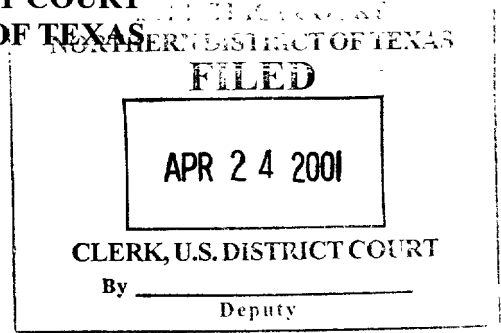


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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

TERRY DON RADER,

Defendant.

Civil Action No.

00788-P

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against Defendant Terry Don Rader (“Rader”) alleges and states:

SUMMARY

1. The Commission brings this action to enjoin Rader, the former president of Weber Investment Corporation (“Weber”), a registered broker-dealer located in Dallas, Texas, from violations of the federal securities laws in connection with his scheme to hide trading losses, by, among other things, mispricing securities in inventory accounts and concealing ownership of securities. Rader also misappropriated funds from Weber and engaged in other misconduct that aided and abetted Weber’s violations of the books and records and net capital provisions of the federal securities laws. Rader’s misconduct created losses to Weber of at least \$2.4 million. In addition to the permanent injunction sought herein, the Commission also seeks a civil money penalty against Rader.

2. By engaging in the conduct detailed in this Complaint, Rader violated 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. Rader also aided and abetted Weber’s violations of Sections 15(c)(3) and 17(a) of the Exchange Act, 15 U.S.C. §§78o(c)(3) and 78q(a), Rules 15c3-1, 17a-3, and 17a-4 thereunder, 17 C.F.R. §§240.15c3-1, 240.17a-3 and 240.17a-4.

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, and pursuant to 28 U.S.C. §§1331, 1337(a) and 1345.

4. Because 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, occurred within the Northern District of Texas, because a substantial part of the events and omissions giving rise to the Commission’s claims occurred in the Northern District of Texas and because Rader was and is an inhabitant and resident of and transacted business in the Northern District of Texas, venue is appropriate under 15 U.S.C. §§77v and 78aa and 28 U.S.C. §1391(b).

PARTIES

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

6. Rader is currently incarcerated at the Federal Medical Center for Prisoners at Fort Worth, Texas, as a result of his fraudulent conduct at Weber. Weber was a registered representative and the former president, chief financial officer, compliance officer and financial

and operations principal for Weber from 1991 until his termination on October 30, 1997. Rader was responsible for all aspects of the firm's operations and was not supervised by, or responsible to, any other person or committee. Rader has been barred permanently from association with any National Association of Securities Dealer Regulation ("NASDR") member and was censured and fined \$25,000 by the NASDR on November 24, 1998, for failure to respond to requests by the NASDR for information related to his activities at Weber.

THE FRAUDULENT SCHEME

Background

7. In May 1991, Weber entered into a Fully Disclosed Correspondent Agreement ("Agreement") with Southwest Securities, Inc. ("Southwest") whereunder Southwest agreed to perform all back office functions for Weber, including clearing services, maintaining client accounts and providing margin lending services. Southwest served as the principal for Weber's securities transactions and was liable for losses in the event a party failed to honor its contractual obligations. In order to protect itself, Southwest obtained a personal guaranty from Garry Weber, the owner and chairman of Weber, as security for Weber's performance under the Agreement and to provide assurance of resources to cure any net capital deficiencies. Generally, margin adjustments were made on a daily basis by Southwest and inventory accounts were "marked to market" on the last trade date at the end of each month. Pursuant to the Agreement, Southwest required that excess collateral be refunded or additional collateral be furnished as a result of changes in the market value of the securities held by Weber.

