

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS  
TOPEKA DIVISION

FILED  
U.S. DISTRICT COURT  
DISTRICT OF KANSAS

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RALPH L. DELBACH  
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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

KINGS REAL ESTATE INVESTMENT TRUST,  
RELIANCE ENTERPRISES, L.L.C.,  
MONTE R. SWANZY,  
STEPHEN P. SWANZY,  
DAVID L. KNUDSON,  
VAN E. BRIGHTON, Individually, and  
d/b/a BRIGHTON FUNDING GROUP,

Defendants,

and

BRIGHTON ENTERPRISES, INC.,  
ROMERIAN TRUST and  
PATRICIA SWANZY,

Relief Defendants.

Civil Action No. 04-4006-RDE

**COMPLAINT**

Plaintiff Securities and Exchange Commission alleges:

**SUMMARY**

1. From at least February 2003, the Defendants have been fraudulently offering and selling Kings REIT securities, referred to as "units of beneficial interest." To date, the Defendants have defrauded investors of at least \$1.9 million.

2. Defendants describe Kings REIT to investors as a real estate investment trust with assets of \$100 million, that pools investor funds to finance real estate ventures.

3. In offering and selling the Kings REIT securities, Defendants directly and indirectly, make misrepresentations and omissions of material facts concerning the nature of the investment, projected returns and the use of investor funds.

4. Most significantly, Defendants fail to advise investors of their plan to systematically loot Kings REIT by diverting substantially all investor funds to themselves for their own personal benefit.

5. After raising \$1.9 million, Kings REIT now has approximately \$150,000 cash, no real estate holdings, no apparent assets, and no legitimate business activity.

6. By engaging in the conduct described in this Complaint, Defendants directly or indirectly, singly or in concert, have engaged, and unless enjoined and restrained, will again engage in transactions acts, practices, and courses of business that constitute violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), (c), & 77q(a)] and Section 10(b) of the Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. Additionally, Defendants Knudson and Brighton have violated Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)].

7. In order to protect the public interest, the Commission seeks to stop this fraudulent offering scheme and to preserve assets pending the final disposition of this litigation. The Commission therefore requests that the Court issue the following orders: 1) a temporary restraining order and preliminary and permanent injunctions against future violations by Defendants, 2) an immediate freeze of the assets of Defendants and Relief Defendants, 3) an order requiring an accounting from Defendants and Relief Defendants, 4) an order prohibiting Defendants and Relief Defendants from destroying records, 5) an order permitting expedited discovery; 6) an order appointing a receiver, 7) an order for the repatriation of funds, and 8) an order providing such other equitable relief that may be deemed appropriate.

#### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action 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. § 78(aa)]. Defendants, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, practices and courses of business described in this Complaint.

9. Venue is proper because many of the transactions, acts, practices and courses of business described below occurred within the District of Kansas.

#### **DEFENDANTS**

10. **Kings Real Estate Investment Trust ("Kings REIT")** is described in various offering materials and public records as a trust formed in 2002 and "owned" by M. Swanzy, trustee. Its principle business address is claimed to be

the Dallas, Texas, home of M. Swanzy, S. Swanzy, and P. Swanzy. Neither Kings REIT nor its securities are registered with the Commission.

11. **Monte R. Swanzy ("M. Swanzy")**, age 52, operates Kings REIT from his Dallas, Texas residence and has signatory authority on at least two Kings REIT bank accounts. M. Swanzy, and entities he controls, received at least \$1 million of the \$1.9 million raised by Kings REIT.

12. **Stephen P. Swanzy ("S. Swanzy")**, age 25, is believed to be M. Swanzy's son. A trustee of Kings REIT, he is also a signatory on at least two Kings REIT bank accounts.

13. **David L. Knudson ("Knudson")**, age 45, of Lees Summit, Missouri operates a Kings REIT branch office in Lees Summit and has sold Kings REIT securities. He also serves as the managing member of Defendant Reliance Enterprises.

14. **Reliance Enterprises, L.L.C. ("Reliance")**, is a Missouri corporation controlled by Knudson that has received approximately \$232,500 in investor funds from Kings REIT. Reliance later transferred these funds to Knudson, Brighton and others.

15. **Van E. Brighton (d/b/a Brighton Funding Group) ("Brighton")**, age 55, of Manhattan, Kansas, is a salesman of Kings REIT investments.

#### **RELIEF DEFENDANTS**

16. **Brighton Enterprises** is a Kansas Corporation. Brighton Enterprises received over \$20,000 from investor funds.

17. **Romerian Trust ("Romerian")** is a Netherlands, Antilles, trust

formed on December 10, 2003. M. Swanzy and P. Swanzy are its trustees. Romerian currently holds approximately \$1 million in cash and securities in a Dallas, Texas, brokerage account.

18. **Patricia Swanzy ("P. Swanzy")** is the wife of M. Swanzy. In addition to being a trustee for Romerian and a signatory on the Romerian brokerage account, P. Swanzy is signatory on at least two Kings REIT bank accounts.

