

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION - CLEVELAND

FILED

2005 OCT -7 AM 9:38

CLERK OF COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

GREGORY APPLGATE,

Defendant.

JUDGE MANOS

CIVIL ACTION
FILE NO.

1 : 05CV2363

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION'S
COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION
AND OTHER ANCILLARY RELIEF**

Plaintiff, the United States Securities and Exchange Commission ("SEC"), alleges as follows:

INTRODUCTION

1. From in or about 2001 through August 2005, Defendant Gregory Applegate ("Applegate"), a registered representative at a securities brokerage firm, solicited at least 140 investors to invest at least \$5.8 million in a supposed "hedge fund" for "tax-exempt" securities. Applegate orally guaranteed an annual rate of return to these investors (ranging from 6.75% to 7.75%) and promised to make up any losses out of his own pocket.

2. In reality, Applegate misappropriated investor funds by funneling money to fund an unrelated personal business -- a coffee shop that he operated. In addition, he used investor funds to pay personal expenses and he used new investor funds to pay back

earlier investors. Furthermore, Applegate invested in equity securities that were not tax exempt. To perpetrate his scheme, he provided investors with false monthly “client statements,” containing securities holdings and returns that did not exist.

3. Accordingly, Applegate, directly and indirectly, has engaged in transactions, acts, practices and courses of business which constitute violations of Section 17(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. §77(q)(a)]. Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §§78j(b)] and Rule 10b-5 [17 C.F.R. §§240.10b-5] promulgated thereunder.

4. The SEC brings this action to enjoin such transactions, acts, practices, and course of business pursuant to Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§78u(d) and 78u(e)].

JURISDICTION AND VENUE

5. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)], Section 27 of the Exchange Act [15 U.S.C. §78aa] and 28 U.S.C. §1331. Venue is proper in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. §78aa].

6. Applegate resides in Ashland, Ohio, located in the Northern District of Ohio. The transactions, acts, practices, and courses of business constituting the violations alleged herein have occurred within the jurisdiction of the United States District Court for the Northern District of Ohio and elsewhere.

7. Applegate, directly and indirectly, has made 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 Ohio and elsewhere.

8. There is a reasonable likelihood that Applegate 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.

BACKGROUND

9. Defendant Applegate is 46 years of age and resides in Ashland, Ohio. Applegate passed his Series 7 and 63 examinations in 1986. Since 1986, he has been employed as a registered representative by several securities brokerage firms including Tempo Securities Corporation (“Tempo”) where he worked from April 1995 through January 2005. He was most recently employed as a registered representative for Regis Securities Corporation (“Regis”). Regis employed Applegate from January 2005 through August 2005 when he was terminated. Applegate is not currently employed at a registered broker-dealer.

THE FRAUDULENT SCHEME

10. From early 2001 through August 2005, Applegate operated a Ponzi scheme in which he falsely represented to investors that they could invest in a “hedge fund” he managed consisting of tax-exempt securities. Applegate orally guaranteed to investors a tax free annual rate of return on the investment, typically from 7% to 8%. Under his scheme, Applegate claimed that he would earn no “commission” as such, but rather that he would keep all returns beyond the guaranteed rate, and if returns were less than the guaranteed rate, Applegate promised to make up that deficiency to the investor

out of his own pocket. Applegate had no written contracts with his investors, no offering memos, and no official receipts for payments.

11. Applegate's investor base steadily grew, and by 2005, he had nearly 140 investors and he received approximately \$5.8 million in investments from clients during the first eight months of 2005 alone. At all times during this scheme, Applegate was associated with a brokerage firm, first Tempo and then Regis.

12. In reality, Applegate diverted a large amount of his clients' money. Instead of investing the money as promised, Applegate placed a large amount of investors' funds into his personal business, a coffee shop.

13. He also used investor funds for other personal expenses. For example, records indicate that in July of 2003, Applegate diverted \$76,000, apparently as a donation, to the Ashland Community Art Center, where his wife served as the executive director. Applegate also kept a reserve of funds to use when investors chose to liquidate their accounts. He also paid off earlier investors directly through investments of newer investors.

14. In order to perpetuate his fraudulent scheme, Applegate creating false monthly client statements in which he indicated share ownership and dividend payments which did not correspond with actual market prices or with actual holdings of securities. To reinforce his misrepresentation that investments would be "tax free," he provided monthly statements indicating share ownership of various municipal income funds although he did not actually place investor money in such securities. In fact, most of the investing that Applegate did do appears to have been in equity securities that were not tax exempt.

15. When Applegate was working for Regis Securities (starting in January 2005), he gave his Regis Securities business cards to certain of his “hedge fund” investors, thus holding himself out as investing for those clients as part of Regis Securities. In fact, those investments were not known to or authorized by Regis. He also falsely reported to Regis that he had no outside activities (except for the coffee shop business). He also issued strict instructions to his office assistant to not let anyone from Regis learn of the scheme.

APPLEGATE GETS CAUGHT

16. In August 2005, the financial advisor of one of Applegate’s investors examined one of the false monthly statements, and discovered that the dividends and share prices of the securities allegedly held did not match actual market prices. The financial advisor reported the scheme on August 29, 2005 to Regis Securities, who investigated the allegations by making an unannounced inspection of Applegate’s office. When questioned about the scheme, Applegate admitted to having only “a handful” of unauthorized personal clients, and claimed that he would be able to reimburse all of those clients.

