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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 SECURITIES AND EXCHANGE COMMISSION

Case No.

15 Plaintiff,

COMPLAINT

16 vs.

17 BRUCE K. BAUMANN,

18 Defendant.

19 Plaintiff Securities and Exchange Commission ("Commission"),
20 for its Complaint against Defendant Bruce K. Baumann ("Baumann")
21 alleges as follows:

22 JURISDICTION

23 1. This Court has jurisdiction over this action pursuant to
24 Sections 20(d)(1) and 22(a) of the Securities Act of 1933, as
25 amended ("Securities Act") [15 U.S.C. §§ 77u(d)(1) & 77v(a)] and
26 Sections 21(d)(3)(A), 21(e), and 27 of the Securities Exchange Act
27 of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d)(3)(a), 78u(e), &
28 78aa].

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ENTERED ON 10/18/98 COMPLAINT

2. The Defendant, directly or indirectly, made use of the mails, means or instruments of transportation or communications in interstate commerce in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

SUMMARY OF THE ACTION

6 3. This matter involves a fraudulent scheme perpetrated by
7 Affordable Prepaid Cellular, Inc. ("APC") and Baumann, one of its
8 sales agents. From approximately December 1996 through May 1997,
9 Baumann fraudulently offered and sold investments in APC, a company
10 that was purportedly to sell cellular telephone airtime to "credit
11 challenged" individuals. In total, APC raised \$1,350,000 from 140
12 investors nationwide. Baumann offered units in APC, in the form of
13 corporate notes, to at least 38 investors in several states, raising
14 approximately \$460,000. In offering the securities, Baumann:

- a. misrepresented that no commissions would be paid from investor monies, when in fact he was being paid commissions;
- b. grossly misrepresented the investment risk; and
- c. misrepresented the identity and background of APC's founder.

4. As a result of his conduct, Defendant Baumann violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and Sections 10(b) and 15(a)(1) of the Exchange Act [15 U.S.C. §§ 78j(b) & 78o(a)(1)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

THE DEFENDANT

5. Bruce K. Baumann, age 48, resides in San Clemente, California. Baumann offered and sold the APC investment from

1 December 1996 to May 1997. Baumann represented to potential
2 investors that he was APC's "Vice President of Marketing."

3 FACTUAL ALLEGATIONS

4 Background

5 6. Affordable Prepaid Cellular, Inc. ("APC") was incorporated
6 by John C. Rockett ("Rockett") in the State of Washington on
7 November 19, 1996. Rockett, a recidivist securities violator, owned
8 and controlled APC. APC's offering materials and sales agents,
9 included Baumann, represented that APC was located at 1516 Second
10 Avenue, Suite 300, Seattle, Washington. In fact, APC was located in
11 Lake Forest, California. APC's assets were frozen, and documents
12 seized, in connection with the action Securities and Exchange
13 Commission v. Affordable Prepaid Cellular, Inc. and John C. Rockett,
14 CV 97-3750 RAP (JGx), filed May 20, 1997.

15 Nature of the Offering

16 7. From about December 1996 through May 1997, Baumann offered
17 and sold to the public APC securities in the form of investment
18 contracts and corporate notes to the public (the "APC Securities.")

19 8. APC, Baumann, and others promised that for a minimum
20 \$5,000 investment in the APC Securities, an investor would receive a
21 guaranteed 16 3/4% annual return, paid on a quarterly basis, and 1%
22 of half of the annual profits of APC, for a one-year term.

23 9. APC's offering materials represented that the purpose of
24 the investment was to raise capital for the operations of a pre-paid
25 cellular telephone business. Investors' monies were to be
26 collectively used to purchase cellular airtime to resell to "credit
27 challenged" customers.

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1 10. APC had sole responsibility for managing APC's business.
2 APC's offering materials and agreement provided no mechanism for
3 investors to participate in APC's business operations. APC's
4 investment agreement stated that APC has the knowledge and expertise
5 in prepaid cellular and related products, and that an investor
6 merely wished "to provide funds to APC." APC's sales agents also
7 represented that APC had already acquired the "revolutionary"
8 technology which would be the basis of APC's business operations.

9 The Sales Effort

10 11. Baumann and other APC sales agents solicited potential
11 investors to invest in APC by using "lead cards" to "cold call"
12 investors; that is, they used purchased information to telephone
13 potential investors without having first been contacted by those
14 investors. Baumann and others at APC then delivered by mail APC's
15 offering materials to interested potential investors.

16 12. Between December 1996 and May 1997, Baumann solicited at
17 least 38 investors who purchased approximately \$460,000 of the APC
18 Securities.

19 13. When soliciting investments from the persons discussed in
20 Paragraph 12, Baumann represented that no commissions would be paid
21 from monies invested with APC. Baumann also mailed to those persons
22 offering brochures that stated that there would be "No Brokers, No
23 Commission, No Fees" paid in connection with an APC investment. In
24 fact, Baumann received commissions of at least \$12,000 based on his
25 sale of the APC securities.

26 14. When soliciting investments from the persons discussed in
27 Paragraph 12, Baumann represented that the founder of APC was "John
28 Thomas Sutton," and that Sutton was "highly respected in the

1 telecommunications industry." In fact, however, Baumann knew that
2 "Sutton" was an alias being used by Rockett. Baumann further knew
3 that Rockett was not highly respected in the telecommunications
4 industry.