### **STATEMENT OF FACTS**

#### ***The Offering Documents***

19. Brighton is the primary sales agent for Kings REIT. Operating from his home, Brighton meets with prospective investors in person and provides offering documents to them that are replete with false and misleading claims.

20. The crux of Brighton's sales pitch is encompassed in three documents: a one-page flyer titled "Frequently Asked Questions," a one-page term sheet that lists expected returns, and a two-page unaudited "Balance Sheet."

21. The Frequently Asked Questions flyer claims that a Kings REIT investment is "very safe," that "[t]his level of safety allows for [individual retirement account] rollovers," and that Kings REIT has assets valued in excess of \$100 million.

22. The term sheet describes two investment programs, the "secured transaction" program and the "working capital" program with rates of return of 4% to 7.5 % per-month (48% to 90% per-year) for different levels of investment, ranging from \$5,000 to \$100,000.

23. The term sheet claims that after raising a total of \$1 million of pooled investor funds, the funds are not at risk and are frozen in the Kings REIT account for a period of one year.

24. The unaudited Balance Sheet is printed on the purported letterhead of a certified public accountant and shows assets of \$100 million in Fannie Mae securities owned by a joint venture of Kings REIT and Axiom Commercial Real Estate Investment Trust ("Axiom").

25. In an apparent attempt to keep the scheme from the scrutiny of law enforcement, Brighton requires each investor to sign a "Non-Disclosure / Non-Circumvent / Non-Compete Agreement" restricting investors from disclosing details about the program, except to refer new investors to the sales agent. The agreement provides that Kings REIT will sue those who violate the agreement.

26. Incredibly, the non-disclosure agreement provides that those violating the agreement will "pay an assessment to the **Social Security Administration**, an agency of the United States Government, of \$2,000,000.00 Two Million Dollars (USD) as a contribution to the American Public [and] that the United States Treasury Department will be petitioned to collect this assessment." (Emphasis Added).

27. Investors are also provided a Private Placement Memorandum ("PPM"). The PPM, comprised of approximately twenty-six pages of small type contains certain cautionary language and risk disclosure.

28. The PPM does not, in any meaningful way, correct or explain claims in the other offering materials. In fact, many of the PPM's claims are inconsistent

with the other offering materials and, regarding use of proceeds and management compensation, inconsistent with the Defendants' actions.

29. The PPM also describes reasonable salary and management fees to be paid to the trustees for administrative services that, as described below, are completely inconsistent with the blatant misappropriation of investor funds by M. Swanzy and others.

***Misrepresentations and Omissions***

30. The Defendants, in furtherance of their scheme to defraud have made numerous misrepresentations and omissions of material fact including but not limited to the following:

- A. The Defendants falsely represent that Kings REIT had assets of \$100 million.
- B. The Defendants falsely represent that King's REIT would pool investor funds for real estate investments.
- C. The Defendants falsely represent that an investment in Kings REIT was "very safe" and their funds were not at risk.
- D. The Defendants falsely represent that investors could expect to receive the extraordinary returns set forth in the Defendants' offering materials.
- E. The Defendants falsely represent that investor funds would be safely held in an escrow account.
- F. The Defendants omitted to disclose to investors that their funds would not be used for real estate investment as represented.
- G. The Defendants omitted to disclose that investor funds would be misappropriated and used for personal matters.

***Misappropriation of Investor Funds***

31. Investors are provided wire transfer coordinates and instructed to wire investment funds directly to a Kings REIT bank account in Dallas, Texas. M. Swanzy and S. Swanzy are signatories on the account.

32. Once in control of investor funds, the Swanzy's direct a series of transfers. First, in what are apparently commission payments that totaled approximately 20% of the first \$1 million raised, investor funds are sent to an account styled as Reliance Enterprises in, Lees Summit, Missouri.

33. Reliance, controlled by Knudson, then makes payments to Knudson, Brighton and others.

34. Also using investor funds, the Swanzy's direct payments to entities they control and apparently pay living expenses with debit card withdrawals from the Kings REIT account.

35. Since March 2003, with M. Swanzy controlling the purse strings, Kings REIT disbursed approximately \$1.8 million of the \$1.9 million investor funds that were raised.

36. Approximately \$1.6 million was misappropriated by the Swanzys, including a \$1,000,000 transfer to Relief Defendant Romerian, controlled by the Swanzys.

***Relief Defendants***

37. The Relief Defendants have received money traceable to Kings REIT investor funds for no apparent consideration—a fact not disclosed in any of the offering documents.



38. P. Swanzy is a signatory on the Romarian account, as well as at least two other Kings REIT bank accounts.

**CLAIMS**

**FIRST CLAIM**

**Violations of Section 17(a) of the Securities Act**  
(As To All Defendants)

39. Plaintiff Commission repeats and incorporates paragraphs 1 through 38 of this Complaint by reference as if set forth *verbatim*.

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

41. As part of and in furtherance of this scheme, Defendants directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material fact and which 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, including, but not limited to, those statements and omissions set forth in paragraphs 1 through 38 above.

