

UNITED STATES DISTRICT COURT
For the
SOUTHERN DISTRICT OF MISSISSIPPI

SECURITIES AND EXCHANGE COMMISSION,

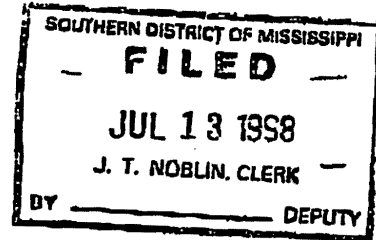
Plaintiff,

v.

DERRYL W. PEDEN,

Defendant.

CIVIL ACTION NO. 3:98cv483WS



COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

It appears to Plaintiff, Securities and Exchange Commission ("Commission"), and it alleges that:

OVERVIEW

1. This case involves a Mississippi attorney, Derryl W. Peden ("Peden"), who caused 39 counties, cities and towns ("municipalities") in Mississippi to misrepresent the intended use of proceeds from public offerings of urban renewal revenue notes ("notes"). Peden solicited the municipalities to issue the notes, and prepared the official statements used as disclosure documents in connection with the offerings. Peden's conduct took place in connection with 74 offerings of notes which occurred between 1987 and 1996 and raised \$287,300,000.

The urban renewal revenue notes were all sold through the same underwriter based on unqualified tax opinions from Peden which concluded that the interest paid to the note holders by the issuer

would not be included in the gross income of the note holders for federal income tax purposes. The notes were issued in reliance on an exception to the anti-arbitrage provisions of the Internal Revenue Code("IRC"), which permits municipalities to issue securities and invest the proceeds at a higher interest rate than the yield on the notes ("arbitrage"), provided, among other things, that the municipalities reasonably expect to use the proceeds for qualifying municipal projects within a three year period.

The Official Statements and other documents executed in connection with the offerings falsely represented that the municipalities intended to use the proceeds on specific municipal projects within the three year period. In fact, the municipalities' intent was to receive a small premium, generally about \$20,000-\$50,000, while the remainder of the proceeds, after costs of issuance, was to be invested in a guaranteed investment contract ("GIC") or certificate of deposit ("CD"), at a materially higher yield than that paid on the notes, thus exposing the bonds to risk of revocation of their tax exempt status by the Internal Revenue Service ("IRS"). The risk to the tax exempt status of the notes was not disclosed to prospective investors. Peden knew or was reckless in not knowing that the municipalities did not intend to spend the proceeds as represented in the official statements, thus exposing the notes to risk of revocation of their tax exempt status by the IRS.

On December 2, 1994 the Commission issued an order directing Peden to cease and desist from violating 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]. That order found that Peden had violated Section 10(b) and Rule 10b-5 by failing to disclose a substantial risk to the tax exempt status of seven issuances of municipal bonds unrelated to those in this case. Seventeen of the fraudulent note offerings in this case occurred after the entry of the cease-and-desist order against Peden.

VIOLATIONS

2. Defendant Peden, directly and indirectly, has engaged, and unless enjoined will engage, in transactions, acts, practices and courses of business that have constituted and will constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] promulgated thereunder, and has violated, and unless ordered to comply will violate, the terms of a cease-and-desist order entered against him by the Commission on December 2, 1994.

3. Pursuant to authority granted by Sections 10(b) and 23(a) of the Exchange Act [15 U.S.C. 78j(b) and 78w(a)], the Commission has promulgated Rule 10b-5 [17 C.F.R. 240.10b-5], which rule was in effect at all times relevant herein and is now in effect.

JURISDICTION AND VENUE

4. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. 77t(b) and 77t(d)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. 78u(d) and 78u(e)] to enjoin the defendant from engaging in the transactions, acts, practices and courses of business alleged in this complaint, and transactions, acts, practices and courses of business of similar purport and object, for disgorgement of illegally obtained funds and other equitable relief, for civil money penalties, and for an order directing that Peden comply with the terms of the cease-and-desist order entered against him by the Commission on December 2, 1994.

5. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. 77t(b), 77t(d) and 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. 78u(d), 78u(e) and 78aa].

6. The defendant, directly and indirectly, made use of the mails, the means and instruments of transportation and communication in interstate commerce, and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices and courses of business alleged in this complaint.

7. Certain of the transactions, acts, practices and courses of business constituting violations of the Securities Act and the

Exchange Act occurred in the Southern District of Mississippi. The defendant resides and conducts business in the Southern District of Mississippi.

8. The defendant, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices and courses of business alleged in this complaint, and in transactions, acts, practices and courses of business of similar purport and object.

