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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	**14 Civ. _____ (___)**
- against -	:	
	:	**COMPLAINT**
SCOTT VALENTE and	:	
THE ELIV GROUP, LLC,	:	**ECF Case**
	:	
Defendants.	:	JURY TRIAL DEMANDED
	:	
	:	

Plaintiff Securities and Exchange Commission for its complaint against Scott Valente ("Valente") and The ELIV Group, LLC ("ELIV") (collectively, "Defendants"), alleges as follows:

SUMMARY OF ALLEGATIONS

1. The Commission brings this action to stop an ongoing fraud being carried out by Defendants. Since at least November 2010 and continuing to the present, Valente, an investment adviser, has used his one-man advisory firm, ELIV, to fraudulently lure approximately eighty individual and unsophisticated investors largely in the Albany and Warwick, New York

communities to become and remain advisory clients, and invest more than $8.8 million with Defendants.

2. Defendants have carried out their fraud by, among other things: (1) falsely claiming to prospective clients that they have achieved consistent and outsized, positive returns; (2) falsely assuring prospective clients that their principal was "guaranteed," backed by a large money market fund and fully liquid; (3) falsely assuring existing clients by sending them monthly investment reports that reported phony and inflated monthly returns, and inflated assets under management (ranging from $11 million to $17 million) and client account values; and (4) falsely assuring prospective and existing clients that ELIV's books and records (including monthly statements) were audited.

3. In reality, Defendants have earned no positive results at all, but rather have sustained investment losses in each of the three full years ELIV has existed, amounting in total to $1.2 million. Nor were any of their clients' funds "guaranteed," or backed by any money market funds. Far from being liquid, furthermore, the vast majority of ELIV's investments have been placed in speculative, highly illiquid investments in privately-held companies. And Defendants' assurances that ELIV employed the services of an auditor were pure fiction.

4. On his ELIV website, Valente has told the investing public (and he still does) that he has a 30-year record of investing experience "dedicated to the highest standards of service," and that he founded ELIV after leaving the "corporate financial industry" upon concluding there "had to be a better way for clients to achieve financial independence." This too is false: In reality, and not disclosed to investors, Valente is a former registered representative who has twice

filed for bankruptcy, and he founded ELIV after the Financial Industry Regulatory Authority ("FINRA") permanently expelled him in 2009 from the broker-dealer industry he had been employed with for 17 years, based on its findings (to which Valente consented, but neither admitted to nor denied) that Valente had engaged in serial misconduct against numerous customers.

5. Investors responded to Valente's false representations and omissions by turning over more than $8.8 million to Defendants since 2010. Once in their hands, Valente (who was entitled to no more than a management fee of 1% of assets under management) secretly misappropriated at least $2.66 million of his clients' money, spending the vast majority of it on his lavish lifestyle: home improvements, mortgage payments, jewelry, a vacation condominium, and substantial cash withdrawals.

6. As a result of Valente's misappropriation of client funds and his unsuccessful trading strategies, Defendants, far from managing in excess of $11 or $17 million in client funds, as they have continued to claim to their clients, have under management only $3.8 million -- far less than Valente told investors, and far less than the investors gave Defendants to manage.

7. Valente, meanwhile, has continued to solicit new clients and investor funds with his false claims, even after notified of the Commission's investigation, and has continued to divert his clients' money for his own purposes, as recently as within the past two weeks. To halt this ongoing fraud, maintain the status quo and preserve any assets for injured clients, the Commission seeks emergency relief, including temporary restraining orders, preliminary and permanent injunctions, and an order: (i) freezing Defendants' assets, (ii) allowing expedited

discovery and preventing the destruction of documents; (iii) requiring verified accountings; and (iv) requiring Defendants to pay disgorgement of ill-gotten gains, plus prejudgment interest and civil penalties.

VIOLATIONS

8. By virtue of the conduct alleged herein, Valente and ELIV, directly or indirectly, have engaged, are engaging, and unless restrained and enjoined will continue to engage in acts, practices, schemes and courses of business that constitute violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 C.F.R. § 240.10b-5(b)], and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

JURISDICTION AND VENUE

9. The Commission brings this action pursuant to the authority conferred by Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], seeking to restrain and enjoin Defendants preliminarily and permanently from engaging in the acts, practices, transactions and courses of business alleged herein, and for such other equitable relief as may be appropriate or necessary for the benefit of investors.

