

**ORIGINAL**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

NOV 19 1999

BY  
DEPUTY

DAVID J. MALAND, CLERK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

- (1) SUNPOINT SECURITIES, INC.,
- (2) VAN R. LEWIS III, and
- (3) MARY ELLEN WILDER,

Defendants.

Civil Action No.

6:99CV667

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF**

Plaintiff Securities and Exchange Commission ("Commission"), for its claims against defendants, alleges as follows:

**Summary**

1. From approximately December 1997 through the present, Defendants Sunpoint Securities, Inc. ("Sunpoint"), Van R. Lewis III ("Lewis") and Mary Ellen Wilder ("Wilder") engaged in a securities fraud scheme by diverting approximately \$25 million of customer funds for improper and undisclosed purposes. In doing so, Sunpoint failed to maintain the required amount of net capital for an extended period and failed to maintain sufficient funds in a special reserve account required for the protection of customers. The Defendants further defrauded Sunpoint's customers by failing to disclose the risks caused by the diversion of funds and misrepresented the value of funds held by Sunpoint on behalf of its customers. In addition, the Defendants, in carrying out the fraud scheme, failed to maintain accurate books and records in violation of the federal securities laws.

2. Defendants Sunpoint, Lewis and Wilder, directly and indirectly, engaged in and are engaging in transactions, acts, practices and courses of business that constitute violations of Sections 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] thereunder. Furthermore, Sunpoint has engaged and is engaging in acts, practices and courses of businesses that constitute violations of the following sections of the Exchange Act, of which Lewis and Wilder have aided and abetted pursuant to Section 20(f) of the Exchange Act [15 U.S.C. §78t(f)] Sections 15(c)(1) and 15(c)(3)[15 U.S.C. §§78o(c)(1) and 77o(c)(3)], 17(a) and 17(e) [15 U.S.C. §§78q(a) and 78q(e)], and Rules 15c1-2, 15c3-1, 15c3-3, 17a-3 and 17a-5 thereunder [17 CFR 240.15c1-2, 240.15c3-1, 240.15c3-3, 240.17a-3 and 240.17a-5].

3. Plaintiff brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§78u(d) and 78u(e)].

#### **Jurisdiction and Venue**

4. The Court has jurisdiction of 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. §78aa].

5. The Defendants will, unless restrained and enjoined, continue to engage in the transactions, acts, practices, and courses of business set forth herein and in transactions, acts, practices and courses of business of similar purport and object.

6. The transactions, acts, practices, and courses of business constituting the violations herein have occurred within the jurisdiction of the United States District Court for the Eastern District of Texas and elsewhere.

7. The Defendants, directly and indirectly, have made and are making use of the mails, and of the means and instrumentalities of interstate commerce in connection with the

transactions, acts, practices and courses of business alleged herein in the Eastern District of Texas and elsewhere.

### Defendants

8. Sunpoint Securities, Inc. is a broker-dealer located in Longview, Texas. Sunpoint has been registered with the Commission since 1989. Sunpoint is a member of the National Association of Securities Dealers ("NASD"). In 1998, Sunpoint settled an enforcement action brought against it by the NASD for alleged violations of the net capital rule.

9. Van R. Lewis III, age 53, resides in Henderson, Texas. He is the founder, president and chief executive officer of Sunpoint, and owns a majority of Sunpoint's outstanding shares of stock. Lewis is a registered securities principal. In June 1994, the NASD barred Lewis from association with any NASD member as a financial and operations principal and he was suspended for ten days from any association for violating certain NASD rules relating to the net capital rule. In September 1994, Lewis was barred for six months by the Oklahoma Department of Securities for violations of the net capital rule and for engaging in dishonest or unethical practices. Lewis asserted his Fifth Amendment right against self-incrimination during the Commission's underlying investigation of this matter.

