal benefit, including to finance his other businesses, to repay outstanding personal debts, and to support an extravagant lifestyle. Malarz also used the Malarz Equity accounts to make \$1,960,777 worth of ponzi-type “interest” and principal payments to previous investors. Further, at least \$436,000 of the money in these accounts was used to make undisclosed commission payments to Lin. These commission payments were transmitted to Relief Defendant Gloria Lin.

5. Malarz, with Sienkiewicz, also used four other entities, Invision Investment, LLC (“Invision”), Burton Grove Condominiums, LLC (“Burton Grove”), Buffalo Creek

Condominiums, LLC (“Buffalo Creek”), and Willow Lake Condominiums, LLC (“Willow Lake”), to carry out the scheme. Through these entities, Malarz and Sienkiewicz raised at least \$7.67 million from at least 20 investors.

6. Malarz and Sienkiewicz provided several investors with personal financial statements that materially overstated their respective net worths and misled the investors into believing that the investments were safe by virtue of their personal guarantees.

7. Malarz and Sienkiewicz also granted some investors mortgages on properties that they either owned or were about to acquire, to purportedly secure their investments. Most of these investors were falsely told that their particular mortgage would have priority over all other debts, except for the mortgages that had previously been granted to banks in conjunction with the property’s purchase. Malarz and Sienkiewicz failed to disclose that they had granted mortgages to other investors and in some cases, other banks, and that priority would depend upon the order in which the mortgages were recorded.

8. Further, at least two investors were told that their funds would be used as part of a down payment on a new apartment complex in Lombard, Illinois. However, Malarz and Sienkiewicz never purchased that property, but instead either transferred the funds to their personal bank accounts or used them to renovate two apartment complexes that they had previously purchased.

9. Based on the above, the SEC seeks: (i) an order of permanent injunction against Malarz, Sienkiewicz, and Lin for violations of Sections 5(a), 5(c), and 17(a)(2) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)(2)] and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 C.F.R. § 240.10b-5(b)], and against Lin only for violations of Section 15(a) of the

Exchange Act [15 U.S.C. § 78o(a)]; (ii) disgorgement, plus prejudgment interest, against Malarz (individually); against Malarz and Sienkiewicz (jointly and severally); against Lin (individually); and against Relief Defendant Gloria Lin (jointly and severally with Lin); and (iii) civil penalties against Malarz, Sienkiewicz, and Lin.

DEFENDANTS

10. **Marcin Malarz**, age 36, had a residence during the relevant period in Lake Forest, Illinois, but is believed to be currently living in Eastern Europe. From 2006 until at least 2010, Malarz was a part-owner and member of Malarz Equity, Invision, Burton Grove, Buffalo Creek, and Willow Lake.

11. **Jacek Sienkiewicz**, age 44, had a residence during the relevant period in Highland Park, Illinois, but is believed to be currently living in Poland. From 2006 until at least 2010, Sienkiewicz was a part-owner and member of Invision, Burton Grove, Buffalo Creek, and Willow Lake.

12. **Arthur Lin**, age 47, resides in Barrington, Illinois. Lin was an officer of Malarz Equity. From October 4, 2006 to April 8, 2010, Lin was a registered representative and investment adviser representative associated with LPL Financial, LLC (“LPL”), a broker-dealer and investment adviser registered with the Commission. During this period, Lin worked out of an LPL branch office located in Itasca, Illinois. LPL terminated Lin in April 2010.

13. **Gloria Lin**, age 41, resides in Barrington, Illinois and is Lin’s wife. Gloria Lin and Malarz were the two members of Malarz Equity. From 2006 until 2009, the commissions received by Arthur Lin in connection with his sale of the Malarz Equity promissory notes were paid to Gloria Lin.

JURISDICTION

14. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa]. Venue is proper in this Court pursuant to 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].

15. The acts, transactions, practices, and courses of business constituting the violations alleged herein occurred within the jurisdiction of the United States District Court for the Northern District of Illinois and elsewhere.

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

PROCEDURAL HISTORY

17. On October 1, 2010, the SEC filed a subpoena enforcement action against Malarz in light of his repeated failure to appear for testimony in response to subpoenas served during the SEC's investigation. *See* 10/1/10 Motion for an Order Requiring Compliance with Subpoenas, 10-cv-6319 (Docket No. 2) (N.D. Ill.). The Court granted the SEC's motion on October 8, 2010. *Id.* (Docket No. 12).