10. The Commission also seeks a final judgment ordering the Defendants to disgorge their ill-gotten gains and pay prejudgment interest thereon, and ordering the Defendants to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

11. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14]. Defendants, directly or indirectly, singly or in concert, have made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein. Some of these transactions, acts, practices and courses of business occurred in the Southern District of New York, where the Defendants transacted business during the relevant period and where certain ELIV clients reside. For example, ELIV maintains an office in Warwick, New York and numerous clients of ELIV to whom Defendants made the material misrepresentations and omissions also reside in Orange County, New York.

DEFENDANTS

12. **Scott Valente**, age 56, is the founder, manager, owner and sole investment professional of ELIV. He is a resident of Schenectady, New York. Valente first became registered with FINRA as a General Securities Representative in May 1989. In April 2009, Valente was permanently barred from association with FINRA members based on findings that on multiple occasions he made unauthorized and unsuitable trades for customers and also provided false written account information to customers. Valente has twice filed for bankruptcy protection, once in 1994 and again in 2004, and he was the subject of numerous prior customer complaints while working as a registered representative, one of which resulted in an arbitration award against Valente in the amount of $300,000.

13. **The ELIV Group, LLC** is a limited liability company that Valente registered in New York in November 2010. ELIV's principal place of business is in Albany, New York, and it also maintains an office in Warwick, New York. ELIV is not registered in any capacity with the Commission, FINRA, or any other self-regulatory organization.

FACTS

14. Valente formed ELIV in November 2010 and is its owner, manager and, apart from secretarial assistance, its sole employee. Valente then began using ELIV to solicit investment advisory clients, by touting his purportedly successful background, his investment strategy and success -- purportedly premised on investing in privately held companies before they "go public," and trading in options, currencies and the S & P 500 futures index.

15. Defendants entered into contractual advisory relationships with these investors, in exchange for a stated annual advisory fee of 1% of assets under management. When investors provided them with funds, Defendants commingled those funds with all other investor proceeds in ELIV's bank accounts, and those funds, collectively, were then placed in various trading accounts in ELIV's name, used to pay other investors, or were secretly misappropriated by Defendants for their own purposes, and without regard to the stated management fee of 1%.

16. Defendants solicited clients using a website, www.elivgroup.com, public informational "seminars," word-of-mouth referrals, and direct oral and written contacts with individual investors. Since November 2010, their efforts, which are continuing, have succeeded in raising more than $8.8 million from approximately 80 individual investors residing mostly in the Albany, New York metropolitan area and the Warwick, New York community, which they

have accomplished by knowingly or recklessly making numerous material misrepresentations and omissions.

17. Defendants' deliberate (or reckless) material misrepresentations have consisted of:

(A) False claims to prospective and existing clients that ELIV has enjoyed large and positive investment returns (*e.g.*, annual returns of 48.27%, 44.56% and 45.11% for each of 2011, 2012 and 2013) – when in fact Defendants have not earned positive returns, but incurred investment losses throughout the relevant period;

(B) False claims that clients' invested principal was "guaranteed" and backed by a large money market fund, and was sufficiently "liquid" to afford immediate access to funds at any time – when in reality there was no guarantee and claims of a backup money market fund were fiction, and the vast majority of Defendants' holdings are in speculative, illiquid investments;

(C) False claims to prospective and existing clients of consistent positive monthly returns, inflated client account values, and inflated claims of ELIV's assets under management (such as that they have grown, from $11.27 million in October 2013 to $17.32 million in April 2014) -- when in reality their assets under management amount to a small fraction of the claimed figure, and less than what investors have paid to Defendants;

(D) False claims to investors seeking to save for their retirement that Defendants were qualified to, and did, establish individual retirement accounts ("IRAs") for their advisory clients – when in fact they were not qualified to do so, and did not do so, and, instead (and unbeknownst to their clients) simply commingled their funds with all other ELIV clients into the same common ELIV trading and bank accounts;

(E) False claims that Valente founded ELIV after a 30-year successful career as an investment professional "dedicated to the highest standards of service," misleadingly omitting to disclose from his prospective and existing clients that FINRA permanently expelled him from the broker-dealer industry in 2009, that he had a history of customer complaints, and that he has twice filed for bankruptcy protection; and

(F) False claims that ELIV's books and records were audited.

18. Having induced their clients to part with more than $8.8 million through these deliberate, material misrepresentations, Defendants then, without any disclosure to their clients, proceeded to divert more than $2.6 million of their clients' money for their own purposes.

Misrepresentations Concerning ELIV's Investment Performance

19. Defendants maintain a website, www.elivgroup.com, in which Defendants have claimed, and continue to claim, to prospective and existing ELIV clients that ELIV "has returned a five year average annual return of 34.5%."

20. This claim was, and remains, materially false and misleading because (i) ELIV has not been in business for five years, and (ii) it has consistently sustained investment losses throughout its much shorter, three-year period of existence.