10. Mary Ellen Wilder, age 56, resides in Longview, Texas. Wilder has been employed by Sunpoint since, 1993, and is a registered principal. In 1998, the NASD suspended Wilder from association with any NASD member firm as a financial and operations principal for ten days and fined her \$50,000 for alleged violations of the net capital rules. Wilder resigned her position from Sunpoint on or about November 16, 1999.

### Statement of Facts

#### 1997 Net Capital Deficiency

11. In or around December 1997, Sunpoint's auditors discovered that Sunpoint was operating with a net capital deficiency of about \$1.2 million.

12. In order to cure Sunpoint's net capital deficiency, Lewis diverted approximately \$1.4 million of customer funds from Sunpoint's clearing account maintained at Mercantile Bank in St. Louis (the "Clearing account"), and approximately \$300,000 from Sunpoint's customer margin account. The funds in the Clearing account originated from an omnibus money market account maintained by Sunpoint at Alliance Capital Management Corporation ("Alliance") for the benefit of its customers.

13. Before transferring the \$1.7 million in customer funds to Sunpoint, Lewis first deposited \$744,000 in his personal bank account and approximately \$969,000 in an account held by another company he controlled.

14. Lewis then transferred the \$1.7 million to Sunpoint, thus giving the appearance that the capital infusion originated from a legitimate source.

#### **Other Diversions of Customer Funds**

15. Sunpoint routinely deposits customer funds in an omnibus money market account at Alliance. At Wilder's direction, funds were periodically transferred between the Alliance account and the Clearing account to cover net purchases and sales of securities on behalf of Sunpoint's customers.

16. Beginning in approximately December 1997, Wilder began directing a subordinate either to increase the amount of funds requested to be transferred from the Alliance account to the Clearing account, or decrease the amount the Alliance account should receive from the clearing account. The net result of these "adjustments" was to lower substantially the balance in the Alliance account maintained by Sunpoint for its customers.

17. At approximately the end of October 1999, Sunpoint internal records show that it should have held approximately \$37 million in funds in the Alliance account on behalf of its customers. Because of the adjustments directed by Wilder, however, Sunpoint had only \$12

million in the Alliance account for the benefit of its customers, leaving a shortfall of about \$25 million.

18. All or a part of the shortfall was periodically diverted to bank accounts controlled by Sunpoint and/or Lewis.

19. Wilder misappropriated Sunpoint funds for her personal use in November 1999 to pay legal fees.

20. Notwithstanding the adjustments in the Alliance account and the diversion of customer funds from the Alliance account, Sunpoint misrepresented to its customers on their monthly customer account statements the true value of money market funds Sunpoint held on behalf of its customers. Such misrepresentations occurred at times during the period of December 1997 to the present.

21. From December 1997 to the present, Sunpoint filed Focus Reports with the NASD on a monthly basis. As a result of the adjustments in the Alliance account and the diversion of customer funds from the Alliance account, Sunpoint misrepresented its net capital position in its Focus Reports that it filed with the NASD at times during the period of December 1997 to the present, and operated and continues to operate its business with deficient net capital.

22. As a result of the adjustments in the Alliance account and the diversion of customer funds from the Alliance account, Sunpoint failed to maintain sufficient customer reserves.

23. As a result of the adjustments in the Alliance account and the diversion of customer funds from the Alliance account, Sunpoint failed to maintain books and records that accurately disclosed its liabilities to its customers for the period December 1997 to the present.

**COUNT ONE**

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

24. Paragraphs 1 through 23 are hereby realleged and incorporated by reference herein.

25. From at least December 1997 through the present, Defendants Sunpoint, Lewis and Wilder, in the offer and sale of securities, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, have employed, and are employing devices, schemes and artifices to defraud; made and are making untrue statements of material fact and have omitted and are omitting 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 engaged and are engaging in acts, practices and courses of business which have operated and will operate as a fraud and deceit upon purchasers and sellers of such securities.

