

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOEL N. BURSTEIN,

Defendant.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission alleges:

I. INTRODUCTION

1. From approximately June 2008 through March 2014, Defendant Joel N. Burstein aided and abetted violations of the antifraud provisions of the federal securities laws by substantially assisting a massive fraudulent scheme in which the Miami owner and the chief executive of a Vermont ski resort systematically looted more than \$50 million of the more than \$350 million raised from hundreds of foreign investors through the U.S. Citizenship and Immigration Service's EB-5 Immigrant Investor Program.

2. The fraudulent scheme spanned seven limited partnership securities offerings all connected to Jay Peak, Inc. ("Jay Peak"), a Vermont ski resort formerly owned by Miami-based Q Resorts, Inc. ("Q Resorts"), which in turn was owned by Miami businessman Ariel Quiros, who was primarily responsible for the fraudulent scheme.

3. Investor funds raised from the Jay Peak offerings were held in, and transferred into, about 15 brokerage accounts at Raymond James & Associates, Inc. ("Raymond James"),

and Quiros and the entities he controlled used those accounts to perpetrate the fraud. In fact, most of the investor money that Quiros misappropriated and misused flowed through the Raymond James brokerage accounts. Burstein, who was Raymond James's branch manager and the registered representative who managed the firm's Jay Peak accounts, was Quiros's son-in-law for part of the relevant time period.

4. Burstein substantially assisted in the fraud from its inception. For example, Burstein played a role in facilitating Quiros' misappropriation of more than \$21 million of investor money to acquire his ownership interest in the Jay Peak resort. After the acquisition, Burstein continued to play a role in the fraud by assisting Quiros in masking his misappropriation of the investor funds. In addition, Burstein facilitated Quiros' fraudulent use of more than \$18 million of investor funds to pay off Jay Peak's margin debt.

5. Through his conduct, Burstein aided and abetted violations of 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5. Unless restrained and enjoined, Burstein is reasonably likely to engage in future violations of the federal securities laws.

II. DEFENDANT AND RELATED ENTITIES AND INDIVIDUAL

A. Defendant

6. **Burstein, 38**, previously resided in Miami, Florida and now resides in Pittsburgh, Pennsylvania. From April 2001 until he was terminated in December 2016 because of conduct relating to the Jay Peak fraud, Burstein was a registered representative associated with Raymond James, a registered broker-dealer and investment adviser. In

March 2013, Burstein became a branch manager at Raymond James before leaving the firm. Burstein holds, among others, Series, 6, 7, and 63 securities licenses.

B. Related Entities and Other Person Involved

7. **Jay Peak, Inc.** is a Vermont corporation with its principal place of business in Jay, Vermont. Jay Peak operates the Jay Peak Resort in Jay, Vermont. Jay Peak was the umbrella entity that controlled and was behind all of the Jay Peak issuers and their general partner companies. Jay Peak and the entities identified in paragraphs 8 through 11 below are now under the control of a Court-appointed Receiver.

8. **Jay Peak Hotel Suites, L.P.** (“Hotel Phase I”) is a Vermont limited partnership with its principal place of business in Jay, Vermont. Between December 2006 and May 2008, Hotel Phase I raised \$17.5 million through an EB-5 offering of limited partnership interests for the sole purpose of constructing a new hotel.

9. **Jay Peak Hotel Suites Phase II L.P.** (“Hotel Phase II”) is a Vermont limited partnership with its principal place of business in Jay, Vermont. Between March 2008 and January 2011, Hotel Phase II raised \$73 million through an EB-5 offering of limited partnership interests for the sole purpose of constructing a hotel, ice rink, indoor water park, and golf club.

10. **Jay Peak Biomedical Research Park L.P.** (“Biomedical”) is a Vermont limited partnership with its principal place of business in Newport, Vermont. Between November 2012 and April 2016, Biomedical raised approximately \$82 million through an EB-5 offering of limited partnership interests for the sole purpose of constructing a biomedical research facility.

