

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

KIRK KOSKELLA, O. JAY NEELEY
and ELTC LIMITED,

Defendants.

JUDGE HIBBLER

01C 6227

MAGISTRATE JUDGE KEYS

U.S. DISTRICT COURT

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AUG 15 2001

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (Commission),

alleges as follows:

1. Defendants Kirk I. Koskella (Koskella), O. Jay Neeley (Neeley) and ELTC Limited (ELTC) (collectively, Defendants) engaged in a fraudulent offering of two "Corporate Revenue Bonds" with an aggregate face value of \$500 million issued by two companies with no assets or income, which Defendants knew were worthless. Specifically, Defendants attempted to find a purchaser for the bonds or use the bonds as collateral for a margin loan or commercial loan, by misrepresenting the legitimacy of the bonds, the financial status of the issuing companies and their ability to make payments on the bonds.

2. Defendants, directly and indirectly, have engaged, are engaged and are about to engage in transactions, acts, practices and courses of business which constitute

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violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933 (Securities Act) [15 U.S.C. §§77q(a)(1) and 77q(a)(3)].

3. The Commission brings this action to restrain and enjoin such transactions, acts, practices, and course of business pursuant to Section 20(b) of the Securities Act [15 U.S.C. §77t(b)].

JURISDICTION AND VENUE

4. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and 28 U.S.C. §1331. Venue is proper in this Court pursuant to Section 22 of the Securities Act of 1933 (Securities Act) [15 U.S.C. §77v].

5. Defendants Koskella and Neeley reside in Utah. Defendant ELTC is a Nevis, West Indies corporation. The transactions, acts, practices, and courses of business constituting the violations alleged herein occurred within the jurisdiction of United States District Court for the Northern District of Illinois and elsewhere.

6. Defendants, directly and indirectly, have made, and are making use of the means and instrumentalities of interstate commerce and of the mails in connection with the transactions, acts, practices, and courses of business alleged herein in the Northern District of Illinois and elsewhere.

7. There is a reasonable likelihood that Defendants will, unless enjoined, continue to engage in the transactions, acts, practices and courses of business set forth in this complaint, and transactions, acts, practices and courses of business of similar purport and object.

DEFENDANTS

8. Koskella, age 42, is a resident of Orem, Utah. Koskella is, and was, at all relevant times, the President, Chief Executive Officer and a director of defendant ELTC.

9. Neeley, age 36, is a resident of Orem, Utah. Neeley is and was, at all relevant times, the Executive Vice President, Secretary and a director of defendant ELTC.

10. ELTC is a Nevis, West Indies corporation formed by Koskella and Neeley on or about November 27, 1997 and, at all relevant times, controlled by them. The company has no assets or apparent business.

OTHER RELEVANT INDIVIDUALS AND ENTITIES

11. JMC International, Inc. (JMC) is a Nevada corporation formed on or about July 6, 1995. JMC has no assets or apparent business. In or about 1997, JMC issued one of the two securities that the Defendants fraudulently offered, a worthless \$250 million face value "Corporate Revenue Bond" (JMC Bond).

12. Northstar, Inc. (Northstar) is a Nevada corporation formed on or about March 18, 1996. Northstar has no assets or apparent business. In or about 1997, Northstar issued one of the two securities that the Defendants fraudulently offered, a worthless \$250 million face value "Corporate Revenue Bond" (Northstar Bond). (The JMC Bond and Northstar Bond are referred to collectively herein as the "Bonds.")

FACTS

13. In or about 1997, JMC issued the JMC Bond and Northstar issued the Northstar Bond in separate, private placement offerings.

14. The JMC Bond and the Northstar Bond falsely represent, on their face, that they are \$250 million, 30-year revenue bonds "secured by a first charge on any and all

assets of the company” that pay 8.5% interest on a repayment schedule set forth on the back of the bonds. Both Bonds are actually unsecured. In addition, neither JMC nor Northstar has ever had any assets or other means to make payments on the Bonds. Consequently, neither JMC nor Northstar has ever made a single interest payment on the Bonds and neither corporation has any ability to do so in the future.

15. In or about May 1997, JMC and Northstar prepared and disseminated virtually identical private placement memoranda for the Bonds that misrepresent and omit numerous material facts.

