

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
(Tampa Division)

01 AUG - 3 11:19:04

SECURITIES AND EXCHANGE COMMISSION, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CRAIG P. SCANLON AND SCANLON & )  
 ASSOCIATES, INC. )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

CASE NO.  
8:01-CV-1446-T-24 TGW  
COMPLAINT FOR  
INJUNCTIVE AND  
OTHER RELIEF

Plaintiff, Securities and Exchange Commission (the "Commission") alleges and states as follows:

**I. INTRODUCTION**

1. The Commission brings this civil injunction action against Defendants Craig P. Scanlon ("Scanlon") and Scanlon & Associates, Inc. ("SAI") based on their violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder; and, Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act"). The Commission seeks, among other things, a permanent injunction, an accounting, disgorgement with prejudgment interest and civil penalties against Scanlon and SAI.

2. This action involves the flagrant misappropriation of clients' funds by an unregistered investment adviser, Craig P. Scanlon and his company, SAI. From approximately June 1999 to September 2000, Scanlon swindled at least seven clients out of

|

more than \$700,000 by employing a common scheme to defraud them. In each instance, Scanlon fraudulently induced these clients to sell their securities holdings at certain broker-dealers and to transfer the monies to him with the promise that he would reinvest, and manage, their sales proceeds through SAI. Contrary to those representations and others, Scanlon diverted these clients' funds to pay his personal expenses.

## **II. DEFENDANTS**

3. Scanlon resides in Madeira Beach, Florida. Scanlon was associated as a registered representative with American Express Financial Advisers, Inc. ("American Express") from December 1991 to June 1998.

(a.) In July 1998, Scanlon became associated with Linsco/Private Ledger Corp. ("Linsco"), a registered broker-dealer and investment adviser, until his voluntary termination on May 10, 1999.

(b.) Since then, Scanlon has not been associated with any registered broker-dealer or investment adviser.

(c.) On August 15, 2000, the National Association of Securities Dealers ("NASD") barred Scanlon from association, in any capacity, with any NASD member.

4. SAI, an Ohio corporation since its inception in June 1994, is located in Madeira Beach, Florida. SAI is not registered with the Commission or the State of Florida as a broker-dealer or an investment adviser nor is it even licensed to conduct business in the State of Florida.

## **III. JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§

77t(b), 77t(d) and 77v(a); Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d), 78u(e) and 78aa; and, Section 214 of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. § 80b-14.

6. The Middle District of Florida is the proper venue for this action. Certain actions and transactions alleged and stated herein constitute violations of the Securities Act, the Exchange Act and the Advisers Act and have occurred, and may be occurring, within the Middle District of Florida. In addition, the home office of Defendant SAI is located within the Middle District of Florida. Defendant Scanlon resides within the Middle District of Florida.

7. Defendants, directly and indirectly, have made, and may be making, use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business complained of herein.

#### **IV. Scanlon's Fraudulent Inducement of Investors**

8. Scanlon had a professional relationship with each of the clients during his associations with American Express and Linsco. Based on the services he had provided to these clients, Scanlon knew that each of these clients had substantial funds. Thus, shortly after Scanlon's termination from Linsco, Scanlon obtained the clients' funds by convincing each of them to sell certain securities that they held with Linsco or American Express and to deposit those funds into their regular checking accounts.

9. Scanlon then instructed each client to write a check made payable

to "Scanlon & Associates" and mail the check to his Florida home office address.

Scanlon represented that he would reinvest the funds by purchasing certain unidentified securities (eg. bonds, money market and mutual funds), and then manage these investments, through Scanlon & Associates.

10. As additional enticements, Scanlon falsely told these clients that he could effectively and efficiently provide better investment advisory services by using electronic mail and a "Quicken" computer program that would enable them to track their investments.

11. Scanlon promised to install the Quicken program in every client's home computer and link it to his office and to on-line broker-dealers. The Quicken program was only installed for one couple but it was never linked to Scanlon & Associates or any on-line broker-dealers.

12. Scanlon assured the clients that he could also provide advisory services in the same manner as they had grown accustomed to when he was associated with American Express and Linsco. However, Scanlon did not disclose that he was no longer associated with a registered investment adviser or company.

13. Scanlon did not have any written client agreements. Scanlon told the clients that his fee would be either an annual 1% fee on assets under management or for other clients, a percentage of any investment profits. In at least one instance, Scanlon also charged a separate fee for the preparation of a financial plan.

**V. Scanlon's Fraudulent Misappropriation of Investor Funds**

14. Contrary to Scanlon's representations, he misappropriated \$432,298 from a client and continued to misrepresent his use of their funds as alleged below:

(a.) In June 1999, Scanlon instructed a client (a trustee of a family trust) to close a Linsco account, held in the name of the family trust, and deposit the proceeds into the family trust checking account. Then, Scanlon instructed the client to write two checks made payable to Scanlon & Associates in the amounts of \$100,000 and \$135,000.

