

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

ROBERT C. SEARS,

Defendant,

and

**LAST MINUTE CONCESSIONS INC.,
JAMES W. CASAGRANDE,
COLD SPRING GOLF COURSE INC.
and COLD SPRING DEVELOPMENT INC.,**

Relief Defendants.

U.S. DISTRICT COURT
DISTRICT OF MASS.

Civil Action No.

00-30170-FHF

NOTED

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") files the following Complaint against Defendant Robert C. Sears ("Sears") and Relief Defendants Last Minute Concessions Inc. ("Last Minute"), James W. Casagrande, Cold Spring Golf Course Inc. ("Cold Spring Golf"), and Cold Spring Development Inc. ("Cold Spring Development").

SUMMARY

1. Sears is an investment adviser who has defrauded his clients of over \$1.9 million. The Commission brings this emergency enforcement action to stop Sears from continuing his conduct, which is ongoing.

NOTED

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2. Sears misappropriated his clients' funds by causing unauthorized transfers from his clients' brokerage accounts (Sears does not keep custody of his clients' funds, but manages his clients' accounts maintained at several different brokerage firms). To accomplish the transfers, Sears forged his clients' signatures on letters directing the brokerage firms to transfer funds to the bank account of a corporation, Last Minute, owned by Sears and relief defendant Casagrande. To generate the transferred cash, Sears forged client signatures on margin agreements and obtained unauthorized margin loans in client accounts. Last Minute used the money to buy a controlling interest in Cold Spring Golf, an entity developing a golf course near Belchertown, Massachusetts. Last Minute also purchased stock in Cold Spring Development, which was to build an adjoining condominium community.

3. When clients eventually learned of the transfers and began to question Sears, he provided varying false explanations, including that the money had been invested in government bonds which would earn 15% interest. Sears did not disclose to clients that he had used the money to buy his own company a controlling interest in Cold Spring Golf. Clients who relied on him as a fiduciary for investment advice did not know that Sears had taken advantage of their trust and served his own financial interest at their expense.

4. Through his fraudulent conduct and statements, Sears has engaged and, unless enjoined, will continue to engage in violations of the federal securities laws. Specifically, Sears has defrauded clients in violation of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"). He has engaged in fraud in the offer or sale of securities in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act"); and fraudulent or deceptive

conduct in connection with the purchase or sale of securities in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder.

5. Last Minute, Casagrande, Cold Spring Golf and Cold Spring Development have been unjustly enriched by Sears' fraudulent transfers of investor funds and are liable for disgorgement of those funds.

6. Accordingly, the Commission seeks: (i) entry of a permanent injunction prohibiting Sears from further violations of the relevant provisions of the federal securities laws, (ii) disgorgement of Sears' ill-gotten gains, (iii) relinquishment of the unjust enrichment of Last Minute, Casagrande, Cold Spring Golf and Cold Spring Development, plus prejudgment interest, and (iii) the imposition of civil monetary penalties due to the egregious nature of Sears' violations. In addition, because of the ongoing nature of the fraud and the danger that assets bought with proceeds of the fraud will be concealed or encumbered, the Commission seeks entry of a temporary restraining order and a preliminary injunction that will: (i) prohibit Sears from continuing to violate the relevant provisions of the federal securities laws, (ii) freeze Sears' assets and any other assets purchased with investor funds, and otherwise maintain the status quo pending final resolution of this action, (iii) freeze a portion of the assets of the relief defendants; (iv) require the defendants to submit an accounting of investor funds and other assets in their possession, (v) prevent the defendants from destroying relevant documents, and (vi) set a schedule for expedited discovery.

JURISDICTION

7. The Commission seeks entry of a temporary restraining order, a preliminary injunction, a permanent injunction, and the disgorgement of ill-gotten gains and unjust enrichment

pursuant to Section 20(b) of the Securities Act [15 U.S.C. §77t(b)], Section 21(d)(1) of the Exchange Act [15 U.S.C. §78u(d)(1)] and Section 209(d) of the Advisers Act [15 U.S.C. §80b-9(d)]. The Commission seeks the imposition of civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], 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)].

8. This Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§77t(d) and 77v(a)]; Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(d), 78u(e) and 78aa] and Section 209(d) of the Advisers Act [15 U.S.C. §80b-9(d)]. Sears maintains a residence in Massachusetts and his investment advisory business is located in Massachusetts, Casagrande resides in Massachusetts, the corporate relief defendants each has its principal place of business in Massachusetts, and many of the defrauded investors reside in Massachusetts.

DEFENDANTS

9. Defendant Sears, age 42, maintains residences in Northampton, Massachusetts and Block Island, Rhode Island. He operates an investment advisory business in Northampton, Massachusetts. Sears is the president of Last Minute and a director of Cold Spring Golf and Cold Spring Development. From December, 1991 through January 31, 2000, Sears was registered with the Commission as an investment adviser. On January 31, 2000, the Commission canceled Sears' registration as an investment adviser due to his failure to establish that he remained eligible for Commission registration by managing at least \$25 million in client assets. On March 2, 2000, with Sears' consent, the Commission entered an order censuring Sears, requiring him to cease and

desist from violation of the filing requirements of the Advisers Act and requiring payment of a \$5,000 civil monetary penalty, for his failure to file required forms while registered.

