

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SEP 06 2000 EC

Michael N. Milby, Clerk

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

HOUSTON TEXANS NFL FOOTBALL
TEAM HOLDING CO.; and

EDGAR A. GUILBEAU,

Defendants,

Civil Action No.

H - 00 - 3072

COMPLAINT

Plaintiff, Securities and Exchange Commission ("Commission"), for its Complaint against Defendants Houston Texans NFL Football Team Holding Co. ("Houston Company"), and Edgar A. Guilbeau ("Guilbeau") (collectively "Defendants"), alleges as follows:

SUMMARY

1. In this action, the Commission charges the Defendants with perpetrating an Internet investment fraud which targeted football fans and other investors in Houston, Texas and elsewhere. The Defendants are currently engaged in a fraudulent scheme to offer and sell unregistered securities of the Houston Company, an entity which is masquerading as the owner of a National Football League ("NFL") franchise in Houston, Texas.

2. In the course of offering the unregistered securities, the Defendants are employing a scheme to defraud and are making omissions of material fact concerning, among other things, their lack of affiliation with the NFL and their lack of authority to sell ownership

interests in an NFL-related entity. In reality, the Defendants do not own an NFL football franchise and are not affiliated with the NFL; nor are they authorized to sell ownership interests in an NFL-related entity.

3. By engaging in the conduct detailed in this Complaint, the Defendants directly or indirectly, singly or in concert, have engaged, and, unless enjoined and restrained, will again engage in transactions, acts, practices and courses of business that constitute violations of Sections 5(c) and 17(a)(1) and (3) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(c) and 77q(a)(1) and (3).

JURISDICTION AND VENUE

4. The common stock offered by the Defendants constitutes "securities" under Section 2(a)(1) of the Securities Act, 15 U.S.C. §77b.

5. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act, 15 U.S.C. §77t(b), to preliminarily and permanently enjoin Defendants from future violations of the federal securities laws. To prevent further investor losses, the Commission also seeks an order of this Court which, in regard to both Defendants: 1) requires them to disgorge their ill-gotten gains plus prejudgment interest; 2) freezes their assets; 3) orders them to provide an accounting; 4) prohibits the destruction of records; 5) orders expedited discovery; and 6) provides such other equitable relief that may be deemed appropriate. In addition, the Commission seeks civil penalties against the Defendants pursuant to Section 20(d) of the Securities Act, 15 U.S.C. §77t(d).

6. This Court has jurisdiction over this action, and venue is proper, pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act, 15 U.S.C. §§77(b), 77t(d), and 77v(a).

7. The Defendants, directly or indirectly, singly or in concert, made use of the means or instruments of transportation and 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. Certain of the transactions, acts, practices and courses of business alleged herein took place in the Southern District of Texas.

DEFENDANTS

8. **Houston Texans NFL Football Team Holding Company** ("Houston Company"), is a Texas corporation formed March 31, 2000. The Houston Company has not registered its offering with the Commission. The business address the company reveals to prospective investors is only a mail drop.

9. **Edgar A. Guilbeau** ("Guilbeau"), 50, of Pearland, Texas, is the registered agent, director, president and secretary of the Houston Company. Guilbeau is believed to have received a bankruptcy discharge in 1997, and is not known to have any prior association with publicly held companies.

THE DEFENDANTS' SCHEME TO DEFRAUD

10. From at least August 2000, and continuing through the present, Houston Company and Guilbeau, individually and in combination, have been operating a scheme to defraud investors, in which the unregistered common stock of Houston Company is offered to investors at \$49 per share, and which requires a minimum purchase of 100 shares.

11. As part of the scheme, and to attract investors, the Defendants employ newspaper advertisements and operate an Internet website, www.houstontexans-nfl.com, which provide information concerning the bogus investment.

12. As a further part of their scheme, the Defendants' have designed their website to lead investors to believe that by purchasing the common stock of defendant Houston Company, they are acquiring an interest in the recently-formed Houston, Texas NFL franchise football team.

13. The Defendants create this false impression by employing a number of devices. First, the Defendants use the name, "Houston Texans NFL Football Team" to create the false impression that the purported team is, in fact, an NFL-sanctioned franchise. Second, the Defendants, illegally display the "NFL Shield" and numerous other NFL-trademarked emblems to further create the illusion that they are affiliated with the NFL. Also, the Defendants capitalize on the recent media speculation that the actual Houston NFL team will likely be named the "Texans," by employing that name as the name of their corporation.