11. **Q Resorts, Inc.** (“Q Resorts”) is a Delaware corporation with offices in Miami, Florida. Q Resorts wholly owned Jay Peak. Q Resorts acquired Jay Peak from a Canadian company in 2008, and essentially served as a project manager for the construction of many of the limited partnerships.

12. **Ariel Quiros**, age 61, resides in Key Biscayne, Florida. Quiros was the sole owner and officer of Q Resorts. He was also the chairman of the board of Jay Peak.

III. JURISDICTION AND VENUE

13. The 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(a) of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e), and 78aa.

14. The Court has personal jurisdiction over the Defendant, and venue is proper in the Southern District of Florida because many of the Defendant’s acts and transactions constituting violations of the federal securities laws occurred in the district. In addition, during the relevant time period, the Defendant resided in the district.

15. In connection with the conduct alleged in this Complaint, the Defendant, directly and indirectly, singly or in concert with others, made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation and communication in interstate commerce, or the mails.

IV. FACTS

A. The Jay Peak Fraudulent Offerings

16. Between December 2006 and April 2016, Jay Peak offered and sold securities in the form of limited partnership interests in seven private placement offerings to investors, raising a total of approximately \$364 million from 728 investors from at least 74 countries.

The securities were offered and sold pursuant to the EB-5 Immigrant Investor Program. The limited partnerships involved in these offerings were: Hotel Phase I; Hotel Phase II; Jay Peak Penthouse Suites L.P.; Jay Peak Golf and Mountain Suites L.P.; Jay Peak Lodge and Townhouses L.P.; Jay Peak Hotel Suites Stateside L.P.; and Biomedical.

17. The first six limited partnerships centered on ski facilities, and involved the construction of hotels, lodges, condominium units, aquatic and recreation centers, cafes, golf, tennis and other facilities. The last offering, Biomedical, focused on the construction of a biotech manufacturing plant. The first six offerings were fully subscribed, and construction was completed for the first five limited partnerships.

18. Quiros and William Stenger, the other principal officer of both Jay Peak and the limited partnership entities, ran the operations. During the offerings, investors wired their investment amount to the respective limited partnership bank account at People's United Bank ("People's Bank"). Quiros also maintained brokerage accounts for the limited partnerships, and Jay Peak and the other affiliated companies he controlled, at a South Florida branch of Raymond James.

19. In April 2016, the Commission filed an emergency civil action against Jay Peak, the first seven Jay Peak limited partnerships, including Hotel Phase I, Hotel Phase II, and Biomedical, Quiros, Stenger, and others. The court granted the Commission's emergency relief, including a temporary restraining order, asset freeze, and the appointment of a Receiver. *SEC v. Ariel Quiros, et al.*, Case No. 1:16-cv-21301-DPG (S.D. Fla.). Since then, all the defendants charged in that action have settled with the Commission.

20. The complaint alleged, in part, that Quiros and his companies made false statements and omitted key information while raising more than \$350 million from investors

to construct ski resort facilities and a biomedical research facility in Vermont. Investors were told they were investing in one of several projects connected to Jay Peak, a ski resort operated by Quiros and others, and their money would only be used to finance that specific project. Instead, in Ponzi-like fashion, money from investors in later projects was misappropriated to fund deficits in earlier projects. More than \$200 million was allegedly used for other-than-stated purposes, including \$50 million spent on Quiros's personal expenses and in other ways never disclosed to investors.

21. Most of the investor money Quiros misappropriated or misused flowed through the Jay Peak-related brokerage accounts at Raymond James. Burstein was the registered representative who serviced those accounts, all of which Quiros controlled. Burstein was Quiros' son-in-law for part of the relevant time period.