10. Relief Defendant Last Minute is a Massachusetts corporation organized in 1992, with its principal place of business in Northampton, Massachusetts. Sears is president of Last Minute and Casagrande is treasurer. Sears and Casagrande own Last Minute.

11. Relief Defendant Casagrande, age 41, resides in Pelham, Massachusetts. Casagrande does business as a tax preparer in office space in Northampton shared with Sears and also works as a golf professional. Casagrande is the treasurer of Last Minute and a director of Cold Spring Golf and Cold Spring Development.

12. Relief Defendant Cold Spring Golf is a Massachusetts corporation organized in 1999, for the purpose of constructing a golf course near Belchertown, Massachusetts. Sears and Casagrande are directors of Cold Spring Golf. Last Minute owns approximately 61% of the stock of Cold Spring Golf.

13. Relief Defendant Cold Spring Development is a Massachusetts corporation organized in 1999, for the purpose of constructing a condominium development associated with the golf course to be built by Cold Spring Golf. Sears and Casagrande are directors of Cold Spring Development. Last Minute owns approximately 16% of the stock of Cold Spring Development.

STATEMENT OF FACTS

Sears' Investment Advisory Business

14. Sears operates a sole proprietorship which provides investment and tax advice to individuals for a fee. When the conduct that is the subject of this complaint began, the majority of

Sears' clients maintained accounts at Charles Schwab & Co., Inc. ("Schwab"). Sears had a written agreement with Schwab which allowed him to make transactions in client accounts maintained at Schwab only to the extent specified in each individual client's account opening agreement.

Sears' Company Buys a Controlling Interest In Cold Spring Golf

15. In January, 1999, Cold Spring Golf and Cold Spring Development were organized to develop a golf course and condominium project. At some time before April, 1999, Cold Spring's three founders met with Sears and Casagrande to discuss the possibility of the two investing in the golf course project. Sears and Casagrande indicated that they wished to obtain a controlling interest in the golf course and Sears stated that he could obtain money from his clients for the purpose.

16. In June, 1999, Last Minute entered into written agreements with Cold Spring Golf and Cold Spring Development to acquire stock of each corporation. Under the agreement between Last Minute and Cold Spring Golf, Last Minute agreed to acquire a 51% interest in Cold Spring Golf by buying shares of newly-issued stock of Cold Spring Golf for \$1,725,000 within thirty days after the golf course project received final permitting. Shortly after the agreements were executed, Last Minute acquired an additional 10% interest in Cold Spring Golf by buying shares owned by one of the company's founders. Under the agreement between Last Minute and Cold Spring Development, Last Minute agreed to purchase a 16% interest for \$275,000, payable within thirty days after final permitting. The stock purchase agreements also provided that Sears and Casagrande would become directors of both Cold Spring Golf and Cold Spring Development upon payment of the funds.

17. In or about January, 2000, Cold Spring Golf received the final permit necessary to allow construction to begin and triggering Last Minute's obligation to provide \$1.725 million.

Sears Fraudulently Obtains Funds from His Clients' Accounts

18. As set forth in detail below, beginning in February, 2000, Sears caused approximately \$2.2 million to be transferred to a bank account maintained by Last Minute ("Last Minute Account") from at least 19 brokerage accounts held by 12 clients of Sears. At least \$1,942,500 of the transfers to Last Minute were fraudulently obtained by Sears through failure to disclose material facts, including his own financial interest in the company which received the transferred funds. Sears misappropriated at least \$892,000 of the fraudulently obtained \$1.942 million by making unauthorized transfers from his clients' accounts without the knowledge or consent of the clients.

19. As set forth in detail below, without the clients' knowledge or consent, Sears:

- 1) forged the signatures of at least six clients on at least 13 letters of authorization ("LOA"s) he sent to their brokerage firms purporting to authorize the transfer of funds out of their accounts;
- 2) forged at least three clients' signatures on margin account agreements; and 3) caused margin loans to be made in at least four client accounts, resulting in monthly interest charges to the account.

Sears Misappropriates \$90,000 from Lyn Reale

20. On or about March 29, 2000, Sears forged the name of his 65-year-old client, Lyn Reale, to a LOA he then faxed to Schwab instructing that \$75,000 be wired from her account to the Last Minute Account. Sears signed Reale's name on the letter without her knowledge or consent. The funds were transferred on March 29 without Reale's knowledge or consent.

21. On or about April 5, 2000, Sears forged Reale's name to a LOA to Schwab instructing that \$15,000 be wired to the Last Minute Account. Sears signed Reale's name on the letter without her knowledge or consent. The funds were transferred on April 6 without Reale's knowledge or consent.

22. Reale's account incurred margin debt as a result of the transfers. From the dates of the transfers to the present, her account incurred at least \$600 per month in margin interest attributable to the \$90,000 margin debt. Reale neither knew of nor consented to the margin loan obtained in her account.