(b.) In contrast to Scanlon's promise to reinvest those funds into a new money market fund and to make other investments (e.g. government bonds, corporate bonds and stocks), Scanlon misappropriated and used the funds for his own benefit.

(c.) Moreover, Scanlon continued his deceit by transferring funds (totaling an aggregate of \$19,500) into the client's checking account whenever she requested a withdrawal from her fictitious new money market fund.

(d.) Fifteen months later, Scanlon instructed the same client to obtain funds from an Individual Retirement Account ("IRA"), held in her name, for Scanlon to roll over into another IRA. This time, the client wrote one check made payable to Scanlon & Associates in the total amount of \$190,000. Like before, Scanlon used the funds for his own benefit.

15. Contrary to Scanlon's representations, he misappropriated \$109,890 from two clients, a married couple, and continued to misrepresent his use of their funds as alleged below:

(a.) In August 1999, Scanlon told a client to close a Linsco account that she held jointly with her husband and to mail him the proceeds to reinvest through Scanlon & Associates. On January 6, 2000, the client mailed a \$20,000 check (made payable to Scanlon & Associates) to Scanlon.

(b.) Two months later, Scanlon falsely told the client on the telephone that he had reinvested the monies in a money market fund.

(c.) During that same telephone conversation, Scanlon also instructed the client to close her IRA account at Linsco, deposit the monies into her checking account and then write two checks made payable to Scanlon & Associates, in the total respective amounts of \$40,000 and \$42,890.

(d.) The client followed Scanlon's instructions and later, he falsely told this client that he had rolled the funds into an IRA.

(e.) This client also mailed a check in the total amount of \$7,000 to Scanlon, upon his advice, to open a cash management account. However, the client never received any paperwork or checks for that purported account.

16. Contrary to Scanlon's representations, he misappropriated \$103,800 from two more clients, a married couple, and continued to misrepresent his use of their funds as alleged below:

(a.) Pursuant to Scanlon's instructions in September 1999, a married couple sold certain securities they held at American Express and deposited the

sales proceeds into their bank account. Shortly thereafter, Scanlon told the clients to write two checks made payable to Scanlon & Associates in the amounts of \$63,800 and \$40,000, respectively.

(b.) Scanlon falsely told these clients that he planned to reinvest the total amount of \$103,800 into a new money market fund on their behalf. Once Scanlon received the checks, the clients never received any further information from Scanlon regarding the disposition of their funds.

17. Contrary to Scanlon's representations, he misappropriated \$55,000 from clients, another married couple, and continued to misrepresent his use of their funds as alleged below:

(a.) Upon Scanlon's instructions in August 1999, a client converted some of his American Express qualified IRA to an unqualified account and sent Scanlon a check for \$55,000 made payable to "Craig Scanlon" to invest on behalf of the client and his wife.

(b.) Scanlon falsely told the client that he would deposit the funds in an interest bearing money market account for the clients' use and for Scanlon to invest through Scanlon & Associates. Sometime after Scanlon received the funds, he falsely told the clients that he had invested all the funds by purchasing common stock in the "Southern Company."

(c.) Scanlon also created a false investment record on a computer disk and copied it into the "Quicken" program on the clients' home computer. The record listed the number of shares of Southern Company's common

stock that Scanlon claimed he purchased for these clients. However, Scanlon did not purchase any shares of that stock.

(d.) In addition, the clients paid Scanlon \$6,600 for a financial plan that he often promised to, but never did, deliver.

(e.) To date, the clients have not received any other information pertaining to their \$55,000. The last communication the clients received from Scanlon was an e-mail on November 27, 2000, in which he promised to meet with the clients in Cleveland, Ohio. Like the fabricated securities transaction and the financial plan, the meeting never took place.

18. With one exception, stated and alleged hereinabove at paragraph 17.(c.), Scanlon never sent his defrauded clients any documents pertaining to the investments he was purportedly making on their behalf.

#### **VI. Scanlon's Use of The Clients' Funds**

19. In contrast to his claims, Scanlon misappropriated the clients' funds to pay for his personal expenses. From April 1999 to October 2000, Scanlon deposited a total of \$925,536 into his personal checking account, of which \$700,988 was the clients' funds. The remaining funds consisted of \$21,974 in unknown deposits and bank credits and \$195,000 were from two individuals, whose funds were purportedly misappropriated by Scanlon in the same fashion as the clients' funds alleged hereinabove at paragraphs 14 - 18.

20. By October 2000, rather than reinvesting the clients' funds, Scanlon had spent almost all of the funds to purchase items such as, but not limited to, Persian rugs, imports, furniture, antiques and electronic equipment. Among other



things, Scanlon also used the clients' funds to pay for his personal expenses such as utilities bills, credit card debts, personal loans and cars.

21. In addition, Scanlon used \$50,000 to trade in common stock and a money market fund with an on-line broker-dealer. Shortly thereafter, he closed the account with a wire transfer of \$69,772 to the on-line money market fund and then, wired \$96,967 to a title company.