42. Defendants made the above-referenced misrepresentations and omissions knowingly or with recklessness regarding the truth. Defendants were also negligent in their actions regarding the representations and omissions alleged herein.

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

**SECOND CLAIM**  
**Violations of Section 10(b) of the Exchange Act and Rule 10b-5**  
(As To All Defendants)

44. Plaintiff Commission repeats and incorporates paragraphs 1 through 38 of this Complaint by reference as if set forth *verbatim*.

45. Defendants, directly or indirectly, singly or in concert with others, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (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 operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

46. As a part of and in furtherance of his scheme, Defendants, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral

presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which 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, including, but not limited to, those set forth in paragraphs 1 through 38 above.

47. Defendants made the above-referenced misrepresentations and omissions knowingly or with recklessness regarding the truth.

48. By reason of the foregoing, Defendants have violated and, unless enjoined, will continue to violate the provisions 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].

**THIRD CLAIM**  
**Violations of Section 15(a) of the Exchange Act**  
(As To Defendants Knudson and Brighton)

49. Plaintiff Commission repeats and incorporates paragraphs 1 through 38 of this Complaint by reference as if set forth *verbatim*.

50. At the times alleged in this Complaint, Defendants Knudson and Brighton were in the business of effecting transactions in securities for the accounts of others.

51. Knudson and Brighton made use of the means and instrumentalities of interstate commerce to effect transactions in and to induce or attempt to induce the purchase of securities.

52. At the times alleged in this Complaint, Defendants Knudson and Brighton were not registered with the Commission as a broker or dealer, as required by Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

53. By reason of the foregoing, Defendants Knudson and Brighton violated and, unless enjoined, will continue to violate Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)].

**FOURTH CLAIM**  
**Violations of Sections 5(a) and 5(c) of the Securities Act**  
(As To All Defendants)

54. Plaintiff Commission repeats and incorporates paragraphs 1 through 38 of this Complaint by reference as if set forth *verbatim*.

55. Defendants, directly or indirectly, singly or in concert with others, have been offering to sell, selling and delivering after sale, certain securities, and has been, directly and indirectly: (a) making use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, through the use of written contracts, offering documents and otherwise; (b) carrying and causing to be carried through the mails and in interstate commerce by the means and instruments of transportation, such securities for the purpose of sale and for delivery after sale; and (c) making use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

56. As described in paragraphs 1 through 38, Defendants' securities were offered and sold to the public through a general solicitation of investors. No registration statements were ever filed with the Commission or otherwise in effect with respect to these transactions.

57. By reason of the foregoing, Defendants violated and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

#### **FIFTH CLAIM**

##### **Claim against Relief Defendants as Custodian of Investor Funds**

58. Plaintiff Commission repeats and incorporates paragraphs 1 through 38 of this Complaint by reference as if set forth *verbatim*.

59. Relief Defendants received funds and property from one or more of the Defendants, which are the proceeds, or are traceable to the proceeds, of the unlawful activities of Defendants, as alleged in paragraphs 1 through 38, above.

60. Relief Defendants obtained the funds and property alleged above as part of and in furtherance of the securities violations alleged in paragraphs 1 through 38 and under circumstances in which it is not just, equitable or conscionable for them to retain the funds and property. As a consequence, Relief Defendants have been unjustly enriched.

#### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiff Securities and Exchange Commission respectfully requests that this Court:

##### I.

Temporarily restrain and preliminarily and permanently enjoin all Defendants from violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Additionally, temporarily restrain and preliminarily and permanently enjoin Defendants Knudson and Brighton from violations of Section 15(a) of the Exchange Act.

II.

Enter an Order instanter freezing the assets of Defendants and Relief Defendants, and directing that all financial or depository institutions comply with the Court's Order.

III.

Enter an Order instanter that all Defendants and Relief Defendants shall file with the Court and serve upon Plaintiff Commission, no later than 72 hours from entry of this Order, or three days prior to a preliminary hearing in this matter, whichever is sooner, an accounting, under oath, detailing all of their assets and all funds or other assets received from investors and from one another.

IV.

Enter an Order that all Defendants and Relief Defendants be restrained and enjoined from destroying, removing, mutilating, altering, concealing or disposing of, in any manner, any of their books and records or documents relating to the matters set forth in the Complaint, or the books and records and such documents of any entities under their control, until further order of the Court.

V.

Enter an Order that the parties may commence discovery immediately, and that notice periods be shortened to permit the parties to require production of documents, or the deposition of any entity or person, on 72 hours notice.

VI.

Enter an Order requiring all Defendants and the Relief Defendant to disgorge an amount equal to the funds and benefits they obtained illegally or inequitably as a result of the violations alleged herein, plus prejudgment interest on that amount.

VII.

Enter an Order imposing civil penalties against all Defendants 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)], for the violations alleged herein.

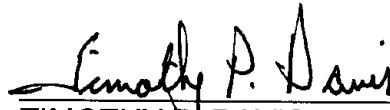
VIII.

Enter an Order for such further relief as this Court may deem just and proper.

For the Commission, by its attorneys:

DATED: January 22, 2004.

Respectfully submitted,



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