26. Defendants Sunpoint, Lewis and Wilder knew or were reckless in not knowing the facts and circumstances described herein.

27. By reason of the activities described herein, Defendants Sunpoint, Lewis and Wilder violated and are violating Section 17(a) of the Securities Act [15 U.S.C. 77q(a)].

**COUNT TWO**

Violations of Section 10(b) of the Exchange Act  
[15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder

28. Paragraphs 1 through 27 are hereby realleged and incorporated by reference herein.

29. From at least December 1997 through the present, Defendants Sunpoint, Lewis and Wilder, in connection with the purchase and sale of securities, and by the use of the means

and instrumentalities of interstate commerce and of the mails, directly and indirectly, employed and are employing devices, schemes and artifices to defraud; made and are making untrue statements of material fact and have omitted and are omitting 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 engaged and are engaging in acts, practices and courses of business which have operated and will operate as a fraud and deceit upon purchasers and sellers of such securities.

30. Defendants Sunpoint, Lewis and Wilder knew or were reckless in not knowing the facts and circumstances described herein.

31. By reason of the activities described herein, Defendants Sunpoint, Lewis and Wilder violated and are violating Section 10(b) of the Exchange Act [15 U.S.C. §78j (b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

### **COUNT THREE**

Violations of Section 15(c)(1) of the Exchange Act [15 U.S.C. §78o(c)(1)] and Rule 15c1-2 [17 CFR 240.15c1-2] thereunder

32. Paragraphs 1 through 31 are hereby realleged and incorporated by reference herein.

33. From at least December 1997 to the present, Defendant Sunpoint, while acting as a broker-dealer, and Defendants Lewis and Wilder while aiding and abetting Sunpoint, made use of the mails and the means and instrumentalities of interstate commerce to effect transactions in, and induced and attempted to induce the purchase and sale of securities by means of manipulative, deceptive and other fraudulent devices and contrivances, including acts, practices and courses of business which operated and would operate as frauds and deceits and made untrue statements of material fact 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.

34. Defendant Lewis and Wilder made such statements and omissions with knowledge or reasonable grounds to believe the statements were untrue and misleading.

35. By reason of the activities described herein, Defendant Sunpoint violated, and Defendants Lewis and Wilder aided and abetted Sunpoint's violations of Section 15(c)(1) of the Exchange Act, as amended [15 U.S.C. §78o(c)(1)] and Rule 15c1-2 [17 CFR 240.15c1-2] thereunder.

#### COUNT FOUR

Violations of Section 15(c)(3) of the  
Exchange Act [15 U.S.C. §78o(c)(3)] and Rules 15c3-1 and 15c3-3  
[17 CFR 240.15c3-1 and 240.15c3-3] thereunder

36. Paragraphs 1 through 35 are hereby realleged and incorporated by reference herein.

37. From at least December 1997 to the present, Defendant Sunpoint, while acting as a broker-dealer, and Lewis and Wilder while aiding and abetting Sunpoint, made use of the mails and the means and instrumentalities of interstate commerce to effect transactions in, and induced and attempted to induce the purchase and sale of securities, while failing to maintain net capital in Sunpoint in an amount equal to the greater of \$250,000 or 2% of the broker-dealer's aggregate debt items, as computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers.

38. As part of this conduct, from at least December 1997 to the present, the Defendants diverted investor funds for the use of Sunpoint, Lewis and/or Wilder. In doing so, Lewis improperly reduced customer funds held for their benefit and thus overstated Sunpoint's net capital. These transactions caused Sunpoint to conceal the fact that Sunpoint failed to maintain adequate net capital balances.

39. From at least December 1997 to the present, Defendant Sunpoint, while acting as a broker-dealer, and Defendants Lewis and Wilder while aiding and abetting Sunpoint, made use of



the mails and the means and instrumentalities of interstate commerce to effect transactions in, and induced and attempted to induce the purchase and sale of securities in contravention of the rules and regulations prescribed by the Commission as necessary and appropriate in the public interest and for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers by failing to maintain a sufficient customer reserve for the benefit of investors.