18. On November 5, 2010, the SEC filed a motion to hold Malarz in contempt of court for failure to obey the Court's Order dated October 8, 2010. *Id.* (Docket No. 13). The Court granted the SEC's motion on November 19, 2010, and set a show-cause hearing for January 21, 2011. *Id.* (Docket No. 18).

19. The Court presided over a show-cause hearing on January 21, 2011. *Id.* (Docket No. 20). Malarz failed to appear. *Id.* The Court issued an Order Issuing Writ of Body Attachment. *Id.* (Docket No. 22).

20. On April 1, 2011, the Writ of Body Attachment was returned unexecuted. *Id.* (Docket No. 23). Malarz did not make any subsequent appearance in that proceeding.

FACTS

Malarz Equity

21. Malarz formed Malarz Equity in September 2006. Malarz gave Gloria Lin a 20% ownership interest in Malarz Equity, and she was the only other member of the LLC. According to the offering documents, Lin was an officer of Malarz Equity. Malarz recruited Lin to help solicit the sale of Malarz Equity notes.

22. Between September 2006 and December 2008, Malarz and Lin sold at least \$6,710,000 of Malarz Equity promissory notes to at least 23 investors. The promissory notes issued by Malarz Equity were not registered with the SEC, nor was the securities offering.

23. Between September 2006 and December 2008, Lin, acting as an unregistered broker, sold at least \$5,360,000 in unregistered promissory notes issued by Malarz Equity to at least 20 investors, including 15 LPL customers. Lin also solicited investments from members of his church, the Chinese-American community, and various friends and relatives, including his mother.

24. In addition to personally soliciting the sale of at least three notes, Malarz responded to requests and inquiries from investors and held periodic meetings with investors, which Lin attended.

25. Lin and Malarz provided investors with an offering memorandum. In the offering memorandum and in their conversations with investors, Malarz and Lin represented that the investors' funds would be used to purchase and upgrade apartment complexes that would be converted to individual condominium units and sold at a profit.

26. According to the offering documents, Malarz and Gloria Lin would initially contribute amounts ranging from \$500,000 to \$3 million to Malarz Equity, and had committed to contribute total amounts ranging between \$2 million to \$7 million, matching dollar for dollar the amounts raised from investors.

27. Malarz and Lin represented that investors would be paid 12% to 15% annual interest, payable quarterly, for the duration of the note, usually one or two years. The offering memorandum stated that Malarz would receive "no compensation" for his services as a manager. Malarz and Lin told investors that Malarz would realize his profit by selling the remaining condominium units after all investors had been repaid.

28. Malarz and Lin told investors that Malarz was well-capitalized and would personally guarantee the notes with his own assets. Lin told a number of investors that Malarz Equity was a "sure thing" and that there was no risk in investing because Malarz was offering a personal guarantee and because their investments would be "secured" by the real estate being purchased.

29. Malarz and Lin persuaded some investors to take out home equity loans so that they could purchase Malarz Equity promissory notes with the proceeds. Other investors liquidated their accounts at LPL in order to purchase Malarz Equity promissory notes.

30. Malarz exercised sole control over Malarz Equity's bank accounts from September 2006 to July 2008. In July 2008, Gloria Lin was given co-signatory authority over

Malarz Equity's primary bank account. Thereafter, Lin, through Gloria Lin, had access to Malarz Equity's use of funds in this account.

31. During 2007 and 2008, a number of Malarz Equity investors complained to Lin that their interest payments had been missed or were late.

32. In June 2008, because interest payments due to his mother were consistently late, Lin requested that quit claim deeds on a number of unsold apartment units be executed in favor of his mother. These deeds allowed Lin's mother to receive rental payments directly from existing tenants in lieu of interest payments from Malarz Equity. Lin failed to tell investors about his mother's deeds or rental payments until January 2009, more than six months after the deeds had been executed.

33. Throughout 2007 and 2008, Lin continued to sell promissory notes to new investors without disclosing the late interest payments or Malarz Equity's cash flow problems.

34. Most of the \$6,710,000 raised from the Malarz Equity investors was placed into one of three bank accounts maintained by Malarz Equity and commingled with \$1,087,000 of Malarz's own funds and \$765,712 that Malarz transferred in from other sources, including \$500,000 from a second mortgage on one of the apartment complexes that had been purchased.