16. Among other things, the private placement memoranda misrepresent that: (i) JMC and Northstar would “provide the actual funding for the various projects”; (ii) a top-100 World Bank (Bank) would provide a “Liquidity Facility,” pursuant to which the Bank would be “obligated ... to fund the Corporate Revenue Bond in an amount equal to the aggregate Face Amount of all the issued Corporate Revenue Bonds”; and (iii) the Bonds would pay interest.

17. The JMC memorandum also includes fictitious financial statements reflecting, among other things, that JMC holds \$2.65 million in assets.

18. The private placement memoranda also omitted to state, among other things, that neither company had any assets, revenues or other financial resources to pay interest on their respective Bonds.

19. Later in or about 1997, under false pretenses, Northstar caused the CUSIP Service Bureau (CSB) to assign the bonds CUSIP and ISIN numbers and caused Reuters to list the Bonds on the Reuters Screen.

20. In or about 1999, Koskella found the Bonds while he and Neeley were performing forensic accounting work for one of Koskella's clients who was also associated with JMC and Northstar.

21. That client assigned the Bonds to Koskella and Neeley for no consideration. The client also informed Koskella and Neeley that the bonds were worthless and that neither JMC nor Northstar had the financial resources to make the interest payments reflected on the Bonds.

22. Nevertheless, after Koskella and Neeley took possession of the Bonds, they proceeded to offer them, through ELTC, to various third parties, in an attempt to obtain funds for their use.

23. On or about August 10, 1999, Neeley established an account in ELTC's name at Merrill Lynch, Pierce, Fenner & Smith, Incorporated (Merrill).

24. Neeley misrepresented to Merrill that ELTC had millions of dollars in cash and negotiable securities that ELTC intended to deposit to the Merrill account to use as collateral to borrow against the securities on margin purportedly to trade securities.

25. Thereafter, in or about January 2000, Koskella and Neeley informed Merrill that they wished to deposit the JMC Bond to ELTC's account and margin against it to trade securities.

26. To induce Merrill to allow them to do so, Koskella and Neeley misrepresented and omitted material facts concerning the JMC Bond. Specifically, they misrepresented, among other things, that the JMC Bond was: (i) a valid debt security issued by JMC in a legitimate private placement offering in exchange for consideration equal to the face value of the bond; and (ii) rated by Moody's. They also omitted to state,

among other things, that: (i) the JMC Bond was worthless, (ii) JMC had never paid interest on the JMC Bonds, and (iii) the company had no assets, revenues or other financial resources to pay interest on the JMC Bond in the future.

27. ELTC also sent Merrill misleading documentation regarding the JMC Bond, including information reflecting that the JMC Bond was listed on the Reuters Screen.

28. Koskella and Neeley knew, but failed to inform Merrill, that the Reuters Screen information was misleading because it created the false impression that the JMC Bond was a legitimate debt security.

29. Merrill refused to permit Koskella and Neeley to deposit the JMC Bond to ELTC's account and margin against it.

30. In or about February 2000, Koskella, Neeley and ELTC entrusted the Bonds to a Chicago bank, LaSalle Bank, N.A. (LaSalle), for safekeeping, where they are presently located.

31. On or about April 1, 2000, ELTC retained The Lester Group, a consulting firm, to either find a buyer for the Bonds, or a financial institution willing to loan ELTC money against the instruments.

32. On or about April 15, 2000, ELTC sent Lester Group's President (Lester) a group of documents to create the false impression the Bonds: (i) were valid debt securities; (ii) represented genuine, interest-bearing obligations of the issuers equal to the face amount of the bonds; and (iii) were separately issued by JMC and Northstar in legitimate private placement offerings in exchange for consideration equal to the aggregate face value of the Bonds.

33. ELTC knew, but failed to inform Lester, among other things, that: (i) neither the JMC Bond nor the Northstar Bond was secured, (ii) neither JMC nor Northstar had ever paid interest on the bonds, (iii) neither company had any assets, revenues or other financial resources to pay interest on their respective bonds in the future, and (iv) the JMC private placement memorandum, excerpts of which ELTC provided Lester, contained false and misleading information regarding JMC's financial statements, including its assets.

34. One of the financial institutions Lester contacted about loaning money to ELTC against the Bonds was Banque Royale, an international private bank.