23. In July, 2000, Reale received a notice from Schwab that she was required to deposit funds into her margin account. When Reale called Sears to inquire about the notice, Sears stated that he would fix it. Shortly thereafter, Reale received a notice from Schwab that stock in her account had been liquidated to provide the required margin payment. When Reale again called Sears to question him, Sears explained for the first time that he had transferred \$90,000 out of her account and represented that he had used the money to buy a bond that would pay 15% interest.

24. In response to Reale's request for a copy of the bond, on or about August 23, she received by fax copies of two forms of promissory notes, one dated March 29 in the amount of \$75,000 and the second dated April 5 in the amount of \$5,000. Each purported to reflect a loan to Last Minute from Reale, to be repaid December 31, 2000 with 15% interest. Each document was signed by Sears on behalf of Last Minute.

25. Reale had never previously seen the forms of promissory note. She had never heard of Last Minute and had never agreed to lend money to Last Minute. When Reale called Sears and

questioned him further, he stated that Last Minute was building a golf course and that her money would be used to build the golf course. Sears failed to disclose to Reale that he was an owner of Last Minute.

26. On or about August 23, during her telephone discussion with Sears after receiving the purported promissory notes, Reale requested that Sears return the \$90,000 he had misappropriated from her account. Shortly afterward, Sears represented to her that he would repay her \$90,000 plus 15% interest within a few days with the proceeds of a business deal he had just completed.

27. Sears has never returned any funds to Reale.

Sears Misappropriates \$502,500 from Roy Johnson

28. On or about June 1, 2000, Sears forged the name of his client Roy Johnson, a gymnastics coach at the University of Massachusetts, to a LOA which instructed Schwab to transfer \$70,000 to the Last Minute Account from a Schwab account in the name of Roy Johnson and his wife Jeannie Johnson. Sears then faxed the LOA to Schwab. Sears signed the Johnsons' names without their knowledge or consent. The funds were transferred on June 6 without the Johnsons' knowledge or consent.

29. On or about June 6, 2000, Sears forged the names of Roy and Jeannie Johnson on an agreement with Schwab authorizing margin trading in the Johnsons' existing Schwab account. Sears signed the Johnsons' names without their knowledge or consent. The Johnsons had never authorized Sears to open a margin account in their name or to convert their existing cash account at Schwab to a margin account.

30. On or about June 21, 2000, Sears forged the names of Roy and Jeannie Johnson on a LOA which he then faxed to Schwab, instructing Schwab to transfer \$100,000 from the Johnsons' account to the Last Minute Account. Sears signed the Johnsons' names without their knowledge or consent. The funds were transferred on June 22 without the Johnsons' knowledge or consent.

31. On or about July 11, 2000, Sears instructed Schwab to sell 2000 shares of General Electric stock in the Johnsons' account. The proceeds of the sale totalled approximately \$105,000. On the same date, Sears forged the names of Roy and Jeannie Johnson to a LOA instructing Schwab to wire \$90,000 from the Johnsons' account to the Last Minute Account. Sears signed the Johnsons' names without their knowledge or consent. Although the forged letter dated July 11 instructed Schwab to send \$90,000 to the Last Minute Account, that amount apparently exceeded the amount that could be withdrawn from the Johnsons' account under applicable margin procedures at Schwab. Instead, on July 12, \$62,500 was transferred to the Last Minute Account without the Johnsons' knowledge or consent.

32. On July 13, 2000, Sears instructed Schwab to sell an additional of 6000 shares of General Electric stock, comprised of 2000 shares in each of three accounts maintained in the names of Johnson's three minor sons. Johnson's father had given the shares to his grandchildren to be used for their college education. On July 13, Sears forged Johnson's name to three LOAs, one for each of the minor sons' accounts, each instructing that \$90,000 be wired to the Last Minute Account from the minor's account. Sears signed Johnson's name to each of the three letters without Johnson's knowledge or approval. Sears added a handwritten note to each letter stating that, "The transfer is being made for the minor's benefit." Three transfers of \$90,000 each were made to the Last Minute Account without Johnson's knowledge or consent.

33. As a result of the transfers of funds set forth in paragraphs 30 and 31 above, the Schwab account of Roy and Jeannie Johnson incurred at least \$166,000 in margin debt and has incurred interest charges of at least \$500 per month attributable to the margin debt. Sears caused the Johnsons' account to incur margin debt without their knowledge or consent.

34. On or about July 24, 2000, Sears informed Johnson that Sears had sold some of Johnson's General Electric stock and used \$25,000 of the proceeds to buy a low-risk government bond, which would yield 14.9% interest. When Johnson later received his monthly account statement from Schwab and asked Sears why the statement did not reflect the purchase of any bonds, Sears stated that Schwab had made a mistake. Johnson requested that Sears repay the funds Sears had caused to be transferred from the Johnson accounts.

35. On or about August 10, 2000, Johnson complained to Schwab about the transfers from his account made by Sears. Shortly afterward, Sears faxed to Johnson a copy of a promissory note from Last Minute reflecting a purported loan in the amount of \$70,000 from Johnson to Last Minute and payable on demand, bearing a stated interest rate of 15%. The document was signed by Sears on behalf of Last Minute.