B. Burstein's Role in the Jay Peak Fraud

1. Misuse of Investor Funds to Acquire Jay Peak

22. Burstein aided and abetted Quiros' fraudulent acquisition of Jay Peak. In June 2008, Quiros fraudulently used investor funds raised from the first two limited partnership offerings, Hotel Phase I and Hotel Phase II, to purchase his ownership interest in Jay Peak from the resort's previous owner, a Canadian company called Mont Saint-Sauveur International, Inc. ("MSSI").

23. Specifically, from January through June 2008, Quiros negotiated and finalized a stock transfer agreement between MSSI and Q Resorts, in which MSSI agreed to transfer the real estate and other assets of Jay Peak to Q Resorts.

24. Up until this time, MSSI had overseen the Hotel Phase I securities offering and part of the Hotel Phase II offering, which had already raised \$17.5 million and \$7.5 million

from investors, respectively. Jay Peak was the company that controlled and was behind both these limited partnerships and their general partner companies. Thus, by purchasing Jay Peak, Quiros, through Q Resorts, was able to take control of the business operations of these projects. The stock transfer agreement was signed on June 13, 2008, and the parties agreed to close on the deal 10 days later, June 23, 2008, for a purchase price of \$25.7 million.

25. Between June 16 and June 20, in preparation for the closing, MSSSI transferred Hotel Phase I and Hotel Phase II investor funds from accounts held at People's Bank to new brokerage accounts in the names of the limited partnerships that Quiros had requested MSSSI open at Raymond James. In conjunction with those transfers, MSSSI representatives provided instructions to Burstein, who was the registered representative and financial advisor on Quiros' and all the Jay Peak-related accounts at Raymond James, that the investor funds held in the MSSSI Raymond James accounts could not be used to pay for Q Resorts' purchase of Jay Peak.

26. Most particularly, in a June 18 letter emailed to Burstein (on which Quiros was copied) confirming their telephone conversation, counsel for MSSSI advised Burstein that the funds in the MSSSI Raymond James accounts were investor funds that were to be used in accordance with the terms of limited partnership agreements. The Hotel Phase I and Hotel Phase II limited partnership agreements prohibited borrowing and commingling of investor funds and from making the type of purchase Quiros made with respect to Jay Peak without investor consent.

27. The letter confirmed Burstein's assurances to MSSSI during their telephone call that the money in the accounts would not be used in any manner to finance the Jay Peak purchase, including as collateral or a guarantee. It further confirmed the claim he made to

MSSI that Raymond James would be lending Q Resorts the funds needed to finalize the transaction. After some additional e-mail communications between them, Burstein sent MSSI an email later the same day again assuring the company that Raymond James would be financing the deal and that no investor money would be used as collateral.

28. Notably, the previous day, Burstein had provided his direct supervisor with a draft of a “funding letter” he intended to send MSSI’s counsel that detailed some of the final steps needed to close the transaction. In this letter, Burstein falsely stated that Raymond James would be “provid[ing] financing” for Q Resorts’ purchase of Jay Peak. Burstein’s supervisor immediately revised the letter by specifically deleting the statement that Raymond James was financing the transaction and writing in instead that the firm was merely “wir[ing] funds” in connection with the closing. Nevertheless, Burstein ignored his supervisor’s revision, instead, reiterating to MSSI the false claim that Raymond James would be financing the deal.

29. On June 23, 2008, MSSI closed on the sale of Jay Peak to Q Resorts for a purchase price of \$25.7 million. That day, MSSI transferred the Hotel Phase I and Hotel Phase II investor funds that had been held in the MSSI Raymond James accounts to two other accounts in the names of the two partnerships at Raymond James that Quiros controlled. Quiros had opened those accounts on June 18, a few days before the closing. However, despite instructions from MSSI that the Hotel Phase I and Hotel Phase II investor money could not be used to pay for Q Resorts’ acquisition of Jay Peak, Burstein assisted Quiros in immediately redistributing the same investor funds back to MSSI to purchase Jay Peak.