35. Banque Royale was prepared to establish a line of credit for ELTC up to 90% (\$450 million) of the aggregate face value of the Bonds conditioned upon a broker-dealer accepting the Bonds for deposit.

36. ELTC thereafter arranged for an account to be established with the German office of Avalon Partners (Avalon), a registered broker-dealer.

37. In or about May 2000, at Koskella's and Neeley's direction, ELTC attempted to deposit the Bonds directly with CIBC Oppenheimer, Inc. (Oppenheimer), Avalon's clearing agent, and margin against the securities.

38. To persuade Avalon and Oppenheimer to accept the Bonds for deposit, ELTC arranged to have the same false and misleading documentation it provided Lester regarding the Bonds sent to both firms.

39. However, Avalon and Oppenheimer refused to accept the Bonds for deposit.

40. In or about June 2000, Koskella and Neeley established an account for ELTC at First Union, a registered broker-dealer.

41. To induce First Union to allow them to do so, Koskella and Neeley falsely represented to First Union, among other things, that ELTC had a liquid net worth of over \$1 billion.

42. Thereafter, Koskella and Neeley sought to deposit the Bonds to ELTC's account at First Union and margin against the securities.

43. To induce First Union to permit them to do so, Koskella and Neeley forwarded First Union a group of documents to create the false impression that the Bonds: (i) were validly issued debt securities; (ii) represented genuine, interest-bearing obligations of the issuers equal to the face amount of the bonds; and (iii) were separately issued by JMC and Northstar in legitimate private placements in exchange for consideration equal to the aggregate face value of the Bonds.

44. Koskella and Neeley knew, but failed to inform First Union, among other things, that: (i) neither of the Bonds was secured, (ii) neither JMC nor Northstar had ever paid interest on the Bonds, and (iii) neither company had any assets, revenues or other financial resources to pay interest on the Bonds in the future.

45. First Union refused to allow Koskella and Neeley to deposit the Bonds to ELTC's account or margin against the securities.

46. The Defendants' scheme was uncovered in or about June 2000 when the bank to which Koskella and Neeley had entrusted the bonds, LaSalle, became suspicious of the Bonds after it attempted to transfer the physical certificates to Oppenheimer and Oppenheimer refused, citing concerns about the validity of the securities. LaSalle

thereafter telephoned the Commission staff questioning the validity of the bonds and the Commission staff began investigating. But for LaSalle notifying the Commission staff of Defendants' fraudulent offering and this Court's entry of an injunction, Defendants will continue to offer the Bonds until successful in finding a buyer or someone who will accept the Bonds as collateral.

COUNT I

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

47. Paragraphs 1 through 46 are realleged and incorporated by reference as if set forth fully herein.

48. From at least January 2000 to the present, Defendants, in the offer of securities, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, have employed and are employing devices, schemes and artifices to defraud.

49. Defendants knew or were reckless in not knowing of the activities described in paragraphs 47 and 48 above.

50. By reason of the activities described in paragraphs 47 through 49 above, Defendants have violated and are violating Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)].

COUNT II

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

51. Paragraphs 1 through 46 are realleged and incorporated by reference as if set forth fully herein.

52. From at least January 2000 to the present, Defendants, in the offer of securities, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, have engaged in transactions, practices or courses of business which have operated, and will operate, as a fraud and deceit upon prospective purchasers of securities.

53. By reason of the activities described in paragraphs 51 through 52 above, Defendants have violated and are violating Section 17(a)(3) of the Securities Act [15 U.S.C. §77q(a)(3)].

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that the Court:

I.

Find that Defendants committed the violations charged and alleged herein.

II.

Issue a Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendants, 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, and each of them from, directly or indirectly, engaging in the transactions, acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Sections 17(a)(1) and 17(a)(3) of the Securities Act [15 U.S.C. §§77q(a)(1) and 77q(a)(3)].

III.

Issue an order, with regard to the Defendants' violative acts, practices and courses of business set forth herein, imposing appropriate civil penalties against Koskella and Neeley pursuant to Section 20(d) of the Securities Act [15 U.S.C. §§77t(d)].

IV.

Retain jurisdiction of this action in accordance with the principals of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

V.

Grant Orders for such further relief as the Court may deem appropriate.

Respectfully submitted,



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