35. Malarz misappropriated a total of at least \$3,421,685 from the Malarz Equity accounts for his personal use. Specifically, at least \$2,143,620 was transferred to Malarz's personal accounts and used to support his extravagant lifestyle, including to maintain his multi-million-dollar home in Lake Forest, Illinois, and to send his children to a prestigious school. At least \$421,225 was used to directly pay Malarz's personal expenses, including his home mortgage payments and his travel expenses for, among other things, multiple trips to Poland, a Cancun vacation for Malarz's extended family, and a trip to Las Vegas. Malarz also directly

used funds in the Malarz Equity accounts to make payments on his BMW lease and to pay his health club dues. At least \$481,000 was transferred to other businesses in which Malarz held ownership interests. Finally, at least \$375,840 was used to pay Malarz's personal debts.

36. Further, at least \$436,000 of the money in the Malarz Equity accounts was used to make undisclosed commission payments to Lin. Malarz Equity typically made commission payments equal to ten percent of the amount invested shortly after the investment was made. In an attempt to disguise the nature of these commission payments, these checks were made payable to Relief Defendant Gloria Lin. The offering documents did not disclose that Lin would be compensated for selling the notes, and Lin never told investors that he was receiving commissions in connection with their investments. The offering documents did not disclose that any compensation would be paid to Gloria Lin.

37. Finally, to keep the scheme afloat, Malarz used \$1,960,777 from the Malarz Equity accounts to make ponzi-like "interest" and return of principal payments to previous investors.

38. Lin knowingly or recklessly participated in at least one such payment. By late September 2008, Lin had access to Malarz Equity's primary bank account, on which Gloria Lin had become a signatory. Lin knew, or was reckless in not knowing, that Malarz Equity owed interest payments to a number of promissory note purchasers, but had a mere \$147.00 in its account.

39. On or about September 29, 2008, Lin secured a new investor who purchased a \$100,000 promissory note from Malarz Equity. The funds were deposited in the Malarz Equity bank account. Lin was paid a \$15,000 commission out of the new investor's funds. Malarz then

used the remainder of the investment proceeds to make interest payments to twelve investors who had previously purchased promissory notes from Malarz Equity.

40. By their conduct described above, Malarz and Lin knowingly or recklessly made material misrepresentations or omitted to state material facts to investors regarding the risks of the investments and the use of investor funds.

Invision, Burton Grove, Buffalo Creek, and Willow Lake

41. Between October 2006 and December 2007, Malarz and Sienkiewicz formed and were both part-owners and members in four other limited liability companies, Invision, Burton Grove, Buffalo Creek, and Willow Lake, through which they offered and sold at least \$7,670,000 in promissory notes to at least 20 different investors. The promissory notes issued by these entities were not registered with the SEC, nor were the offerings.

42. Malarz and Sienkiewicz shared management responsibilities for these entities, used their respective contacts to identify potential investors, and then worked together to sell promissory notes.

43. Both Malarz and Sienkiewicz had signatory authority on the entities' bank accounts, and each directed transactions from these accounts on a regular basis. Sienkiewicz was responsible for the day-to-day management of the projects, and Malarz was responsible for identifying properties suitable for purchase and development.

44. Malarz and Sienkiewicz gave the ten Invision investors, whose investments totaled \$2,440,000, an offering memo and agreement that were nearly identical to those given to Malarz Equity investors.

45. The eight Burton Grove investors, whose investments totaled \$3,830,000, were all given short-form promissory notes.

46. The one Buffalo Creek investor, who invested a total of \$1,000,000, executed a lengthy promissory note.

47. Finally, the two individuals who invested a total of \$400,000 through Willow Lake were each provided with a short-form, two-page note.

48. Regardless of the documentation that was provided, the representations made by Malarz and Sienkiewicz were essentially the same. Malarz and Sienkiewicz both made oral representations to investors that they would personally contribute 10% of the purchase price of the apartment complexes being acquired, and that investor funds, in conjunction with funds contributed by Malarz and Sienkiewicz, would be used to purchase and upgrade apartment complexes that would be converted to individual condominiums and sold at a profit.

49. Both Malarz and Sienkiewicz also told investors that they would not realize a return on their own investments until all other investors had been repaid. Investors were promised annual interest ranging from 12% to 50% for the term of the note, usually one or two years. Malarz and Sienkiewicz also both executed written personal guarantees “securing” the promissory notes and, in some cases, provided investors with signed financial statements purporting to describe their income, net worth, property ownership, and interests in other business ventures.