21. Defendants have made, and continue to make, these false and misleading claims deliberately (or at a minimum recklessly) and for the purpose of inducing investors to invest their money with Defendants and become clients of Defendants.

22. Defendants have made similarly materially false and misleading claims to prospective and existing clients during the relevant period. For example, Valente met personally with one investor ("Investor A") in December 2012. During their meeting, Valente falsely told Investor A that ELIV had enjoyed positive returns in the past (when in fact it had lost money in almost every month of its operation before that meeting, and lost money for each year of its operation), and that based on those (false) past returns, his goal for that investor were monthly returns of 3-6%.

23. Valente then followed up that meeting with a handwritten note and sample contract, in which he falsely represented to Investor A that ELIV had achieved an annual return for 2010 of 36.383% (when in fact it had only started operating and receiving investor funds in December 2010), and 48.27% and 44.56% returns for 2011 and 2012, respectively. A subsequent investment contract Valente sent this Investor also claimed a return of 45.11% for 2013. Investor A placed importance on these false and misleading claims, and invested $45,000 with Defendants.

24. Between February and June, 2012, Valente met with a different investor ("Investor B"), and falsely told him that ELIV was doing well and producing positive returns from his investing strategy. Investor B considered those claims to be important, and invested approximately $30,000 with Defendants. In truth, ELIV had consistently lost money before June 2012, losing money in 2011, and earning (meager) trading profits in only two of its 19 months before that time. The investment contract Valente sent Investor B also falsely claimed that ELIV had earned 48.27% and 44.56% in 2011 and 2012, respectively.

25. Defendants repeated these same wildly inflated claims of ELIV's annual returns to most if not all of its prospective clients, in the form of their written investment contracts that were generally sent to clients at or about the time they invested with Defendants. All of these contracts contained the same false claims of positive returns for 2011, 2012 and (for those sent after 2012), 2013, of 48.27%, 44.56% and 45.11%.

26. Defendants have also bolstered these false claims to their existing clients, through equally fraudulent monthly or quarterly "investment reports" that have purported to state to clients the performance of ELIV (and, derivatively), the clients' individual accounts. These reports have regularly reported fictitious and substantial positive returns on a monthly basis – and therefore false, but ever-increasing account values for Defendants' clients -- when in reality, ELIV has almost always sustained losses in each of the months it has operated in the relevant period.

27. For example, to one retired couple with a joint account at ELIV ("Investors C and D"), Valente represented in an investment report for the year-end of 2011 that their account had

increased in value from $571,434.94 as of March 31, 2011 to approximately $600,000 as of December 31, 2011. This was a deliberate lie: ELIV's total assets under management, collectively for all clients as of December 31, 2011 was only $497,284, and Defendants deliberately and falsely overstated the value in Investors C and D's account – a deception that has continued on a monthly basis to the present, as with all existing ELIV clients, with the investment reports sent as recently as April 2014.

28. Defendants regularly made their false claims of positive and large investment returns at periodic informational "seminars" open to the public in the Albany and Warwick, New York areas, and have done so as recently as March 2014.

29. Defendants' foregoing claims were of central relevance and materiality. Valente is and was the sole individual at ELIV responsible for its investment and trading activities, and he (and by imputation ELIV) therefore knew (or were reckless in not knowing) that ELIV has consistently lost money through investing during the relevant period, and that their oral and written claims of great success to prospective and existing clients were therefore false and misleading.

Defendants Misrepresented that Investments were Guaranteed.

30. To further induce investors to become and stay ELIV clients, Defendants regularly represented to prospective clients before they invested the false claim that the principal they invested with ELIV would be "guaranteed" and was backed by a large money market fund held in ELIV's name.

31. For example, to Investor A, Valente claimed when they met in December 2012 that Investor A's principal was guaranteed against loss, even if the amounts earned on it fluctuated with the market. Valente further explained to Investor A that ELIV held approximately $3.2 million in money market investments, which was why ELIV was able to guarantee the safety of the principal. Valente then confirmed this conversation in a follow-up handwritten note, in which he reiterated that he had $3.2 million in money market accounts with Trademonster and TD Ameritrade – and that because he was managing $2.9 million, "your initial investment is guaranteed." This was then confirmed in the written investment contract Valente sent Investor A.

32. These claims were an important factor in Investor A's decision to invest $45,000 with Defendants.

33. Valente made substantially the same claim of a principal guarantee to Investor B, to whom that claim was an important factor in his decision to invest $30,000 with ELIV. Defendants reiterated that false claim in the written investment contract they sent Investor B.