30. Specifically, on the day of the closing, on behalf of Quiros, Burstein wired approximately \$13.5 million of investor funds to MSSI through an account in the name of Q

Resorts as partial payment for the Jay Peak purchase. Over the course of several months, he wired additional investor funds totaling \$8.1 million to MSSSI out of the Q Resorts account. All of this money was investor funds that had been transferred from the Hotel Phase I and Hotel Phase II brokerage accounts at Raymond James. In total, with Burstein's assistance, Quiros misappropriated more than \$21 million of Phase I and Phase II investor funds to purchase Jay Peak.

2. Attempts To Mask The Fraudulent Acquisition of Jay Peak

31. Even after the Jay Peak acquisition, Burstein continued to facilitate the fraud by assisting Quiros in masking his misappropriation of investor funds.

32. Quiros' fraudulent use of investor funds to purchase Jay Peak resulted in significant shortfalls in the Hotel Phase I and Hotel Phase II Raymond James brokerage accounts, including money needed for project construction. To make up for these shortfalls, in June 2008, Burstein helped Quiros secure margin loans from Raymond James in these accounts, with the assets of the limited partnerships impermissibly pledged as collateral. Quiros then began drawing against the accounts and used the borrowed money to pay for construction costs and other project expenses.

33. To give the appearance that the investor funds remained in the accounts, with Burstein's assistance, Quiros also purchased U.S. Treasury Bills on margin. Burstein was aware that Quiros purchased the Treasury Bills in those accounts solely for this reason.

34. Quiros and Burstein later tried to hide the margin debt and low cash balances reflected in the Hotel Phase I and Hotel Phase II accounts from Jay Peak's auditors. By February 2009, the two accounts had a combined margin loan balance of approximately \$23.8

million and positive ending balances totaling only about \$4 million. This was far short of the \$25 million in cash that should have been sitting in the accounts.

35. That month, in an apparent attempt to conceal those low cash balances from Jay Peak's auditors (who would be asking for confirmation of the value of the holdings in those accounts), at Quiros request, Burstein arranged for the margin debts to be moved to a new margin account opened under the name of Hotel Phase I at Raymond James. The debt was moved simply by paying off the margin balances in the Hotel Phase I and Hotel Phase II accounts using the cash from the new margin loan account.

36. As a result, those two accounts now reflected combined positive cash balances of more than \$27 million, consisting of unencumbered U.S. Treasury bills. However, this was just a ruse, as there was still a significant margin debt of \$23.8 million in the new consolidated account.

37. Emails Burstein sent contemporaneously show that he was aware that the new margin account was being opened to hide the Hotel Phase I and Hotel Phase II margin debt. For example, in a February 6, 2009 email to Quiros, Burstein wrote, "per our conversation yesterday, attached are the new documents to open up an account just to hold your margin debit." Later, Burstein sent an email to Raymond James' Customer Accounts department, asking that the margin debits from the two accounts be moved to the new margin account, and stating that he did not want the debits to appear on the statements.

38. Burstein continued to help Quiros hide his fraud by preparing and signing, at Quiros' behest, a letter addressed to Quiros, dated December 9, 2009. In the letter, which was on Raymond James letterhead, Burstein wrote that Raymond James received approximately \$13.5 million into the Hotel Phase I account in June 2008 from MSSSI's bank account.

39. The letter further represented that through November 30, 2009, Raymond James wired a total of \$13.45 million of that money from the Hotel Phase I account through Q Resorts for the construction of Hotel Phase I. This letter is misleading because Burstein knew that Quiros had used the money from MSSSI to acquire Jay Peak and that the funds that were actually wired for Hotel Phase I construction was money borrowed from Raymond James through a margin loan.

3. Misuse of Investor Funds To Pay-Off A Margin Loan

40. Burstein also aided and abetted Quiros' fraudulent use of more than \$18 million in investor funds from the Biomedical offering to pay off another margin account under the name of Jay Peak. Quiros opened the margin account in February 2012 and began drawing against it to pay for construction costs associated with some of the other Jay Peak projects. Moreover, Quiros also used approximately \$7 million from this margin loan to finance his purchase of another ski resort in Vermont called Burke Mountain Resort.