36. Johnson had never previously seen the promissory note. He had never heard of Last Minute and had never agreed to lend money to Last Minute. Sears failed to disclose to Johnson that he was an owner of Last Minute.

37. Beginning on or about August 11, 2000, Sears left over twenty voicemail messages for Johnson repeatedly stating that the transferred funds would be repaid to him immediately. In one such message, Sears represented that an individual named Klaus Peter was going to buy the "bonds" currently held by Johnson and that his purchase money would be wired to Johnson's

Schwab account. On or about August 16, Sears faxed Johnson and Schwab a copy of a document purporting to relate to a wire transfer to be made by Peter to Johnson. In the copy faxed to Schwab, Sears identified a Fleet bank account number from which he stated the funds would be wired to Johnson's account. No such bank account exists. Shortly after faxing this document, Sears left a message for Johnson falsely stating that he could not wire funds to Johnson's Schwab account to repay him because Schwab had blocked the account. In fact, Schwab had never blocked Johnson's account, or otherwise taken any action to prevent funds from being wired into the account.

38. Sears has never returned any of the funds transferred from the Johnsons' accounts.

Sears Misappropriates \$30,000 from Paul and Deborah Engel

39. On or about June 22, 2000, Sears forged the names of his clients Paul and Deborah Engel to a letter which he then faxed to Schwab, instructing Schwab to transfer \$30,000 from the Engels' Schwab account to the Last Minute Account. Sears signed the Engels' names without their knowledge or consent. The funds were transferred on June 22 without the Engels' knowledge or consent. The transfer increased the Engels' existing margin debt, without their knowledge or consent.

40. On or about August 20, 2000, the Engels received a written notice from Schwab that it had terminated Sears' ability to conduct trades in his clients' Schwab accounts. The Engels made inquiries to Schwab regarding the notice, as a result of which they received a copy of the letter of instruction for the \$30,000 transfer, bearing their forged signatures. Deborah Engel then called Sears. Sears represented to Ms. Engel that the Engel's money had been placed in a bond

fund in the name of Cold Spring Development, a golf course development, and that it was earning 15% interest.

41. Ms. Engel requested that the \$30,000 Sears had taken be returned to the Engels' account. Sears responded that he would send a promissory note. Ms. Engel received by fax a copy of a promissory note from Last Minute reflecting a purported loan in the amount of \$30,000 from the Engels to Last Minute payable on demand and bearing a stated interest rate of 15%. The document had a purported date of June 22, 2000 and was signed by Sears on behalf of Last Minute.

42. Mr. and Mrs. Engel had never previously seen the promissory note. They had never heard of Last Minute and had never agreed to lend money to Last Minute. Sears failed to disclose to the Engels that he was an owner of Last Minute.

43. After receiving the purported promissory note, Ms. Engel continued to request the return of the Engels' money. Sears has never returned any money to the Engels.

Sears Misappropriates Additional Client Funds

44. From March, 2000 to the present, in addition to the \$622,500 misappropriated from Lyn Reale, Roy and Jeannie Johnson and their children, and Paul and Deborah Engel, Sears has misappropriated at least \$270,000 from at least four other clients, including Ann Arnold, Thomas Futter, Stephen and Claire McQueeny, and Virginia Senders.

45. Sears forged the name of each client identified in the preceding paragraph to one or more letters which he then faxed to Schwab, instructing the transfer of funds from the client's account to the Last Minute Account, which were made in the following amounts on the specified dates:

Ann Arnold	Letter sent 6/1/00	\$ 20,000 transferred 6/2/00
Thomas Futter	Letter sent 3/29/00	\$ 50,000 transferred 3/29/00
Stephen and Claire McQueeney	Letter sent 3/15/00	\$ 75,000 transferred 3/15/00
Stephen and Claire McQueeney	Letter sent 4/5/00	\$ 5,000 transferred 4/6/00
Virginia Senders	Letter sent 3/29/00	\$120,000 transferred 3/31/00

46. Each of the transfers from the accounts of Arnold, Futter and McQueeney was made without the clients' knowledge or consent. Sears caused Futter's account to incur margin debt for the amount transferred, without Futter's knowledge or consent.

47. Sears did not disclose material facts to his client Futter, age 79, concerning the use of Futter's transferred funds, including Sears' financial interest in Last Minute and the golf course. Sears did not disclose material facts to Arnold, a licensed practical nurse, or to McQueeney, a self-employed businessman, including the fact that their funds would be transferred to an entity in which Sears had an ownership interest. Sears also failed to disclose these facts to Reale, the Johnsons or the Engels.

48. Sears forged the name of his client Virginia Senders, age 77, to a Schwab margin account agreement on or about March 28, 2000, and caused a margin account to be opened in her name without her knowledge or consent. On or about March 29, 2000, Sears caused Senders' account to incur a margin loan of \$120,000, without Senders' knowledge or consent. The proceeds were transferred to the Last Minute Account without Senders' knowledge. In each subsequent month, Senders' account has incurred an average of approximately \$900 in margin interest charges attributable to the unauthorized margin loan.