14. In reality, the Defendants have no interest in the recently-formed Houston, Texas NFL franchise football team, and are not authorized to claim an affiliation with the National Football League or to use its symbols or trademarks.

15. As a further part of Defendants' scheme, they create the illusion that Houston Company is a prosperous entity conducting legitimate business affairs by advising investors, through their website, that the business address of Houston Company is 5300 N. Braeswood, Suite 282, Houston, Texas. In truth and fact, there is no business office at this location, and there is no Suite 282. Rather, the address is merely a mail drop box, and 282 is simply the number of the box.

**THE DEFENDANTS' MISREPRESENTATIONS
AND OMISSIONS OF MATERIAL FACT
IN FURTHERANCE OF THEIR SCHEME TO DEFRAUD**

16. The Defendants' website, which invites the "[t]he individual football fan/investor... to purchase shares of common stock in the HOUSTON TEXANS NFL FOOTBALL TEAM HOLDING CO.," and advises "TIME IS OF THE ESSENCE," omits facts that are material.

17. For example, the Defendants fail to disclose to investors that the shares of common stock they are offering for sale are not registered with the Commission.

18. The Defendants fail to disclose to investors that by acquiring shares of the Houston Company, they will not acquire any interest in the actual Houston, Texas NFL franchise.

19. The Defendants fail to disclose to investors that NFL Rules prohibit the ownership of a franchise by a corporation or other entity in which ownership interests are publicly owned, with the exception of the Green Bay Packers.

20. The Defendants fail to disclose to investors that they are not affiliated with the NFL.

21. The Defendants fail to disclose to investors that they have no authority to sell ownership interests in an NFL-related entity.

22. The Defendants fail to disclose to investors that they do not own an NFL football franchise.

23. The Defendants fail to disclose to investors that they are not authorized to use or display NFL trademarks or symbols.

CAUSES OF ACTION

FIRST CLAIM

Violations of Section 17(a)(1) of the Securities Act

24. The Commission repeats and realleges paragraphs 1 through 23 of this Complaint and incorporates them herein by reference as if set forth *verbatim*.

25. Houston Company and Guilbeau, directly or indirectly, in the offer of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, have: (a) employed devices, schemes or artifices to defraud; (b) obtained 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 light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

26. As part of and in furtherance of this scheme, the Defendants directly and indirectly, prepared, disseminated or used, written offering documents, promotional materials, investor and other correspondence, and made oral presentations, which contained untrue statements of material fact and which 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, including, but not limited to, those statements and omissions set forth above.

27. The Defendants made the above-referenced misrepresentations and omissions knowingly or recklessly disregarding the truth.

28. By reason of the foregoing, Houston Company and Guilbeau have violated, and unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. 77q(a)].

SECOND CLAIM

Violations Of Section 17(a)(3) of the Securities Act

29. The Commission repeats and realleges paragraphs 1 through 23 of this Complaint and incorporates them herein by reference as if set forth *verbatim*.

30. Houston Company and Guilbeau, directly or indirectly, in the offer of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, have engaged in transactions, practices, or a course of business which operateds or would operate as a fraud or deceit upon the purchaser of the securities.

31. As part of and in furtherance of this scheme, the Defendants directly and indirectly, prepared, disseminated or used contracts, promotional materials, investor and other correspondence and made oral presentations which contained untrue statements of material fact and which 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, including, but not limited to, those statements and omissions set forth above.

32. The Defendants, directly or indirectly, in the offer of securities, by use of the means and instruments of transportation and communication in interstate commerce made the above-referenced misrepresentations and omissions negligently.

33. By reason of the foregoing, Houston Company and Guilbeau have violated, and unless enjoined, will continue to violate Section 17(a)(3) of the Securities Act, 15 U.S.C. §77q(a)(3).

THIRD CLAIM

Violations of Section 5(c) of the Securities Act

34. The Commission repeats and realleges paragraphs 1 through 23 of this Complaint and incorporates them herein by reference as if set forth *verbatim*.