50. Malarz and Sienkiewicz also both told a number of investors that returns were “guaranteed,” and that no risk was involved because of the personal guarantees and because of the values of the properties being acquired in connection with the offerings.

51. Seven of the investors, who invested a total of \$4,110,000 through Burton Grove and Buffalo Creek, were also given mortgages on apartment complex properties that Malarz and Sienkiewicz purchased.

52. The financial statements that Malarz and Sienkiewicz provided to investors materially misstated the amounts of money that they had in their personal bank accounts. They also materially overstated the value of Malarz's interest in Malarz Equity, and the value of Malarz's and Sienkiewicz's interests in other entities owned or controlled by them.

53. Malarz and Sienkiewicz also made misrepresentations, or failed to disclose material facts, to the investors who were given mortgages about the existence and priority of other mortgages. Most of these investors were falsely told that their particular mortgage would have priority over all other debts, except for the mortgages that had previously been granted to banks in conjunction with the property's purchase. Malarz and Sienkiewicz failed to disclose that they had granted mortgages to other investors and, in some cases, to other banks, and that priority would depend upon the order in which the mortgages were recorded.

54. Further, at least two investors were told that their funds would be used as part of a down payment on a new apartment complex in Lombard, Illinois. However, Malarz and Sienkiewicz never purchased that property, but instead either transferred the funds to their personal bank accounts or used them to renovate two apartment complexes that they had previously purchased.

55. Most of the \$7,670,000 raised from the sale of the promissory notes issued by Invision, Burton Grove, Buffalo Creek, and Willow Lake was placed into one of five bank accounts. The investors' money was commingled with approximately \$7,844,293 of other funds, including proceeds from the condominium sales and funds raised from other sources (*e.g.*, commercial bank and short term loans). Malarz and Sienkiewicz contributed \$259,000 and \$407,712, respectively, from their personal bank accounts.

56. More than \$1,466,948 of the money in these accounts was used for the personal benefit of Malarz and Sienkiewicz, including \$500,519 that was transferred into Sienkiewicz's personal account, \$135,883 that was transferred into Malarz's personal account, \$240,000 that was used to pay off Malarz's personal loans, and \$590,546 that was used for other personal purposes, including for remodeling work done on Malarz's home, payments on an Audi leased by Sienkiewicz, and vacations to places like Punta Cana, Cabo San Lucas, Banff Springs, Sedona, Jackson Hole, and the Wisconsin Dells. Sienkiewicz and Malarz also used at least another \$2.6 million to make payments to previous investors.

57. By their conduct described above, Malarz and Sienkiewicz knowingly or recklessly made material misrepresentations and omitted to state material facts to the Invision, Burton Grove, Buffalo Creek, and Willow Lake investors regarding the safety and risks of the investments.

The Fraudulent Scheme Unravels

58. By early 2009, the fraudulent scheme was no longer sustainable. The entities and their related real estate development projects had almost no cash on hand and were in arrears on both mortgage payments to banks and interest due to investors.

59. Recognizing the impending collapse of the scheme, Malarz and Sienkiewicz stopped making payments on the bank mortgages on the underlying properties, and pocketed most of the payments being made by persons still renting apartment units at those properties. Malarz and Sienkiewicz also stopped making interest payments on the promissory notes.

60. In June 2009, the primary lenders appointed a receiver over the underlying properties and initiated foreclosure proceedings. Individual investors were left with the worthless personal guarantees of Malarz and Sienkiewicz.

COUNT I

**VIOLATIONS OF SECTIONS 5(a) AND (c) OF THE SECURITIES ACT
[15 U.S.C. §§ 77e(a) and (c)]
(Against Malarz, Sienkiewicz and Lin)**

61. Paragraphs 1-43, 45, and 48-60 are realleged and incorporated herein by reference.

62. By their conduct, Defendants directly or indirectly: (i) made use of means or instruments of transportation or communication in interstate commerce or of the mails to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement was in effect; (ii) for the purpose of sale or delivery after sale, carried or caused to be carried through the mails or in interstate commerce, by means or instruments of transportation, securities as to which no registration statement was in effect; and (iii) made use of means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy, through the use or medium of a prospectus or otherwise, securities as to which no registration statement had been filed.

63. By reason of the foregoing, Defendants violated Sections 5(a) and (c) of the Securities Act [15 U.S.C. § 77e(a) and (c)].