DEFENDANT

9. Derryl W. Peden, 46, resides in Jackson, Mississippi and has been a licensed attorney since 1974. Peden is a partner in the law firm of Stennet, Wilkinson & Peden. He served as bond counsel on all of the urban renewal revenue note financings. On December 2, 1994, the Commission entered an Order Making Findings And Imposing A Cease-And-Desist Order against Peden. In the Matter of Derryl W. Peden, Admin. Proc. File No. 3-8400. Peden was ordered to permanently cease and desist from committing or causing any violation or future violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, based on conduct separate from that alleged in this case.

THE URBAN RENEWAL REVENUE NOTE OFFERINGS

10. Between November 1987 and May 1996, Peden served as bond counsel on 74 separate urban renewal revenue note issues in amounts ranging from \$2 million to \$5 million.

11. The urban renewal note offerings described above include the following:

<u>Date</u>	<u>Issuer</u>	<u>Date</u>	<u>Issuer</u>
11/24/87	Jefferson County	12/10/87	Panola County
3/8/88	Greene County	6/13/88	Hancock County
10/6/88	Coahoma County	7/14/88	Simpson County
10/20/88	Wayne County	11/3/88	Pearl River County
12/22/88	Smith County	3/13/89	City of Picayune
4/6/89	Jefferson Davis County	6/15/89	Leake County
4/13/89	City of Clarksdale	4/18/90	Stone County
7/31/90	Quitman County	8/2/90	Clarke County
12/27/90	City of Magee	2/13/91	Jefferson County
2/27/91	City of Carthage	2/27/91	Leake County
3/7/91	Panola County	3/28/91	Greene County
5/16/91	City of Mendenhall	7/2/91	Coahoma County
11/18/91	Town of Bay Springs	12/18/91	Town of Marks
1/23/92	Town of Raleigh - A	4/1/92	Town of Raleigh - B
8/3/92	Town of Crenshaw	8/27/92	City of Carthage
8/27/92	Leake County	9/7/92	Panola County
9/28/92	Greene County	10/12/92	Stone County
11/16/92	City of Mendenhall	12/15/92	Town of Leakesville
12/27/92	City of Magee	12/30/92	Jefferson Davis County
2/1/93	Quitman County	2/14/93	Jefferson County
3/1/93	Coahoma County	6/18/93	Town of Marks
9/23/93	Town of Raleigh - A	10/1/93	Town of Raleigh - B
12/7/93	City of Magee	12/8/93	Panola County
12/8/93	Stone County	2/1/94	Leake County
2/15/94	Jefferson County	3/1/94	City of Carthage
3/1/94	Quitman County	4/1/94	Greene County
6/25/94	City of Mendenhall	8/10/94	City of Winona
8/24/94	Montgomery County	9/1/94	Town of Marks
11/1/94	City of Purvis	12/5/94	Town of Raleigh
12/29/94	Town of Leakesville	12/29/94	Town of Crenshaw

3/7/95	Town of Como	3/7/95	Town of Coldwater
4/24/95	Town of Lambert	5/11/95	City of Sardis
6/27/95	Town of Friars Point	7/6/95	Town of Coffeeville
7/20/95	Town of Tchula	9/21/95	Town of Edwards
9/28/95	Town of Jonestown	11/8/95	City of Moorhead
11/30/95	City of Itta Bena	12/28/95	City of Shaw
2/15/96	Town of Leakesville	4/15/96	Stone County

12. The municipalities were solicited to issue the notes by Peden and/or representatives of the underwriter. Following the initial contact, Peden and/or a representative of the underwriter met with the municipality's governing body and described the proposed arrangement.

13. Peden and the underwriter generally induced the municipalities to participate by describing the deal as a mechanism by which the municipality could receive a modest amount of funds, generally \$20,000-\$50,000, as a "premium" in exchange for serving as the issuer, with no pay-back obligation.

14. Peden prepared and provided the municipalities with all the necessary documents, including, among other documents, the necessary resolutions and the official statements which served as the disclosure documents with regard to each offering. For each offering, Peden also prepared, and the municipality executed, a "Certificate Under Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, As Amended" ("Arbitrage Certificate").

15. After each issue of notes was sold, the bulk of the offering proceeds was used to purchase a GIC or a CD with a three

year term and a sufficient rate of interest to pay periodic interest and to redeem the notes at the end of a three year period.

16. The remaining proceeds after purchase of the GIC or CD were used to pay issuance costs, including Peden's fee, and to pay the premium to the issuer, generally between \$20,000 and \$50,000.

17. Each issuance of notes was nominally issued with a 23 year maturity. However, the notes were subject to a mandatory tender after three years, unless the municipality exercised its right to repurchase and remarket the notes as general obligation or revenue securities.

18. The GICs and CDs were by their terms unbreakable within the three year period. Accordingly, before the municipality could utilize any of the underlying proceeds on municipal projects, the municipality would have to repurchase the notes from the investors and remarket them as general obligation or revenue securities.