49. Sears did not disclose to his clients the risks of incurring margin loans or the risks associated with investing in Last Minute or the Cold Spring Golf.

50. Through the transactions set forth in paragraphs 20 through 49 above, Sears misappropriated at least \$892,000 from his clients' accounts.

Sears Fraudulently Obtains Additional Client Funds

51. In addition to the client funds he misappropriated through the unauthorized transfers and margin loans set forth in paragraphs 20 through 49 above, Sears fraudulently obtained at least \$1 million in additional funds from clients to whom he failed to disclose material facts concerning his financial interest in Last Minute, Last Minute's financial interest in the golf course, and the risks associated with providing funds to Last Minute or the Cold Spring golf project.

52. On or about February 22, 2000, Sears caused \$500,000 to be transferred from the Schwab account of his client Thomas Futter, age 79, to the Last Minute Account. Futter believed that he was investing money in a golf course development. Sears did not disclose material facts concerning the use of Futter's money, including Sears' ownership interest in Last Minute or the golf course.

53. On or about May 10, 2000, Sears caused \$250,000 to be transferred from Thomas Futter's account at Fidelity Investments to the Last Minute Account. Sears did not disclose material facts concerning the use of Futter's transferred funds, including Sears' ownership interest in Last Minute or the golf course.

54. Sears has never repaid any of the \$750,000 principal or any interest to Futter.

55. On or about March 29, 2000, Sears forged the name of his client Josephine Shaw, age 82, to a letter which he then faxed to Prudential, instructing Prudential to transfer \$225,000 to the

Last Minute Account from Shaw's account. Prudential responded by requesting Sears to have his client sign a form of authorization letter provided by Prudential, which stated that a \$225,000 transfer from Shaw's account would cause her account to incur a margin debt of \$210,872 at an interest rate of 9.25%.

56. On or about March 30, 2000, Sears and Casagrande visited Shaw at her home or office to obtain her signature to the letter. Sears placed a paper in front of Shaw and asked her to sign it to authorize him to take money out of her account. Sears told Shaw that she could earn a better return if she placed money in a deal he was doing and that she would receive her principal back, with interest, within six months. Shaw paid little attention to the document because she trusted Sears. The funds were transferred from her account on or about March 31, 2000.

57. Sears did not inform Shaw that her money would be transferred to an entity in which he had an ownership. Sears did not provide Shaw with any document reflecting his promise to repay Shaw's principal with interest within six months.

58. On or about June 1, 2000, Sears signed the names of his clients Robert and Eleanor McLaughlin to a letter instructing Schwab to transfer \$75,000 from their account to the Last Minute Account and the funds were transferred that day. At some time after making the transfer, Sears told Robert McLaughlin, age 65, that he had transferred the funds for a bond deal. Sears did not disclose that the McLaughlins' funds would be transferred to an entity in which he had an ownership interest. After Mr. McLaughlin communicated with Schwab regarding the transfer, Sears sent him a copy of a promissory note from Last Minute reflecting a purported loan in the amount of \$75,000 from the McLaughlins to Last Minute payable on demand and bearing a stated

interest rate of 15%. The document had a purported date of June 1, 2000 and was signed by Sears on behalf of Last Minute.

59. Through the transactions set forth in paragraphs 20 through 58 above, Sears fraudulently obtained at least \$1,942,000.00.

Use of the Fraudulently Obtained Funds

60. The funds Sears fraudulently caused to be transferred to Last Minute from his clients were used for his own financial benefit, to make payments directly to Cold Spring Golf or Cold Spring Development or to provide funds indirectly to those companies by paying costs (including land acquisition costs) they incurred in the construction of the golf course and condominium projects. The monies funded Last Minute's acquisition of a controlling interest in Cold Spring Golf, thus rendering the Cold Spring stock much more valuable and increasing the value of Sears' and Casagrande's Last Minute stock. Casagrande also received investor funds which purported to be salary and loan repayments.

Sears Attempts to Conceal His Fraudulent Conduct

61. As set forth above, Sears generally failed to disclose the transfers he made from client accounts until after the clients had discovered the transfers. When questioned by clients, he provided materially misleading explanations of the transfers.

62. Sears also concealed documents relating to the transfers. The client files Sears made available during an examination by Commission staff did not include account statements for the clients identified in this Complaint for the period from January 1, 2000 to the present, or any of the purported client LOAs which he had used to obtain funds for Last Minute. In response to an inquiry by the Commission staff about the letters, Sears initially stated that he had removed certain

client documents and placed them in his apartment or with his lawyer. Later he produced unsigned versions of the LOAs and falsely stated that his clients had the executed originals.

Sears' Continuing Conduct

63. Sears continues to provide investment advisory services and to solicit individuals to provide funds for Cold Spring golf course.

64. On or about August 14, 2000, Schwab notified Sears and Sears' Schwab clients that Schwab had terminated his ability to make transactions in his client accounts at Schwab. Sears immediately began contacting clients and requesting that they transfer their brokerage accounts from Schwab to another brokerage firm, where he would be able to obtain authority to direct trades in their accounts.