COUNT II

**VIOLATIONS OF SECTION 17(a)(2) OF THE SECURITIES ACT
[15 U.S.C. § 77q(a)(2)]
(Against Malarz, Sienkiewicz and Lin)**

64. Paragraphs 1 through 60 are realleged and incorporated herein by reference.

65. By their conduct, Defendants, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce and by the use of the mails, directly or indirectly, obtained money or property by means of untrue statements of

material fact or omitting to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

66. By reason of the foregoing, Defendants violated Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

COUNT III

**VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT
[15 U.S.C. § 78j(b)] AND RULE 10b-5(b) THEREUNDER
[17 C.F.R. § 240.10b-5]
(Against Malarz, Sienkiewicz, and Lin)**

67. Paragraphs 1 through 60 are realleged and incorporated herein by reference.

68. By their conduct, Defendants, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or by the use of the mails, directly or indirectly, made untrue statements of material fact 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.

69. Defendants acted with scienter.

70. By reason of the foregoing, Defendants violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 C.F.R. § 240.10b-5].

COUNT IV

**VIOLATIONS OF SECTION 15(a) OF THE EXCHANGE ACT
[15 U.S.C. § 78j(o)(a)]
(Against Lin)**

71. Paragraphs 1 through 60 are realleged and incorporated herein by reference.

72. Defendant Lin, by his conduct, directly or indirectly, made use of the mails or the means or instrumentalities of interstate commerce to effect transactions in, or to induce or

attempt to induce, the purchase or sale of securities, without registering with the Commission as a broker or dealer.

73. By reason of the foregoing, Lin violated Section 15(a) of the Exchange Act [15 U.S.C. § 78j(o)(a)].

COUNT V

UNJUST ENRICHMENT (Against Relief Defendant Gloria Lin)

74. Paragraphs 1 through 60 are realleged and incorporated herein by reference.

75. Relief Defendant Gloria Lin, directly or indirectly, received \$436,000 in undisclosed commission payments to Defendant Lin. These funds are the proceeds, or are traceable to the proceeds, of the unlawful activity alleged above.

76. Relief Defendant Gloria Lin has no legitimate claim to these funds.

77. Relief Defendant Gloria Lin has been unjustly enriched by her receipt of these funds.

78. The Commission is entitled to an order requiring Gloria Lin to disgorge, jointly and severally with Lin, the \$436,000 in undisclosed commission payments that she received or from which she benefited.

RELIEF REQUESTED

WHEREFORE, the SEC respectfully requests that this Court:

I.

Find that Defendants committed the violations alleged herein.

II.

Issue Orders of Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining Defendants Malarz, Sienkiewicz, and Lin,

their agents, servants, employees, attorneys, and all persons in active concert or participation with them, from violating Sections 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)] and 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 restraining and enjoining Defendant Lin, his agents, servants, employees, attorneys, and all persons in active concert or participation with him, from violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

III.

Order disgorgement, plus prejudgment interest, of Defendants' ill-gotten gains, derived directly or indirectly from the misconduct alleged, together with prejudgment interest thereon. Defendant Malarz should be ordered to disgorge the \$6,710,000 that was raised from the Malarz Equity investors, less any amounts repaid to the investors by Malarz Equity. In addition, Defendant Malarz and Defendant Sienkiewicz should be ordered to disgorge, jointly and severally, the \$7,670,000 that they raised from Invision, Burton Grove, Buffalo Creek, and Willow Lake investors, less any amounts repaid to the investors by these entities. Defendant Lin, and Relief Defendant Gloria Lin, jointly and severally with Defendant Lin, should be ordered to disgorge the \$436,000 that was paid as commissions for Defendant Lin's efforts soliciting the sale of Malarz Equity promissory notes, plus prejudgment interest thereon.

IV.

Order Defendants Malarz, Sienkiewicz, and Lin to pay the SEC civil 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.

Retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Grant such other and further relief as the Court deems just and appropriate.

Dated: December 12, 2011

Respectfully submitted,

s/ Steven C. Seeger

Kathryn A. Pyszka (pyszkak@sec.gov)

Steven C. Seeger (seegers@sec.gov)

Attorneys for Plaintiff

U.S. SECURITIES AND EXCHANGE
COMMISSION

175 West Jackson Boulevard, Suite 900

Chicago, Illinois 60604

Telephone: (312) 353-7416 (Pyszka)

Telephone: (312) 886-2247 (Seeger)

Facsimile: (312) 353-7398