

**ORIGINAL**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

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

APR - 6 2001

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

FRANK L. HARRIS, III

Defendant.

DAVID J. MALAND, CLERK  
BY DEPUTY *Becca J. Hill*

CIVIL ACTION NO. 4:01cv117

**COMPLAINT**

Plaintiff, Securities and Exchange Commission ("Commission"), alleges that:

**SUMMARY**

1. The Commission brings this action to enjoin the Defendant from continuing to violate the federal securities laws in connection with his fraudulent misappropriation of investor funds. Since at least January 2000, Defendant Frank L. Harris, III ("Harris"), a licensed securities salesman has stolen at least \$1.3 million from as many as 19 of his customers at the Addison, Texas branch office of Josephthal & Co. Inc. ("Josephthal"), a broker-dealer registered with the Commission. Indeed, as recently as the past several weeks, Harris has stolen at least \$132,000 from customers. In certain instances, Harris misled customers by convincing them to invest in a bogus investment, only to transfer the funds to his personal bank accounts. In other cases, Harris either liquidated or borrowed against securities in his customers' accounts without their knowledge or approval, and then wire transferred the proceeds to bank accounts that he controlled. Harris' fraudulent scheme was uncovered on or about March 20, 2001, when he

failed to appear for work. Upon information and belief, Harris has recently fled to Cancun, Mexico and the disposition of the misappropriated funds is unknown. In addition to the injunctive relief sought, emergency relief in the form of an order freezing Harris' funds and assets is necessary to preserve any remaining funds and assets for the benefit of the defrauded investors.

2. By engaging in such conduct, as detailed in this Complaint, the defendant has violated, and unless enjoined, will continue to violate, Section 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 Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. In addition to the emergency relief sought herein, the Commission seeks preliminary and permanent injunctive relief, disgorgement of ill-gotten gains with prejudgment interest and civil penalties against defendant Harris.

### **JURISDICTION AND VENUE**

3. 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)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78t(d), 78t(e) and 78aa].

4. Certain of the acts, practices, courses of business, and transactions constituting violations of the Securities Act and the Exchange Act, as alleged in this Complaint, have occurred within the Eastern District of Texas. Also, during the relevant period, the Defendant has resided in McKinney, Texas.

## **PARTIES**

5. The Commission is the federal government agency created to enforce the federal securities laws for the benefit of investors.

6. Defendant Harris, age 33, resides in McKinney, Texas, with his wife and two young children. Harris worked as a registered representative with Josephthal from February 1999 until approximately March 20, 2001, when Josephthal terminated Harris. Prior to his association with Josephthal, Harris worked as securities salesman for two other brokerage firms.

## **THE FRAUDULENT SCHEME**

### **Background**

7. From February 1999 until March 20, 2001, Harris worked as a registered representative with Josephthal.

8. Harris' supervisor at Josephthal first became alarmed when one of Harris' customers contacted the firm on Monday, March 19, 2001, about a wire transfer that he was to receive from his Josephthal account. The firm learned that instead of going to the customer's account, a portion of the funds was transferred to a bank account controlled by Harris.

9. On Tuesday, March 20, 2001, Harris failed to show up for work, prompting a full-scale review of his customer account statements. In addition, the firm contacted the Commission, the United States Attorney's office and the Federal Bureau of Investigation.

10. Based on the Commission's examination of Josephthal's records and interviews with several of Harris' clients and others, the Commission determined that since January 2000 until approximately March 20, 2001, Harris misappropriated at least \$1.3 million from

approximately 19 Josephthal customer accounts, including accounts maintained by Harris' own family members. Moreover, approximately \$132,000 was stolen from six accounts during the past several weeks.

### **Harris' Misappropriation of Customer Funds**

11. Harris fraudulently obtained customer funds in at least three ways. First, he falsely represented to customers that their funds would be used to purchase a particular security, when, in fact, their funds were transferred to Harris' personal bank accounts. Second, Harris borrowed against securities in customers' margin accounts without their authorization. Finally, Harris simply liquidated securities—typically mutual funds, money market shares or blue chip stocks--without the customer's knowledge and approval.

12. For example, between July 2000 and January 2001, Harris stole \$88,000 from a woman who he first met in his wife's birthing class. The customer's account records reflect that Harris first stole \$41,265 by margining securities in the customer's account and then wire transferring the money to his personal account. Harris later repaid the \$41,265 to the account in an apparent "ponzi" payment, only to steal an additional \$88,000 from the customer by liquidating securities in the account without her knowledge or approval. When the customer's husband questioned certain of the transactions in the account, Harris gave the husband a variety of false explanations or excuses.

13. In certain instances, Harris fraudulently induced his customers to authorize certain transactions in their account, only to steal the proceeds from the customer. For instance, in July 2000, Harris convinced one of his customers to borrow, or margin, approximately \$75,000 against seven securities in this customer's account to invest in a New York Stock

Exchange index investment. Harris told the customer that his principal was guaranteed, and that he would be paid interest based upon the performance of the fund. However, instead of investing the margin proceeds on the customer's behalf, Harris wired the proceeds to one of his own bank accounts.

14. In addition, during January 2001, Harris stole an additional \$62,500 from the customer discussed in paragraph 13, above, by liquidating shares from two mutual funds in the customer's IRA account and wire transferring to proceeds to Harris' personal account.