34. Valente also made the same claim of a guarantee of principal to Investors C and D. These investors had been customers of Valente when he was a registered representative. When Valente started ELIV after FINRA expelled him from the broker-dealer industry (a fact that Valente did not tell Investors C and D at the time), Valente persuaded them to become ELIV clients by telling them that "the initial portion of your investment through ELIV would be guaranteed," which they understood to mean "the amount that we initially gave him, we would always be able to get that back."

35. Defendants also made the same claim to Investor E, falsely assuring in the written investment contract dated November 2, 2012 they sent that investor (as elsewhere) that ELIV backs each client's account with "money market funds that are held with Fidelity and Bank of America" and that your "initial investment is guaranteed."

36. On information and belief, Defendants have made the same false claims to many if not most of the investors who became clients of ELIV during the relevant period.

37. These false claims that clients' initial investments, or their principal, were guaranteed and backed by money market investments were highly material, and Defendants made them knowing (or were at least reckless in not knowing) that they were false and misleading.

Defendants Misrepresented Assets Under Management and Client Account Values.

38. Defendants have distributed, and are continuing to distribute, monthly investment reports that were, and are, also false and misleading to their clients because they deliberately (or at least recklessly) and substantially inflate the level of assets under management by ELIV, and the value of their clients' accounts.

39. Defendants, for example, have distributed investment reports to their clients for each month from October 2013 through April 2014, in which they have represented to their clients that ELIV's assets under management were approximately $11.3 million, $11.7 million, $15.6 million, $15.6 million, $16.2 million, and $17.3 million, respectively.

40. These claims were materially false: Through March 2014, ELIV in fact has never held more than a total of $3.66 million in assets under management, and never held significantly more than $400,000 in cash in bank accounts. In fact, ELIV's actual amount of assets under

management as of the end of the months noted above were: $2.07 million, $2.48 million, $2.99 million, $3.40 million, $3.63 million, $3.66 million and $3.83 million.

41. The fraudulence of these representations is highlighted by the investment reports Defendants sent Investors C and D, for example, for the period January 2011 through March 2011; July 2011; December 2011; March 2012; and December 2012. Each such report falsely stated egregiously inflated values for these investors' account that was, by itself, greater than the entirety of ELIV's assets under management at the time the reports were issued.

42. Defendants' representations about their assets under management in these investment reports were also materially false, because they falsely represented how the assets under ELIV's management were apportioned between the different liquid and illiquid trading strategies Defendants supposedly employed. Defendants had assured investors in their investment contracts that "your funds are liquid at anytime [sic] when needed for your personal use."

43. Beginning no later than December 2013 and continuing through his most recent known statements to investors (April 30, 2014), Valente represented that 60% of ELIV's assets under management were held at Fidelity, where, he claimed, he was trading liquid instruments: options, S & P futures and currencies. He also represented that only 40% of ELIV's assets under management were held at the two firms, Alexander Capital and Felix Advisors, where Defendants were investing in speculative, illiquid pre-IPO investments. But in reality, almost all of ELIV's assets were held (and continue to be held) in illiquid investments at Felix Advisors.

44. Defendants have thus been materially overstating the liquidity and safety of the investments held by ELIV. Defendants' false claims about their assets under management, and the allocation of those assets as between relatively liquid and illiquid investments were and are material, and Defendants made and are making them knowingly, or at least with reckless disregard for the truth of them.

Defendants Misrepresented that ELIV Was Qualified to, And Would, Open and Manage IRAs for Their Clients.

45. Defendants represented to at least 28 of their clients that they would open IRAs for them, and in fact accepted IRA roll-over investments from other financial institutions where those clients formerly kept investments.

46. In the monthly investment reports regularly sent to these clients, Defendants designated their accounts as IRAs, including the reports sent to Investor C.

47. These false claims were made knowingly or recklessly and are materially false. First, Defendants never established IRAs for these clients, as they told them they would, and as Defendants' investment reports misleadingly state. Rather, as Defendants did with all clients, Defendants simply deposited their funds directly into the same common ELIV bank account and trading accounts where all other client money (apart from what Defendants misappropriated) found their way to.

48. Furthermore, as Defendants knew or were reckless in now knowing, ELIV was not qualified or permitted to establish or maintain custody of IRAs. Defendants thus have and had no legitimate basis for claiming that ELIV could act as a custodian for IRAs or other tax-deferred investments.

Defendants Concealed Valente's Background.

49. ELIV's website touts Valente's "30 years" of experience in investing, and in providing the "highest standards of service ... in developing effective, personalized financial strategies in order to provide the highest returns for his clients." Further, Valente claimed that he had founded ELIV after leaving the "corporate financial industry" to find a "better way" to help clients achieve their goal.