5 15. When soliciting investments from the persons discussed in
6 Paragraph 12, Baumann represented that the notes investors received
7 were "registered" and "secured." In fact, the notes were not
8 registered or secured.

9 16. When soliciting investments from the persons discussed in
10 Paragraph 12, Baumann represented to investors that the APC
11 investment was risk-free and that investors were "guaranteed" to
12 receive 16 3/4% interest plus their investment back at the end of
13 one year. Baumann told one investor that the risk associated with
14 the APC investment was "the same as the sun sets in the West and
15 rises in the East." However, Baumann knew in fact that the
16 investment was highly risky, given that: (1) no business operations
17 had begun, and therefore there was no basis to guarantee a return;
18 (2) investor monies were being misused, thus causing substantial
19 doubt as to the legitimacy of the investment; and (3) the business
20 background and identity of APC's "founder" were misrepresented to
21 investors, thus causing substantial doubt as to the future success
22 of the business. These facts demonstrate a high degree of risk
23 involved with the APC investment.

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1 FIRST CAUSE OF ACTION

2 FRAUD IN THE OFFER AND SALE OF SECURITIES

3 Section 17(a) of the Securities Act

4 [15 U.S.C. § 77q(a)]

5 17. Paragraphs 2-16 are realleged and incorporated herein by
6 reference.

7 18. Defendant Baumann, by engaging in the conduct described in
8 Paragraphs 2-16 above, in the offer and sale of securities, by the
9 use of means or instruments of transportation or communication in
10 interstate commerce, or by use of the mails, directly or indirectly:
11 (1) with scienter, employed devices, schemes, or artifices to
12 defraud; (2) obtained money or property by means of untrue
13 statements of material fact or omissions to state material fact
14 necessary in order to make the statements made, in light of the
15 circumstances under which they were made, not misleading; or (3)
16 engaged in transactions, practices, or courses of business which
17 operates or would operate as a fraud or deceit upon the purchaser,
18 in violation of Section 17(a) of the Securities Act.

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

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SECOND CAUSE OF ACTION
FRAUD IN CONNECTION WITH THE
PURCHASE OR SALE OF SECURITIES
Section 10(b) of the Exchange Act
[15 U.S.C. § 78j(b)] and Rule 10b-5
promulgated thereunder [17 C.F.R. § 240.10b-5]

20. Paragraphs 2-16 are realleged and incorporated herein by reference.

21. Defendant Baumann, by engaging in the conduct described in Paragraphs 2-16 above, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or of the mails, with scienter: (1) employed devices, schemes or artifices to defraud; (2) 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; or (3) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon the purchaser of such securities, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5].

22. By reason of the foregoing, Baumann violated, and unless restrained and enjoined will continue to violate, and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5].

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1 THIRD CAUSE OF ACTION

2 FAILURE TO REGISTER AS A BROKER-DEALER

3 Violations of Section 15(a)(1) of the Exchange Act

4 [15 U.S.C. § 78o(a)(1)]

5 23. Paragraphs 2-16 are realleged and incorporated herein by
6 reference.

7 24. Defendant Baumann, by engaging in the conduct described in
8 Paragraphs 2-15 above, directly or indirectly, made use of the mails
9 or means or instrumentalities of interstate commerce to effect
10 transactions in securities, or to induce or attempt to induce the
11 purchase or sale of securities, without being registered as brokers
12 or dealers in accordance with Section 15(b) of the Exchange Act [15
13 U.S.C. § 78o(b)], in violation of Section 15(a)(1) of the Exchange
14 Act [15 U.S.C. § 78o(a)(1)].

15 25. Baumann was not registered with the Commission as a broker
16 or dealer or associated with a registered broker or dealer during
17 the relevant time period.

18 26. By reason of the foregoing, Defendant Baumann violated,
19 and unless restrained and enjoined will continue to violate, Section
20 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)].

21 PRAYER FOR RELIEF

22 WHEREFORE, the Commission respectfully requests that this
23 Court:

24 I.

25 Issue findings of fact and conclusions of law that the
26 Defendant committed the violations charged and alleged herein.

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1 II.

2 Issue in a form consistent with Rule 65(d) of the Federal Rules
3 of Civil Procedure, an order permanently enjoining Defendant Baumann
4 from violating Section 17(a) of the Securities Act [15 U.S.C. §
5 77q(a)] and Sections 10(b) and 15(a)(1) of the Exchange Act [15
6 U.S.C. §§ 78j(b) & 78o(a)(1)] and Rule 10b-5 thereunder [17 C.F.R.
7 § 240.10b-5].

8 III.

9 Grant such other and further relief as this Court may determine
10 to be just, equitable and necessary, including, but not limited to,
11 disgorgement with prejudgment interest.

12 IV.

13 Order Defendant Baumann to pay civil penalties pursuant to
14 Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section
15 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].


16 V.

17 Retain jurisdiction of this action in accordance with the
18 principles of equity and the Federal Rules of Civil Procedure in
19 order to implement and carry out the terms of all orders and decrees
20 that may be entered, or to entertain any suitable application or
21 motion for additional relief within the jurisdiction of this Court.

22 VI.

23 Grant such further relief as this Court may determine to be
24 just and necessary.

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26 Dated: May 21, 1998

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28 Kathleen K. Bisaccia
Attorney for Plaintiff
Securities and Exchange
Commission