40. By reason of the activities described herein, Defendant Sunpoint, as aided and abetted by Defendants Lewis and Wilder, violated and are violating Section 15(c)(3) of the Exchange Act [15 U.S.C. §78o(c)(3)] and Rules 15c3-1 and 15c3-3 [17 CFR 240.15c3-1 and 240.15c3-3] thereunder.

#### **COUNT FIVE**

Violations of Section 17(a) and 17(e) of the Exchange Act [15 U.S.C. §§78q(a) and 78q(e)] and Rules 17a-3 and 17a-5 [17 CFR 240.17a-3 and 240.17a-5] thereunder

41. Paragraphs 1 through 40 are hereby realleged and incorporated by reference herein.

42. From approximately December 1997 to the present, Defendant Sunpoint, as a broker-dealer transacting a business in securities and registered with the Commission, and as aided and abetted by Defendant Lewis and Wilder, failed to accurately make and keep current for prescribed periods such records, including, but not limited to, records of original entry showing all receipts and disbursements of cash and all other debits and credits; ledgers reflecting all assets and liabilities, income and expense and capital accounts; memoranda of each brokerage order, purchase and sale; copies of confirmations of all purchases and sales of securities; and records of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of aggregate indebtedness and net capital, and also failed to furnish such copies

thereof and make, disseminate and file such reports as the Commission by rule, as prescribed as necessary and appropriate in the public interest and for the protection of investors.

43. Sunpoint violated each of these books and records and reporting provisions by excluding millions of dollars of liabilities from its books and filings. By excluding these liabilities, Sunpoint kept false books and records, and made false and inaccurate filings.

44. From at least December 1997 to the present, Defendant Sunpoint, as a broker-dealer transacting a business in securities and registered with the Commission, aided and abetted by Defendant Lewis and Wilder, failed to annually file with the Commission accurate balance sheet and income statements certified by an independent public accountant and such other financial statements and information concerning its financial condition.

45. Exchange Act Rule 17a-5 [17 C.F.R. §240.17a-5] requires broker-dealers registered with the Commission to file monthly and quarterly financial reports with a designated self-regulatory organization, and to file annual audited financial reports on Form X-17A-5 [17 C.F.R. §240.X-17A-5] with the Commission and a designated self-regulatory organization. Form X-17A-5, the FOCUS Report, requires that the financial statements be prepared in accordance with Generally Accepted Accounting Principles. The FOCUS Report is the basic financial and operational report required of broker-dealers, such as Sunpoint, who are registered with the Commission. FOCUS Reports are reviewed by regulatory authorities whose responsibility it is to monitor the financial and operating condition of such broker-dealers. Exchange Act Rule 17a-5(c)(1) further requires registered broker-dealers to send copies of their annual audited balance sheets to their customers.

46. By reason of the activities described herein, Sunpoint failed to file accurate monthly, quarterly and audited annual financial statements as required by Sections 17(a) and 17(e) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder.

**Relief Requested**

WHEREFORE, the Plaintiff respectfully requests that this Court:

I.

Find that the Defendants committed the violations alleged above.

II.

Grant a Temporary Restraining Order and Orders of Preliminary and Permanent Injunction, restraining and enjoining Defendants Sunpoint, Lewis and Wilder, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the Temporary Restraining Order and Orders of Preliminary and Permanent Injunction by personal service or otherwise, and each of them, from directly or indirectly, in the offer, purchase or sale of the securities of any issuer or to any client or prospective client, engaging in the acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Sections 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], Sections 15(c)(1) and 15(c)(3) of the Exchange Act [15 U.S.C. §§78o(c)(1) and 77o(c)(3)], and Rules 15c1-2, 15c3-1, 15c3-3 thereunder [17 CFR 240.15c1-2, 240.15c3-1, 240.15c3-3], and Sections 17(a) and 17(e) of the Exchange Act [15 U.S.C. §§78q(a) and 78q(e)], 17a-3 and 17a-5 thereunder [17 CFR 240.17a-3 and 240.17a-5].