19. The official statements represented that the underwriter and each municipality had agreed that the underwriter would be the "remarketing agent" for any such attempt.

20. The official statements, the arbitrage certificates, and other documents with regard to each offering represented that the municipalities intended to spend the full amount of the offering proceeds within three years from the offering, on various municipal projects, such as roads, parks, a courthouse, and other projects.

21. The official statements also represented that the municipalities had sufficient debt capacity and an adequate tax base to be able to remarket the notes as general obligations of the municipality.

22. The arbitrage certificates also represented that the municipalities intended to spend two and one-half percent of the offering proceeds on the municipal projects within six months of the offering.

23. None of the issuers involved in any of the 74 offerings since 1987 ever spent or allocated any proceeds, other than the premium, on the urban renewal projects.

24. None of the issuers involved in any of the 74 offerings intended or had a reasonable expectation at the time of the offering that it would allocate or spend any of the note proceeds, other than the premium, on municipal projects within three years from the offering. The representations concerning the intended use of note proceeds which were made in the official statements and other places, including the arbitrage certificates, were false.

25. Many of the municipalities did not have sufficient debt capacity and an adequate tax base to be able to remarket the notes as general obligations.

26. The official statements, arbitrage certificates, construction schedule financing certificates, trust indenture agreements and other documents executed in connection with each

offering, were signed by the chief executive of the municipality issuing the notes.

UNDISCLOSED RISK TO THE NOTES' TAX EXEMPT STATUS

27. Each offering of notes was sold based on an unqualified opinion from Peden stating that, assuming that the issuer lived up to its covenants, interest on the notes would be exempt from the federal income tax.

28. The GIC or CD purchased in connection with each issuance of notes provided a higher yield than the notes.

29. IRC Section 103(b) provides that gross income includes interest on any local bond which is an "arbitrage bond" as that term is defined by IRC Section 148. IRC Section 148 defines an arbitrage bond as "any bond issued as part of an issue any portion of the proceeds of which are reasonably expected (at the time of issuance of the bond) to be used directly or indirectly to acquire higher yielding investments."

30. Peden's tax opinion was predicated upon compliance with a provision of the Internal Revenue Code ("IRC") which permits the proceeds of a bond or note offering to be used to acquire higher yielding investments under certain limited circumstances. Specifically, Peden's tax opinions were based on IRC Section 148(c)(1), which allows the proceeds of qualifying issues of securities to be invested in higher yielding investments for a

three year temporary period until such proceeds are needed for the purpose for which the security was issued.

31. Bonds (or notes) will not be treated as taxable arbitrage bonds if the net sale proceeds and investment proceeds of an issue are reasonably expected to be allocated to expenditures for capital projects within the three year period. Treas. Reg. Sec. 1.148-2(e)(2).

32. The lack of an intent to spend any more than a small portion of the proceeds within the three year period would fail to satisfy the reasonable expectation requirements of IRC Section 148(c)(1) and Treas. Reg. Sec. 1.148-2(e)(2). Therefore, the municipalities, which did not intend to spend the proceeds of the offerings, other than the premium, on municipal projects, could not meet the requirements of the temporary period exception. The structure of these transactions is therefore a prohibited arbitrage device that violates IRC Sections 103(b) and 148. The violation of these sections created a substantial risk that the IRS would revoke the tax exempt status of the offerings.

33. The substantial risk to the tax exempt status of interest on the notes was not disclosed to investors.

34. The Official Statements and other documents executed in connection with the offerings affirmatively misrepresented the issuers' intent to use the proceeds.

35. Each official statement also represented that the municipality was negotiating with a specified firm for "architectural services." These statements were not true.

36. At the time of each of the note offerings listed above, Peden knew, or was reckless in not knowing, that the municipality in question did not intend or reasonably expect to spend or allocate the proceeds of the respective note offering on municipal projects within the three year period.

37. Among other things which contributed to Peden's knowledge concerning the municipalities' intentions, many of the municipal officials advised Peden that they did not intend to spend the note proceeds, beyond the premium. Peden was also aware, as the scheme progressed, that none of the municipalities had recalled and remarketed their notes, a prerequisite to spending the proceeds on municipal projects. Finally, Peden knew or was reckless in not knowing that many of the municipalities would not have been able to remarket the notes as general obligations, because to do so would have exceeded the debt ceiling imposed on the municipalities by Mississippi Code Sections 21-33-303 and 19-9-5.

38. Despite his knowledge to the contrary, Peden nevertheless prepared, and permitted to be distributed, offering materials, including official statements which were provided to prospective investors, representing that the proceeds from the note

offerings would be used on municipal projects within a three year period.