8. In early September 1997, the Southwest employee responsible for making the marks-to-market noticed an irregularity regarding the manual prices entered in one of the Weber inventory accounts controlled by Rader. Specifically, the prices of the securities reflected in the

Weber inventory were higher than the actual market prices. The employee brought the issue to the attention of her supervisors and was directed to begin monitoring the Weber inventory accounts on a daily basis. Southwest determined that Weber had a \$2.4 million liability for trading losses suffered over the preceding two years and that those losses had been hidden by Rader's overpricing of inventory. After Southwest informed Garry Weber of this on October 29, 1997, Garry Weber confronted Rader who admitted that he had inflated the prices of securities held in Weber inventory accounts to cover the extensive losses Rader had incurred in a Weber option trading account that he controlled. Garry Weber immediately terminated Rader and personally covered the losses.

9. After the Commission learned of problems at Weber, the Commission conducted a "cause" examination of Weber and confirmed Rader's scheme to cover up his trading losses and his failure to maintain proper books and records on behalf of the firm. Specifically, that examination revealed that Rader had overstated inventory valuations, concealed his ownership of securities in accounts that he controlled, moved cash between certain Weber accounts and made false and misleading general journal entries in an effort to conceal his trading losses and his misappropriation of funds from the firm.

Trading Losses And Transfers Between Inventory Accounts

10. Weber maintained a number of accounts at Southwest, including one in which index options ("Options Account") were traded on behalf of the firm. Rader controlled the Options Account and the activity within it. From January 1, 1997, to October 31, 1997, Rader caused and Weber experienced trading losses in the Options Account totaling nearly \$1 million. Account statements generated by Southwest for the Options Account reflected the activity and the losses in the Options Account, but Southwest sent those statements only to Rader.

11. In addition to the Options Account, Rader also maintained three firm inventory accounts. Two of the accounts (the “500 Accounts”) were reflected in Weber’s books and records; however, the third account (the “700 Account”) was not reflected in the firm’s records. Rader used the inventory accounts to cover the losses in the Options Account and to provide funds for his personal use. Rader also sold securities to the 700 Account from the 500 Accounts and related customer/fictitious accounts controlled by him at inflated values. The monies were then used to avoid margin calls, to reduce Options Account losses and/or to pay for personal expenses. Because Rader purchased those securities for Weber on margin, Southwest bore the cost of the overpayments.

12. Because Rader made the Options Account purchases on margin and because the purchases resulted in losses, Rader sought to avoid margin calls and reduce losses in two ways. First, he overpriced the securities in the inventory accounts and thereby avoided margin calls. Second, this overvaluing of the inventory account securities resulted in a profit being reflected. Rader would then request a mid-month advance of the profit, using it to offset losses in the Options Account or for his personal use.

Inflation Of Inventory Value

13. Rader had the ability, as did all of Southwest’s other correspondent broker-dealers, to input the price used by Southwest to adjust the value of the broker-dealer’s inventory for margin adjustments. Rader participated in creating the Securities Industries Software (“SIS”) that Southwest provided to its correspondents, and Rader had more knowledge of the SIS than many Southwest employees. On a daily basis, from at least November 1995 through October 28, 1997, Rader manually entered inflated prices for securities in his inventory accounts by accessing the SIS. For example, although the highest market price for ATLD during this period

was \$.53, Rader priced it as high as \$1.88. In order to cover the continuing losses in the Options Account and to make up for the transfers of funds out of the inventory accounts, Rader had to and did continually increase the per share price of the securities in the inventory accounts. Rader was then able to keep up the appearance of a profitable inventory and to avoid margin calls.

Rader's Ownership Of Securities Concealed

14. Rader concealed the ownership of the securities purchased in the inventory accounts by selling the positions on the last trade date of each month and then canceling the sales before the settlement date, thereby reestablishing the positions. The sales were effected in accounts owned or controlled by Rader. Because Weber accounted for its inventory on the last trade date of each month, Rader was able to create the appearance of a flat inventory in the accounts. By canceling the trades before the settlement date, Rader prevented trade confirmations from being sent to the customer in whose account the transaction was effected, and he prevented the transaction from appearing on the customer's monthly statement. The cancellations, however, did appear on reports generated by Southwest to reflect the activity in the inventory accounts, but those reports were sent only to Rader as Weber's highest ranking official.