15. In another case, Harris fraudulently induced a customer's authorization of a \$20,000 wire transfer for the purported purchase of a bond. In reality, Harris stole this customer's \$20,000 by wiring the funds to his personal bank account. When the customer questioned Harris why the bond did not appear on her account statement, Harris falsely claimed that since the customer shared the bond investment with Harris' institutional clients, the bond was held in a separate account. In early February 2000, Harris convinced the customer to invest another \$24,000 in the bogus bond. To generate the funds for this investment, mutual funds were sold. As before, Harris caused the \$24,000 in client funds to be wire-transferred to his personal account.

16. Harris also stole funds from accounts maintained by members of his family and his wife's family. For instance, Harris misappropriated approximately \$397,346 from 5 accounts maintained by his relatives. Harris attempted to cover up his theft of funds by submitting a false change of address form to Josephthal that caused his father's monthly statements to be sent to a post office box controlled by Harris. Harris then provided his father with bogus account statements reflecting non-existent securities transactions and inflated cash balances.

**Harris Flees the Country**

17. After Harris failed to show up for work at Josephthal on March 21, 2001, his automobile was found parked at Dallas-Fort Worth International Airport. Agents from the Federal Bureau of Investigation seized a large amount of Josephthal customer account records in the car's trunk.

18. According to a travel agent, who is also one of Harris' defrauded customers, Harris recently purchased and apparently used an airline ticket to Cancun, Mexico.

**FIRST CLAIM**

**FRAUD IN THE OFFER AND SALE OF SECURITIES**

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

19. The allegations of Paragraphs 1 through 18 of this Complaint are realleged and incorporated herein by reference, as if set forth here verbatim.

20. At various times since January 2000 until approximately March 20, 2001, defendant Harris, directly and indirectly, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, have been, and are now:

- a. employing devices, schemes or artifices to defraud;
- b. obtaining 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. engaging in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

21. By reason of the foregoing, defendant Harris has violated, is violating, and unless enjoined, will continue to violate Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and (3)]. Furthermore, this defendant has intentionally, knowingly and/or recklessly engaged in the acts and practices described in this claim, so he has violated, is violating, and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

**SECOND CLAIM**

**FRAUD IN CONNECTION WITH THE PURCHASE AND SALE OF SECURITIES**

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

22. The allegations of paragraphs 1 through 21 of this Complaint are realleged and incorporated herein by reference as if set forth here verbatim.

23. At various times since January 2000 until approximately March 20, 2001, directly and indirectly, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails, have been, and are now:

- a. employing devices, schemes and artifices to defraud;
- b. making untrue statements of material facts and omitting 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. engaging in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

24. Defendant Harris has intentionally, knowingly, and/or recklessly engaged in the devices, schemes, artifices to defraud, making of untrue statements and omissions, acts, practices and courses of business described in this claim. By reason of the foregoing, this defendant is violating, has violated and, unless enjoined, will continue to violate the provisions 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].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully prays that this Court:

**I.**

Preliminarily and permanently enjoin the Defendant from violating Section 17(a) of the Securities Act and Sections 10(b) of the Exchange Act and Rule 10b-5 thereunder.

**II.**

Issue an order freezing the assets of the Defendant and directing persons and/or entities in possession, custody, or control of such assets, including all financial or depository institutions, to comply therewith.

**III.**

Issue an order requiring Defendant to cause all monies and funds held by himself or any person or entity on his behalf, or held in a bank, savings and loan association, trust company, broker-dealer or other financial or depository institution located outside of the territorial limits of the United States to be repatriated and to be deposited into the registry of the Court.



**IV.**

Issue an order requiring Defendant to deliver any and all valid passports that he may hold to the Clerk of this Court to be held in the depository of this Court, and issue an order restraining and enjoining Defendant from applying for or obtaining any new passport or a replacement.

**V.**

Order the Defendant to prepare and file with the Court and serve on Plaintiff Commission prior to the hearing set on Plaintiff's request for a Preliminary Injunction, an accounting, under oath, of (1) all monies and other assets he received, directly or indirectly, in connection with any customer accounts maintained at Josephthal; and (2) all transactions conducted through any and all banks, financial or depository institutions, and securities brokerage accounts in his name or in which he had a beneficial interest on or after January 1, 2000.

**VII.**

Issue an order prohibiting the Defendant from destroying, removing, mutilating, altering, concealing or disposing of, in any manner, any books or records in his possession or control which may reflect such funds or other assets.

**VIII.**

Order the Defendant to disgorge an amount equal to the funds and benefits he obtained as a result of the violations alleged, plus prejudgment interest on that amount.

**IX.**

Permit the parties to engage in expedited discovery, so that the evidentiary hearing on Plaintiff Commission's Motion for a Preliminary Injunction will be based on all the available evidence.

**X.**

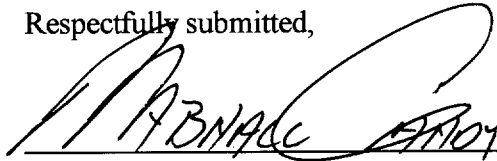
Order the Defendant to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 79u(d)].

**XI.**

Order such further relief, including interim relief, as this Court may deem just and proper.

Dated: April 6, 2001

Respectfully submitted,



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