22. From November 2000 to at least March 2001, Scanlon also purchased five houses in or about the City of Madeira Beach, Florida.

### **COUNT I**

#### **FRAUD IN VIOLATION OF SECTION 17(a)(1) OF THE SECURITIES ACT**

23. The Commission realleges and repeats its allegations set forth at paragraphs 1-22 of this Complaint as if fully restated herein.

24. Since a date unknown but since at least the summer of 1999 through October 2000, Defendants SAI and Scanlon, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, as described herein, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

25. By reason of the foregoing, Defendants SAI and Scanlon, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

**COUNT II**

**FRAUD IN VIOLATION OF  
SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5**

26. The Commission realleges and repeats its allegations set forth at paragraphs 1-22 of this Complaint as if fully restated herein.

27. Since a date unknown but since at least the summer of 1999 through October 2000, Defendants SAI and Scanlon, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails, and of any facility of any national securities exchange, in connection with the purchase or sale of the securities, as described herein, have been, knowingly, willfully or recklessly: (i) employing devices, schemes or artifices to defraud; (ii) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (iii) engaging in acts, practices and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

28. By reason of the foregoing, Defendants SAI and Scanlon, directly or indirectly, have violated and, unless enjoined, may continue to violate 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.

**COUNT III**

**FRAUD IN VIOLATION OF  
SECTIONS 206(1) OF THE ADVISERS ACT**

29. The Commission realleges and repeats its allegations set forth at paragraphs 1-22 of this Complaint as if fully restated herein.

30. Since a date unknown but since at least the summer of 1999 through the present, Defendants SAI and Scanlon, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities, as described herein, have been: (i) obtaining money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and (ii) engaging in transactions, practices and courses of business which was operating and may still be operating as a fraud or deceit upon investors and prospective investors of such securities.

31. By reason of the foregoing, Defendants SAI and Scanlon, directly and indirectly, have violated and, unless enjoined, may continue to violate Section 206(1) of the Advisers Act, 15 U.S.C. §§ 80b-6.

#### **COUNT IV**

#### **FRAUD IN VIOLATION OF SECTIONS 206(2) OF THE ADVISERS ACT**

32. The Commission realleges and repeats its allegations set forth at paragraphs 1-22 of this Complaint as if fully restated herein.

33. Since a date unknown but since at least the summer of 1999 through October 2000, Defendants SAI and Scanlon, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails, and of any facility of any national securities exchange, in connection with the purchase or sale of the securities, as described herein, have been, knowingly, willfully or recklessly: (i) employing devices, schemes or artifices to defraud; (ii) making untrue statements of material facts and

omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (iii) engaging in acts, practices and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

34. By reason of the foregoing, Defendants SAI and Scanlon, directly or indirectly, have violated and, unless enjoined, may continue to violate Section 206(2) of the Advisers Act, 15 U.S.C. § 80b-6.

**RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests that the Court:

**A.**

**Declaratory Relief**

Declare, determine and find that Defendants SAI and Scanlon committed the violations of the federal securities laws alleged herein.

**B.**

**Preliminary and Permanent Injunctive Relief**

Issue a Preliminary Injunction and a Permanent Injunction, restraining and enjoining Defendants SAI and Scanlon, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating: (i) Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a); (ii) Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. § 240.10b-5; and, (iii) Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. § 80b-6.

**C.**

**Disgorgement**

Issue an Order requiring SAI and Scanlon to disgorge all profits or proceeds that they have received as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest.

**D.**

**Penalties**

Issue an Order directing Defendants SAI and Scanlon to pay civil fines and/or penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d); Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3); and, Section 217 of the Advisers Act, 15 U.S.C. § 80b-17.

**E.**

**Accounting**

Issue an Order requiring accountings by Defendants SAI and Scanlon and to provide the Commission with a document sworn to before a notary public setting forth all assets (whether real or personal) and accounts (including, but not limited to, bank accounts, savings accounts, securities or brokerage accounts, and deposits of any kind) in which they (whether solely or jointly), directly or indirectly (including through a corporation, trust or partnership), either have an interest or over which they have the power or right to exercise control.

**F.**

**Further Relief**

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

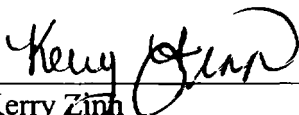
G.

**Retention of Jurisdiction**

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may hereby be entered, or to entertain any suitable application or motion by the Commission seeking additional relief within the jurisdiction of this Court.

Respectfully submitted,

August 3, 2001

  
\_\_\_\_\_  
Kerry Zinn  
Senior Trial Counsel  
Florida Bar No. 0118559

Eric Busto  
Chief, Branch of Enforcement #4  
Florida Bar No. 0968749

Robbie Mayer  
Staff Attorney  
Florida Bar No. 0771325

Attorneys for Plaintiff  
**SECURITIES AND EXCHANGE  
COMMISSION**  
1401 Brickell Avenue, Suite 200  
Miami, Florida 33131  
Telephone: (305) 536-4700  
Facsimile: (305) 536-7465