39. At the time of each note offering listed above, Peden knew that the underlying premise of his tax opinion, i.e. that the issuer reasonably expected to use or allocate the offering proceeds on municipal projects within three years of the offering, was false. Peden nevertheless prepared tax opinions and official statements referencing his tax opinions, which he knew would be relied on by investors, which failed to disclose the substantial risk to the tax exemption which resulted from the lack of a bona fide intent on the part of the issuers to use the proceeds as represented in the official statements.

40. At the time of each offering listed above, Peden knew, or was reckless in not knowing, that the issuer was not negotiating with any firm for architectural services to be provided in connection with the municipal projects purportedly to be funded by the offering proceeds. Peden nevertheless prepared and permitted to be distributed official statements representing that the issuers were negotiating for such services.

FAILURE TO DISCLOSE PROCEEDING AGAINST UNDERWRITER

41. On June 23, 1994, the Commission instituted a public administrative proceeding against Peden, the underwriter, and the president of the underwriter. The proceeding involved allegations that Peden, the underwriter and the underwriter's president had violated the antifraud provisions of the securities laws by failing to disclose a substantial risk to the tax exempt status of interest on seven issuances of municipal bonds unrelated to the notes in this case. The proceeding remained pending as to the underwriter and its president throughout the period of the subsequent offerings.

42. The Commission proceeding which was pending against the underwriter jeopardized the underwriter's ability to stay in business.

43. Peden was aware of the pending proceeding and was aware that it represented a substantial risk to the underwriter continuing in business. Nevertheless, Peden prepared the official statements, all of which represented that the underwriter would serve as the remarketing agent for the notes. The pending proceeding was not disclosed to the issuers or in any of the offering materials.

44. Peden's conduct, described above, to the extent it continued after December 2, 1994, constituted a violation of the cease-and-desist order entered against him by the Commission on December 2, 1994.

COUNT I

FRAUD

Violations of Section 17(a)(1) of the Securities Act
[15 U.S.C. 77q(a)(1)]

45. Paragraphs 1 through 44 are hereby realleged and are incorporated herein by reference.

46. From in or about November 1987 through at least May 1996, defendant Peden, singly and in concert with others, in the offer and sale of securities, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud purchasers of such securities.

47. Defendant Peden knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

48. By reason of the foregoing, defendant Peden has violated, is violating, and, unless restrained and enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. 77q(a)(1)].

COUNT II

FRAUD

Violations of Sections 17(a) (2) and 17(a) (3) of the Securities Act [15 U.S.C. 77q(a) (2) and 77q(a) (3)]

49. Paragraphs 1 through 44 are hereby realleged and are incorporated herein by reference.

50. From in or about November 1987 through at least May 1996, defendant Peden, singly and in concert, in the offer and sale of securities, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

- (a) obtained money and property by means of untrue statements of material facts and omissions 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; and
- (b) engaged in transactions, practices and courses of business which operated and would operate as a fraud and deceit upon the purchasers of such securities.

51. By reason of the foregoing, defendant Peden has violated, is violating, and, unless restrained and enjoined, will

continue to violate Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. 77q(a)(2) and (3)].

COUNT III

FRAUD

**Violations 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]**

52. Paragraphs 1 through 44 are hereby realleged and are incorporated herein by reference.

53. ^{Despite having} From in or about November 1987 through at least May 1996, defendant Peden, singly and in concert with others, in connection with the purchase and sale of securities, by the use of means and instruments of interstate commerce and by use of the mails, directly and indirectly:

- (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 the light of the circumstances under which they were made, not misleading; and
- (c) engaged in acts, practices, and courses of business which operated as a fraud and deceit upon persons.

54. Said defendant knowingly, intentionally and/or recklessly engaged in the above-described conduct.

55. By reason of the foregoing, defendant Peden has violated, is violating, and, unless restrained and 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].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Securities and Exchange Commission respectfully prays for:

I.

Findings that defendant Peden committed the violations alleged herein.

II.

A permanent injunction restraining and enjoining defendant Peden, his officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, and each of them, whether as principals or as aiders and abettors, from, directly or indirectly, 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].

III.

An order directing that Peden comply with the terms of the cease-and-desist order entered against him by the Commission on December 2, 1994.

IV.

An order requiring the disgorgement by defendant Peden of all ill gotten gains or unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws.

V.

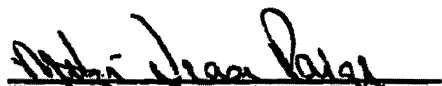
An order pursuant to Section 20(d) of the Securities Act [15 U.S.C. 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. 78u(d)(3)] imposing civil penalties against defendant Peden.

VI.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

DATED: July 13, 1998

OF COUNSEL



Honorable Brad W. Pigott
UNITED STATES ATTORNEY

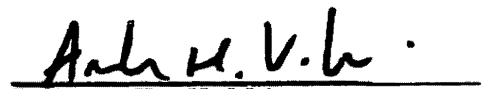
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