41. In March 2014, Quiros used about \$18 million of Biomedical investor funds to pay off the Jay Peak margin loan. As a result, Biomedical investors effectively funded some of the construction costs of other Jay Peak projects, and even more blatantly, paid for Burke Mountain.

42. As the registered representative on Quiros' accounts at Raymond James, Burstein played a significant role in facilitating this fraudulent transaction, while being aware that the \$18 million consisted of Biomedical investor funds. Burstein handled the transfer of the investor funds, which followed a circuitous route involving several accounts, seemingly to hide the misuse. Specifically, on March 4, 2014, Burstein facilitated Quiros' transfer of \$18.2

million from the Biomedical account at Raymond James to the Biomedical bank account at People's Bank.

43. That same day, he facilitated the transfer of the money back to Raymond James, where it was then deposited into an account in the name of another entity controlled by Quiros, Jay Construction Management, Inc. ("JCM"), which had been established purportedly to pay bills from outside vendors related to construction on the Jay Peak projects. The following day, the money was transferred from that account to the Jay Peak account where it was used to pay off the margin debt.

44. The roundabout transfer of investor money from Raymond James to People's Bank and then back to Raymond James on the same day served no legitimate purpose. Apparently, this movement of money was designed to muddy and confuse the actual use of Biomedical investor funds and create the false appearance that the money was being used to pay for construction related costs for the project.

45. Burstein allayed questions from Raymond James personnel in its customer accounts and anti-money laundering departments about this unusual flow of funds by falsely claiming that it was for "accounting purposes" without providing any specific details of what that meant.

46. Besides helping transfer the funds, Burstein facilitated this fraudulent transaction by processing the Letters of Authorization, and other paperwork and approvals needed to move the Biomedical funds at the direction of Quiros. He also worked with Raymond James' customer accounts department to come up with the "pay off plan" for the Jay Peak margin loan.

V. CLAIMS FOR RELIEF

COUNT 1

Aiding and Abetting Violations of Section 10(b) and Rule 10b-5 of the Exchange Act

47. The Commission repeats and realleges paragraphs 1 through 46 of its Complaint as if fully set forth herein.

48. Between approximately June 2008 and March 2014, Burstein, directly or indirectly, knowingly or recklessly provided substantial assistance to persons who, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of a security, with scienter, used the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange: (a) to employ devices, schemes or artifices to defraud; (b) to make untrue statements of material facts or omit 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 (c) to engage in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

49. By reason of the foregoing, Burstein aided and abetted and, unless enjoined, is reasonably likely to continue to aid and abet 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.

COUNT 2

Aiding and Abetting Violations of Section 17(a) of the Securities Act

50. The Commission repeats and realleges Paragraphs 1 through 46 of its Complaint as if fully set forth herein.

51. Between approximately February 2012 and March 2014, Burstein, directly or indirectly, knowingly or recklessly provided substantial assistance to persons who, directly or indirectly, singly or in concert with others, in the offer or sale of a security, used the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange: (a) to knowingly or recklessly employ devices, schemes, or artifices to defraud; (b) to negligently obtain money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) to negligently engage in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon purchasers of the securities.

52. By reason of the foregoing, Burstein aided and abetted and, unless enjoined, is reasonably likely to continue to aid and abet violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court find Burstein aided and abetted violations of the federal securities laws alleged herein and

A.

Permanent Injunction

Issue a permanent injunction restraining and enjoining Burstein, and his officers, agents, servants, employees, attorneys, representatives, and all persons in active concert or participation with them, and each of them, from violating the federal securities laws alleged in this complaint.

B.

Civil Penalty

Issue an Order directing Burstein to pay a civil money penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d).

C.

Further Relief

Grant such other and further relief as may be necessary and appropriate.


D.

Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action 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 by the Commission for additional relief within the jurisdiction of this Court.

September 6, 2018

Respectfully submitted,

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