35. Houston Company and Guilbeau, directly or indirectly, have been offering to sell, and have been, directly and indirectly: (a) making use of the means and instruments of transportation and communication in interstate commerce and of the mails to offer their securities for sale, through the use of any prospectus or otherwise.

36. As described above, the Houston Company's common stock was offered to the public through a general solicitation of investors. No registration statement has been filed with the Commission or is otherwise in effect with respect to these securities.

37. By reason of the foregoing, Defendants Houston Company and Guilbeau have violated and, unless enjoined, will continue to violate Section 5(c) of the Securities Act [15 U.S.C. 77e(c)].

RELIEF REQUEST

WHEREFORE, Plaintiff Securities and Exchange Commission respectfully requests that this Court:

I.

Temporarily restrain and preliminarily and permanently enjoin Houston Company and Guilbeau from violating Sections 5(c) and 17(a)(1) and (3) of the Securities Act.

II.

Enter an Order instanter freezing the assets of Houston Company and Guilbeau, and directing that all financial or depository institutions comply with the Court's Order.

III.

Enter an Order instanter that both Defendants shall file with the Court and serve upon Plaintiff Commission, no later than 72 hours from receipt of this Order, an accounting, under oath, detailing all of their assets and all funds or other assets received from investors and from one another.

IV.

Enter an Order instanter that both Defendants be restrained and enjoined from destroying, removing, mutilating, altering, concealing or disposing of, in any manner, any of their books and records or documents relating to the matters set forth in the Complaint, or the books and records and such documents of any entities under their control, until further order of the Court.

V.

Enter an Order that the parties may commence discovery immediately, and that notice periods be shortened to permit the parties to require production of documents, or the deposition of any party or party-representative, on 72 hours notice.

VI.

Enter an Order requiring both Defendants to disgorge an amount equal to the funds and benefits they obtained illegally as a result of the violations alleged herein, plus prejudgment interest on that amount.

VII.

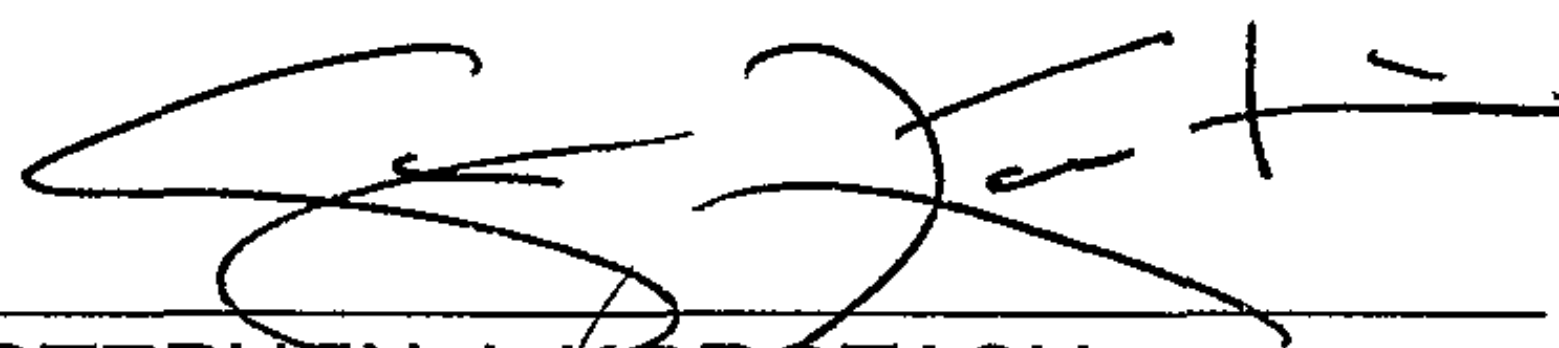
Enter an Order imposing civil penalties against both Defendants pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), for the violations alleged herein.

VIII.

Enter an Order for such further relief as this Court may deem just and proper.

For the Commission, by its attorneys:

Dated this 5th day of September, 2000.



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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of July 2000, a true and correct copy of the foregoing document was served by hand on the following individuals:

Houston Texans NFL Football Team
Holding Co
6421 Kelly Drive
Pearland, TX 77581

Edgar A. Guilbeau
6421 Kelly Drive
Pearland, TX 77581



Stephen J. Kerofash