50. Defendants' claims were materially misleading, because they omitted the material information that Valente did not leave the "corporate financial industry" voluntarily, but was expelled by FINRA for misconduct, and that he founded ELIV after that FINRA bar. Their claims – made to tout Valente's purported integrity and skill – were materially misleading, because they also omitted that Valente has twice filed for bankruptcy, and, while a registered representative, was the subject of numerous customer complaints and at least one arbitration award against him for $300,000.

51. Defendants never disclosed these material facts to prospective or existing clients, which disclosure was also necessary to make their website claims not misleading.

52. Their omissions of these material facts were made knowingly or recklessly.

Defendants Have Misrepresented that ELIV Has an Auditor.

53. Defendants identified that ELIV had an auditor, identified by name, on certain investment contracts, and investment reports distributed to clients.

54. As Defendants know and have always known (or are and were reckless in not knowing), ELIV has never had an auditor for any purpose. Their inclusion of this materially

false claim on their written statements to clients and prospective clients was a fabrication, and was done to provide a false sense of assurance to their clients that the financial information reported to them was accurate, rather than the sham that it actually was.

Defendants Misappropriated Clients' Funds.

55. Valente deposited at least $8.8 million of client funds into ELIV bank accounts. From these accounts, Valente, without disclosure to or permission of his clients, misappropriated a total of more than $2.6 million for his own purposes, in violation of his obligations to his clients. At least $2.2 million of this amount went to pay Valente's personal expenses. For example, since March 2011, Valente has made approximately $230,000 in cash withdrawals, $443,000 on credit cards, $117,000 on a condominium, $35,000 on jewelry, $20,000 on liquor, $29,000 on mortgage payments, and $424,000 on house-related improvements and maintenance. Valente spent another $453,058 on items that were not clearly personal, but were well in excess of the one percent management fee he had represented to clients he would take from their funds.

56. Defendants' concealed misappropriations, which are continuing, were and are material to their clients, and were done knowingly, or with reckless disregard.

FIRST CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b)
(All Defendants)

57. The SEC realleges and incorporates by reference as if fully set forth herein paragraphs 1 through 56 of this Complaint.

58. Defendants, directly or indirectly, singly or in concert with others, by use of the means or instrumentalities of interstate commerce, or by the use of the mails, or of the facilities

of a national securities exchange, in connection with the purchase or sale of securities, knowingly or recklessly, have made untrue statements of material facts and omitted to state material facts necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading.

59. Defendants knew or were reckless in not knowing of the activities described herein.

60. By reason of the foregoing, Defendants have each violated, and unless enjoined will likely again violate, 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(b)].

SECOND CLAIM FOR RELIEF
Violations of Sections 206(1) and 206(2) of the Advisers Act
(All Defendants)

61. The SEC realleges and incorporates by reference as if fully set forth herein paragraphs 1 through 56 of this Complaint.

62. Defendants, directly or indirectly, knowingly or recklessly, by use of the mails or any means or instrumentality of interstate commerce, while acting as investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)], have: (a) employed devices, schemes, and artifices to defraud a client or prospective client; and/or (b) engaged in transactions, practices, or courses of business which operate as a fraud or deceit upon a client or prospective client.

63. Defendants knew or were reckless in not knowing of the activities described herein.

64. By reason of the foregoing, Defendants have each violated, and unless enjoined will likely again violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

RELIEF SOUGHT

WHEREFORE, the Commission respectfully requests that the Court grant the following relief:

I.

A Final Judgment finding that the Defendants each violated the securities laws and rules promulgated thereunder as alleged against them herein;

II.

An Order temporarily and preliminarily, and a Final Judgment permanently, restraining and enjoining the Defendants and their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing future violations of each of the securities laws and rules promulgated thereunder; and prohibiting them from participating in any transactions in any securities;

III.

An Order freezing the assets of the Defendants pending further Order of the Court;

IV.

An Order permitting expedited discovery;

V.

An Order directing the Defendants to file with this Court and serve upon the Commission, within three (3) business days, or within such extension of time as the Commission staff agrees in writing or as otherwise ordered by the Court, a verified written accounting, signed by each of them under penalty of perjury;

VI.

A Final Judgment directing the Defendants to disgorge their ill-gotten gains, plus prejudgment interest;

VII.

A Final Judgment directing Defendants to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)]; and

VIII.

Such other and further relief the Court deems just and proper.

Dated: June 3, 2014
New York, New York

SECURITIES AND EXCHANGE COMMISSION

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