65. Sears has continued to meet with clients and to provide investment advice.

66. Sears continues to solicit individuals and ask others to solicit individuals to invest funds in the Cold Spring golf course project. As recently as September 18, 2000, Jack Holmes, a Massachusetts resident, wrote a check for \$50,000 payable to a trust account for the golf course in the name of Sears' counsel, Irving Labovitz.

67. Holmes understood that in exchange for his payment he would receive a mortgage interest on the golf course property. When soliciting investments in the golf course, Sears has promised individuals that they will receive a mortgage interest on the property in exchange for their payments.

68. On or about September 20, 2000, a founder of Cold Spring Golf stated that he expected the golf course would try to mortgage its property within a week.

**FIRST CLAIM FOR RELIEF
AGAINST SEARS**

**Fraud in the Offer and Sale of Securities
[Violation of Section 17(a) of the Securities Act]**

69. The Commission repeats and incorporates by reference the allegations in paragraphs 1-68 of the Complaint as if set forth fully herein.

70. Sears, directly or indirectly, acting intentionally, knowingly or recklessly, in the offer or sale of securities by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails: (a) has employed, is employing, and is about to employ devices, schemes or artifices to defraud; (b) has obtained, is obtaining, and is about to obtain money or property by means of untrue statements of material fact or omissions to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) has engaged, is engaging, and is about to engage in transactions, practices or courses of business which operate as a fraud or deceit upon the purchasers of the securities.

71. As a result, Sears has violated, is violating and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

**SECOND CLAIM FOR RELIEF
AGAINST SEARS**

**Fraud in Connection with the Purchase and Sale of Securities
[Violation of Section 10(b) of the Exchange Act and Rule 10b-5]**

72. The Commission repeats and incorporates by reference the allegations in paragraphs 1-68 of the Complaint as if set forth fully herein.

73. Sears, directly or indirectly, acting intentionally, knowingly or recklessly, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) has employed, is employing, and is about to employ devices, schemes or artifices to defraud; (b) has made, is making, and is about to make untrue statements of material fact or has omitted, is omitting, and is about to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) has engaged, is engaging, and is about to engage in acts, practices or courses of business which operate as a fraud or deceit upon certain persons.

74. As a result, Sears has violated, is violating and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. §240.10b-5].

THIRD CLAIM FOR RELIEF AGAINST SEARS

Fraudulent Scheme or Device By an Investment Adviser [Violation of Section 206(1) of the Advisers Act]

75. The Commission repeats and incorporates by reference the allegations in paragraphs 1-68 of the Complaint as if set forth fully herein.

76. Sears, directly or indirectly, acting intentionally, knowingly, or recklessly, by use of the means or instrumentalities of interstate commerce, has employed a device, scheme, or artifice to defraud clients and prospective clients.

77. As a result, Sears has violated, is violating, and unless enjoined, will continue to violate Section 206(1) of the Advisers Act [15 U.S.C. §80b-6(1)].

**FOURTH CLAIM FOR RELIEF
AGAINST SEARS**

**Fraudulent Transaction, Practice, or Course of Business By an Investment Adviser
[Violation of Section 206(2) of the Advisers Act]**

78. The Commission repeats and incorporates by reference the allegations in paragraphs 1-68 of the Complaint as if set forth fully herein.

79. Sears, directly or indirectly, acting intentionally, knowingly, or recklessly, by use of the means or instrumentalities of interstate commerce, has engaged in transactions, practices, or courses of business which operate as a fraud or deceit upon clients or prospective clients.

80. As a result, Sears has violated, is violating, and unless enjoined, will continue to violate Section 206(2) of the Advisers Act [15 U.S.C. §80b-6(2)].

**FIFTH CLAIM FOR RELIEF
AGAINST SEARS, LAST MINUTE, CASAGRANDE,
COLD SPRING GOLF AND COLD SPRING DEVELOPMENT**

Unjust Enrichment

81. The Commission repeats and incorporates by reference the allegations in paragraphs 1-68 of the Complaint as if set forth fully herein.

82. Sears, Last Minute, Casagrande, Cold Spring Golf and Cold Spring Development have been unjustly enriched. They received investor funds or benefits derived therefrom under circumstances dictating that, in equity and good conscience, they should not be allowed to retain such funds.

83. As a result, Last Minute, Casagrande, Cold Spring Golf and Cold Spring Development are liable for unjust enrichment and should be required to return their ill-gotten gains, in an amount to be determined by the Court.

**SIXTH CLAIM FOR RELIEF
AGAINST SEARS, LAST MINUTE, CASAGRANDE,
COLD SPRING GOLF AND COLD SPRING DEVELOPMENT**

Constructive Trust

84. The Commission repeats and incorporates by reference the allegations in paragraphs 1-68 of the Complaint as if set forth fully herein.