III.

Grant a Temporary Restraining Order and Orders of Preliminary and Permanent Injunction restraining and enjoining:

A. Defendants Sunpoint, Lewis and Wilder, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the Temporary Restraining Order, the Order of Preliminary Injunction and the Order of Permanent Injunction by personal service or otherwise, and each of them, from directly or

indirectly destroying, mutilating, concealing, altering or disposing of in any manner, any of the books, records, documents, computer data, correspondence, brochures, manuals, obligations or other property of or pertaining to the Defendants, wherever located; and

B. Defendants Sunpoint, Lewis and Wilder, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the Temporary Restraining Order, the Order of Preliminary Injunction and the Order of Permanent Injunction by personal service or otherwise, and each of them, from directly or indirectly transferring, selling, assigning, pledging, dissipating, concealing or otherwise disposing of in any manner, any funds, assets, or other property belonging to, or in the possession, custody or control of the defendants, wherever located.

C. Defendants Sunpoint, Lewis and Wilder, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the Temporary Restraining Order, the Order of Preliminary Injunction and the Order of Permanent Injunction by personal service or otherwise, and each of them, from directly or indirectly transferring, selling, assigning, pledging, dissipating, concealing or otherwise disposing of in any manner, any funds, assets, accounts or other property into which any Sunpoint investors' funds were placed.

#### IV.

Grant an Order requiring the Defendants to:

A. Produce to the Plaintiff, within five days of the issuance of the Temporary Restraining Order, all books, records and other documents in the Defendants actual or constructive possession relating to the conduct described herein;

B. Provide to the Court, within seven days of issuance of the Temporary Restraining Order, an accounting of all funds received from investors, the uses to which such funds were put and the amounts of any remaining such funds and their location, and an accounting

of any remaining assets of the Defendants, and their location; provided, however, that nothing in the Order shall be construed to require the Defendants to abandon any constitutional or other legal privilege which they may have available to them.

V.

Grant an Order permitting the parties to commence discovery immediately, and that notice periods be shortened to permit the parties to require production of documents and answers to interrogatories within 72 hours, and the deposition of any party or party-representative on 48 hours notice by facsimile or personal service.

VI.

Grant an Order requiring Defendants Sunpoint, Lewis and Wilder to disgorge any and all ill-gotten gains (including prejudgment interest).

VII.

Grant an Order imposing appropriate civil penalties against Defendants Sunpoint, Lewis and Wilder in accordance with 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)].

VIII.

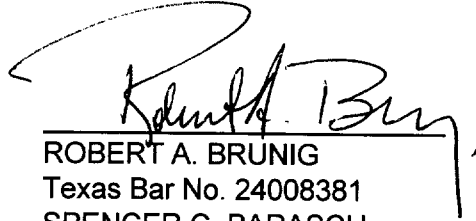
Retain jurisdiction of this action in accordance with the principals of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction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

IX.

Grant Orders for such further relief as the Court may deem appropriate.

Dated: November 19, 1999

Respectfully submitted,



ROBERT A. BRUNIG  
Texas Bar No. 24008381  
SPENCER C. BARASCH  
District of Columbia Bar No. 388886  
J. KEVIN EDMUNDSON  
(Attorney in Charge)  
District of Columbia Bar No. 430746  
VICTORIA F. PRESCOTT  
Texas Bar No. 16255300  
DOUGLAS A. GORDIMER  
Member of Maryland Bar

Attorneys for Plaintiff  
Securities and Exchange Commission  
801 Cherry Street, 19<sup>th</sup> Floor  
Fort Worth, Texas 76102  
(817) 978-6483 (JKE)  
(817) 978-2700 fax