Misappropriation Of Funds

15. In addition to Rader's annual salary of \$72,000, Rader improperly withdrew more than \$550,000 from Weber between November 1995 and October 1997. The source of monies to pay Rader came from the false profits created in the inventory accounts. Southwest normally performed its mark-to-market process once each month at the end of the month. Rader nevertheless consistently requested that mid-month advances be made to Weber from the "profits" generated in the inventory accounts. Rader made these requests directly to the

accounting department at Southwest where an employee would issue a check to Rader if there were profits reflected in the inventory accounts. Although Southwest's end of the month mark-to-market process was subject to a review process wherein each inventory account was looked at for excessive profits and losses and Southwest randomly checked prices of securities for accuracy, because Rader removed the securities in the inventory accounts at the end of each month and then canceled the trade before settlement, there was never anything for Southwest employees to review in these accounts.

Books And Records Irregularities

16. Rader failed to prepare and maintain accurate books and records for Weber. For instance, Rader destroyed records pertaining to the 700 Account, and the activity in that account was not reflected in Weber's records. Further, all positions held in Rader's three inventory accounts were overpriced. Rader caused a number of suspicious general ledger and journal entries. For example, the journal reflects transfers of approximately \$72,000 between an advance account for Rader and two advance accounts for another registered representative who had not worked at Weber for at least one year prior to the entries. In addition, although Weber's 1997 general ledger reflects numerous deposits and withdrawals from the Southwest clearing deposit account, Southwest's corresponding monthly statements did not reflect the same deposits and withdrawals. Weber's general ledger balance for the months ending June and July 1997 did not match Southwest's monthly statements for the same period.

Violations Of Net Capital Provisions

17. An NASDR examination of Weber conducted in November 1997 revealed that, as of September 29, 1997, Weber had a net capital deficit of \$62,553. This deficiency did not result from Rader's mispricing of securities, but rather from a number of customer checks

improperly made payable to Weber instead of Southwest, and resulted in an increase in Weber's net capital requirements because Weber was acting as a clearing firm.

18. Rader was responsible for all aspects of the firm's supervisory procedures, including the implementation and compliance with such procedures. Rader aided and abetted the firm's net capital violation because he failed to follow the firm's written supervisory procedures that customer checks be payable to the clearing firm and not to Weber.

CAUSES OF ACTION

Count One

FRAUD IN THE OFFER AND SALE OF SECURITIES

(Violations Of Section 17(a) Of The Securities Act)

19. The Commission realleges and restates the matters set forth in Paragraphs 1 through 18 and incorporates them by reference as if set forth here *verbatim*.

20. At various times from November 1995 through October 1997, Rader, 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:

- a. employed devices, schemes or artifices to defraud;
- b. obtained money and property by means of untrue statements of material fact and 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 operated or would operate as a fraud or deceit.

21. By reason of the foregoing, Rader violated, 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). In

addition, because Rader intentionally, knowingly and/or recklessly engaged in the acts and practices described, he violated Section 17(a)(1) of the Securities Act, 15 U.S.C. §77q(a)(1).

Count Two

FRAUD IN CONNECTION WITH THE PURCHASE AND SALE OF SECURITIES

(Violations Of Section 10(b) Of The Exchange Act And Rule 10b-5)

22. The Commission realleges and restates the matters set forth in Paragraphs 1 through 18 and incorporates them by reference as if set forth here *verbatim*.

23. At various times from November 1995 through October 1997, Rader, 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:

- a. employed devices, schemes and artifices to defraud;
- b. made untrue statements of material facts and 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; and
- c. engaged in acts, practices and courses of business which operated as a fraud and deceit upon purchasers, prospective purchasers and other persons.