85. Sear's wrongful acts caused investors to lose their funds.

86. The funds and benefits received by the relief defendants are traceable to those funds.

87. The relief defendants did not give value for the funds and benefits and/or knew that they had been wrongly obtained.

88. The relief defendants did not give value to investors for their funds and/or knew that they had no legitimate claim to such funds. Accordingly, the relief defendants hold such funds in constructive trust for the benefit of investors

NEED FOR EMERGENCY RELIEF AND PENALTIES

89. This is an ongoing fraud, as Sears continues to solicit investors to invest money in the golf course project and continues to control accounts of his clients. Without this Court's action, it is likely that Sears will continue his fraudulent conduct.

90. Sears and the companies he controls have announced their intent to place mortgages on the property purchased with proceeds of his fraud.

91. The emergency relief requested below is necessary in order to prevent further violations of the federal securities laws and further harm to investors, including further encumbrance or concealment of investor assets.

92. The violations by Sears identified in this Complaint have involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and have directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Enter a temporary restraining order which:

1. Restrains Sears, his agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from directly or indirectly violating:

- 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];
- e. Section 17(a) of the Securities Act [15 U.S.C. §77q(a)], and
- f. Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§80b-6(1) and 80b-6(2)];

2. Requires Sears, Last Minute, Casagrande, Cold Spring Golf, Cold Spring Development, and each of their officers, agents, servants, employees, attorneys, and those persons

in active concert or participation with them who receive actual notice of the order by personal service or otherwise, including facsimile transmission or overnight delivery service, to hold and retain all funds and other assets held for the direct or indirect benefit, or under the direct or indirect control, of Sears, or over which he exercises actual or apparent investment or other authority (except for nonparty funds in nonparty brokerage accounts over which Sears has discretionary authority), in whatever form such funds and other assets may presently exist, to prevent any withdrawal, sale, payment, transfer, dissipation, assignment, pledge, alienation, encumbrance, disposal or any diminution in value whatsoever of any such funds and other assets, and to freeze such funds and other assets pending further order of this Court, and further require all bank, brokerage and other financial institutions and other persons and entities which receive actual notice of the order by personal service or otherwise, including by facsimile transmission, or overnight delivery service, and which hold any funds or other assets in the name, for the direct or indirect benefit, or under the direct or indirect control, of Sears or over which Sears exercises actual or apparent investment or other authority (except for nonparty funds in nonparty brokerage accounts over which Sears has discretionary authority), in whatever form such assets may presently exist, and wherever located, to hold and retain within their control and prohibit the withdrawal, removal, sale, payment, transfer, dissipation, assignment, pledge, alienation, encumbrance, diminution in value or other disposal of any such funds and other assets;

3. Requires each of Last Minute, Casagrande, Cold Spring Golf and Cold Spring Development, and each of their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, including facsimile transmission or overnight delivery service, to

hold and retain funds and assets equal to the amount of funds and assets by which each was unjustly enriched as a result of the conduct alleged in this Complaint, and presently held by each relief defendant, in the name of the relief defendant, for the direct or indirect benefit of that relief defendant, or under the direct or indirect control of the relief defendant, in whatever form such funds or other assets may presently exist and wherever located, and shall prevent any withdrawal, removal, sale, payment, transfer, dissipation, assignment, pledge, alienation, encumbrance, diminution in value or other disposal of any such funds and other assets; and further requires all bank, brokerage and other financial institutions and other persons and entities which receive actual notice of the order by personal service or otherwise, including by facsimile transmission or overnight delivery service, and which hold any funds or other assets in the name, for the direct or indirect benefit, or under the direct or indirect control, of Last Minute, Casagrande, Cold Spring Golf or Cold Spring Development, in whatever form such assets may presently exist, and wherever located, to hold and retain within their control and prohibit the withdrawal, removal, sale, payment, transfer, dissipation, assignment, pledge, alienation, encumbrance, diminution in value or other disposal of any such funds and other assets up to the amount each such relief defendant received, directly or indirectly, from Sears' customers;

4. Requires the attachment of real estate of Sears; and requires the attachment of real estate of Cold Spring Golf and Cold Spring Development in the amount by which each such relief defendant was unjustly enriched as a result of the conduct alleged in this Complaint;

5. Requires that all persons who hold or possess the direct or indirect proceeds of the misconduct described in this Complaint, in whatever form such funds or other assets may

presently exist, who receive actual notice of the order, by personal service or otherwise, including facsimile transmission or overnight delivery service, and each of them, hold and retain such funds and assets and prevents any withdrawal, sale, payment transfer, dissipation, assignment, pledge, alienation, encumbrance, disposal, or any diminution in value of any such funds or other assets;

6. Requires Sears, Last Minute, Casagrande, Cold Spring Golf and Cold Spring Development to submit in writing and serve upon the Commission, within three (3) business days following service of the order upon them, a written accounting identifying:

- a. All transfers or disbursements of funds made from brokerage accounts for which Sears served as the investment adviser to Sears or any of the relief defendants in this action, or to any entity owned or controlled in part or whole by Sears or any relief defendant in this action, such identification to include the amount and date of each such transfer/disbursement and the name, address, account number and financial institution of the party making and receiving the transfer/disbursement;
- b. For each transfer identified in response to (a) above, any subsequent transfer of funds from Sears or any of the relief defendants in this action, or any entity owned or controlled in part or whole by Sears or any relief defendant, to any person or entity, such identification to include the amount and date of the transfer/disbursement and the name, address account number and financial institution of the party making and receiving the transfer/disbursement;
- c. All persons, entities and accounts currently holding funds or assets derived from the transfers described in paragraph (a) above, such identification to include the recipient's name and address, the amount each received, the date of receipt, the institution and account number (or other location) in which the funds or assets are held, and the name, address, account number and financial institution of the person or entity who provided the funds;
- d. Assets of every type and description with a value of at least one thousand dollars (\$1000) held for the direct or indirect benefit, or subject to the direct or indirect control, of Sears, Last Minute,

Casagrande, Cold Spring Golf or Cold Spring Development, whether in the U.S. or elsewhere (excluding nonparty brokerage accounts over which Sears has discretionary authority);

- e. All transfers of funds or other assets of one thousand dollars (\$1000) or more by Sears, Last Minute, Casagrande, Cold Spring Golf or Cold Spring Development since January 1, 2000, such identification to include the names and locations of all persons, entities and accounts to and from which the transfers were made, the date, amount and purpose of each such transfer and the identify and location of any assets derived from such transferred funds or assets;
- f. All accounts maintained at any bank, brokerage, or other financial institution in the U.S. or elsewhere in the name of Sears, Last Minute, Casagrande, Cold Spring Golf or Cold Spring Development or otherwise under their direct or indirect control, or in which Sears, Last Minute, Casagrande, Cold Spring Golf or Cold Spring Development have or had any direct or indirect beneficial interest, at at any time from January 1, 2000 to the present (excluding nonparty brokerage accounts over which Sears has discretionary authority);

7. Requires Sears, Last Minute, Casagrande, Cold Spring Golf and Cold Spring Development to submit in writing to the Commission, within three (3) business days following service of the order, a list of all telephone or facsimile transmission numbers (including numbers of pagers and mobile telephones), street and mailing addresses (including but not limited to postal box numbers), safety deposit boxes and storage facilities used by or under the direct or indirect control of any defendant, at any time since January 1, 1999;

8. Restrains Sears, Last Minute, Casagrande, Cold Spring Golf and Cold Spring Development, and each of their officers, agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, including by facsimile transmission or overnight delivery service,

from destroying, mutilating, concealing, altering, disposing of, or transferring custody of any items, including but not limited to any books, records, documents, correspondence, contracts, agreements, assignments, obligations, tape recordings, computer media or other property relating to Sears, Last Minute, Casagrande, Cold Spring Golf or Cold Spring Development or any of their securities, financial or other business dealings;

9. Provides that the parties may commence discovery forthwith, without any time constraints imposed by the Federal Rules of Civil Procedure or the Local Rules of this District, that all parties shall respond to any discovery request, including any notice of deposition or document request, within three (3) business days following service thereof, and that all depositions may be taken upon three (3) business days notice and all depositions of parties may be taken in Boston, Massachusetts;

10. Provides that, pursuant to Rule 5 of the Federal Rules of Civil Procedure, service of all pleadings and other papers to be served in this action, except the Summons and Complaint, may be made personally, by facsimile transmission, by overnight delivery service, or as this Court may direct by further order and that service of the Summons and Complaint shall be made pursuant to Rule 4 of the Federal Rules of Civil Procedure or as this Court may further order; and

11. Requires Sears, Last Minute, Casagrande, Cold Spring Golf and Cold Spring Development to serve the statements and accountings required by the order and all other filings in this action on counsel for the Commission by messenger, overnight delivery service, or by facsimile to David E. Marder, Esq., U.S. Securities and Exchange Commission, 73 Tremont Street, 6th Floor, Boston, Massachusetts 02108, facsimile number (617) 424-5940.

B. Enter a preliminary injunction extending the terms of the temporary restraining order described above;

C. Enter a permanent injunction restraining Sears and each of his, agents, servants, employees, attorneys, and those persons in active concert or participation with him who receives actual notice of the order or injunction by personal service or otherwise, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of:

1. Section 17(a) of the Securities Act [15 U.S.C. §77q(a)],
2. 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];
3. Section 206(1) of the Advisers Act [15 U.S.C. §80b-6(1)]; and
4. Section 206(2) of the Advisers Act [15 U.S.C. §80b-6(2)];

D. Require Sears to disgorge his ill-gotten gains and Last Minute, Casagrande, Cold Spring Golf and Cold Spring Development to disgorge their unjust enrichment, including prejudgment interest, with said monies and interest to be distributed in accordance with a plan of distribution to be ordered by the Court;

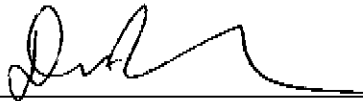
E. Impose a constructive trust on the funds, including prejudgment interest thereon, that defendants received as a result of the conduct alleged in this Complaint, and require them to disgorge an amount equal to the proceeds they received, plus prejudgment interest thereon, with such monies and interest to be disbursed in accordance with a plan of distribution to be ordered by the Court;

F. Order Sears to pay appropriate civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], 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)];

G. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

H. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Dated: September 26, 2000