24. Rader intentionally, knowingly, and/or recklessly engaged in the devices, schemes, and artifices to defraud, in the making of untrue statements and in the omissions, acts, practices and courses of business described. By reason of the foregoing, Rader violated 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.

Count Three

BOOKS AND RECORDS VIOLATIONS

(Aiding And Abetting Violations Of Section 17(a) Of The Exchange Act
And Rules 17a-3 and 17a-4)

25. The Commission realleges and restates the matters set forth in Paragraphs 1 through 18 and incorporates them by reference as if set forth here *verbatim*.

26. From November 1995 through October 1997, Rader was responsible for making false and misleading general journal entries in Weber's books, the mispricing of inventory and the destruction of records pertaining to the 700 account, all of which caused Weber's books and records to be inaccurate.

27. Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder require every broker-dealer, including Weber, to make and keep certain documents for a specified period of time. Specifically, Rule 17a-3(a)(1) requires broker-dealers to make, among other things, blotters containing an itemized daily record of all purchases and sales of securities, all receipts and disbursements of cash and all other debits and credits, and Rule 17a-3(a)(3) requires broker-dealers to make records itemizing, separately as to each cash and margin account of every customer, all purchases and sales for such account and all other debits and credits to such account.

28. Rule 17a-3(a)(5) requires broker-dealers to make records relating to securities positions carried by a broker-dealer for its own account and the accounts of customers. Such records must show the account for which each such transaction was effected, the name and amount of securities and the name of the person from whom purchased or received or to whom sold or delivered. The policy underlying the record-keeping provisions is to ensure that the Commission has access to certain basic information about securities transactions to allow it to

adequately police the securities markets.

29. Rule 17a-4(b) requires broker-dealers to preserve for at least three years, the first two years in an accessible place, among other records, memoranda of each order for the purchase and sale of securities (order tickets) and originals of all communications received and copies of all communications sent by the broker or dealer relating to its business as such.

30. Because Rader made false and misleading general entries in Weber's journals, Rader aided and abetted Weber's violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4(b).

Count Four

NET CAPITAL VIOLATIONS

(Aiding And Abetting Violations Of Section 15(c)(3) of the Exchange Act And Rule 15c3-1)

31. The Commission realleges and restates the matters set forth in Paragraphs 1 through 18 and incorporates them by reference as if set forth here *verbatim*.

32. Pursuant to Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder, it is prohibited for a broker-dealer to conduct a securities business with insufficient net capital.

33. As of September 29, 1997, Weber had a net capital deficit of \$62,553 as a result of customer checks improperly made payable to Weber instead of Southwest, thereby increasing Weber's net capital requirements because Weber acted like a clearing firm and did not have sufficient net capital to permit it to do so.

34. Weber violated Section 15(c)(3) and Rule 15c3-1 thereunder by continuing to conduct a securities business with insufficient capital after September 29, 1997. Rader, the individual responsible for implementing and ensuring that firm procedures were followed, provided substantial assistance to Weber in violating the net capital rules. Specifically, Rader

failed to follow the firm's written supervisory procedures to notify customers of the requirement to make checks payable to Southwest, the clearing firm, and not to Weber.

35. By reason of the activities described herein, Rader aided and abetted Weber's violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder.

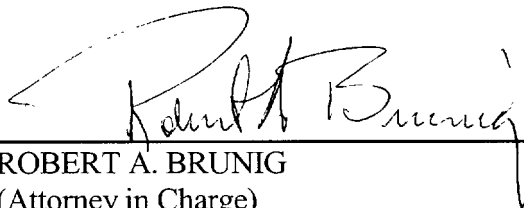
PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully prays that this Court:

- (1) permanently enjoin Rader from violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;
- (2) order Rader 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); and
- (3) order such further relief, including interim relief, as this Court may deem just and proper.

FOR THE COMMISSION, BY ITS ATTORNEYS:

Dated: April 23, 2001.



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