17. On August 31, 2005, Applegate refused to allow an audit of his records by Regis, at which time Regis terminated him.

18. Immediately after Applegate was confronted about his investment scheme and fired from Regis Securities on August 31, 2005, he began liquidating his “hedge fund” securities accounts and issuing checks to investors. However, Applegate chose to repay only certain investors.

19. Over the first two weeks of September, a brokerage account controlled by Applegate fell from approximately \$891,000 to less than \$91,000, as he liquidated holdings and wrote numerous checks to certain investors. Although Applegate was able to reimburse some investors, it does not appear that he will be able to pay numerous others.

APPLEGATE CONFESSES

20. On September 14, 2005, Gregory Applegate voluntarily came to the Ashland Police Department, accompanied by his counsel, and met with representatives of the police department and the Federal Bureau of Investigation. Applegate admitted many of the facts alleged in the Complaint, including admitting that he started running an illegal and unethical investment scheme in 2001; that he knew this was a pyramid scheme; and that it was an illegal investment practice.

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

21. Paragraphs 1 through 20 are realleged and incorporated by reference as if set forth fully herein.

22. From in or about 2001 through at least August 2005, Applegate, in the offer and sale 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, has employed devices, schemes and artifices to defraud.

23. Applegate knew or was reckless in not knowing of the activities described in paragraphs 21 and 22 above.

24. By reason of the activities described in paragraphs 21 through 23 above, Applegate has violated Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)].

COUNT II

Violations of Section 17(a)(2) and 17(a)(3) of the Securities Act

25. Paragraphs 1 through 24 are realleged and incorporated by reference as if set forth fully herein.

26. From in or about 2001 through at least August 2005, Applegate, in the offer and sale 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, has obtained money and property by means of untrue statements of material fact or omissions 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 has engaged in transactions, practices or courses of business which have operated as a fraud and deceit upon purchasers of securities.

27. By reason of the activities described in paragraphs 25 and 26 above, Applegate has violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §77q(a)(2) and §77q(a)(3)].

COUNT III

**Violations of Section 10(b) of the
Exchange Act and Rule 10b-5 Promulgated Thereunder**

28. Paragraphs 1 through 27 are realleged and incorporated by reference as if set forth fully herein.

29. From in or about 2001 through at least August 2005, Applegate, in connection with the purchase and sale of securities, directly and indirectly, by the use of

the means and instrumentalities of interstate commerce and of the mails, has employed devices, schemes and artifices to defraud; has made untrue statements of material fact and has omitted 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 has engaged in acts, practices and courses of business which operated as a fraud and deceit upon the customers discussed in paragraphs 1 through 20, above.

30. Applegate knew or was reckless in not knowing of the activities described in paragraphs 28 and 29 above.

31. By reason of the activities described in paragraphs 1 through 30 above, Applegate has violated Section 10(b) of the Exchange Act [15 U.S.C. §§78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder.

PRAYER FOR RELIEF

WHEREFORE, the SEC requests that the Court:

I.

Find that Defendant Applegate committed the violations charged and alleged herein.

II.

Grant Orders of Preliminary and Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant Applegate, his 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), 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§77q(a)(1), 77q(a)(2), and 77q(a)(3)], Sections 10(b) of the Exchange Act [15 U.S.C. §§78j(b)] and Rules 10b-5 [17 C.F.R. §§240.10b-5] promulgated thereunder.

III.

Issue an Order requiring Defendant Applegate to disgorge the ill-gotten gains that he received as a result of his wrongful conduct, including prejudgment interest.

IV.

With regard to the Defendant Applegate's violative acts, practices and courses of business set forth herein issue an Order imposing upon him appropriate civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §§78u(d)(3)].

V.

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.

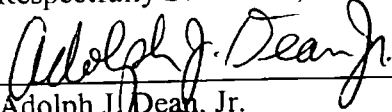
VI.

Grant appropriate emergency relief to prevent further secretion or dissipation of assets purchased with investor funds.

VII.

Grant an Order for any other relief this Court deems appropriate.

Respectfully Submitted,



Adolph J. Dean, Jr.

Charles J. Kerstetter

One of the Attorneys for Plaintiff

U.S. SECURITIES AND

EXCHANGE COMMISSION

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Dated: October 7, 2005

1:05CV2363

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

JUDGE MANOS

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Securities and Exchange Commission 2005 OCT -7 AM 9:28

DEFENDANTS

Gregory Applegate

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Ashland (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number) Adolph J. Dean, Jr. SEC, 175 W. Jackson, 9th Floor, Chicago, IL 60604

Attorneys (If Known) Dennis Bartek, 2300 E. Market Street, Suite E, Akron, OH 44312

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories like 110 Insurance, 210 Land Condemnation, 310 Airplane, 441 Voting, 610 Agriculture, 710 Fair Labor Standards, 820 Copyrights, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. 77(q)(a), 15 U.S.C. 78j(b), 17 C.F.R. 240.10b-5
Brief description of cause: securities fraud

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10-7-2005 SIGNATURE OF ATTORNEY OF RECORD Adolph J. Dean Jr.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

I. Civil Categories: (Please check one category only).

- 1. General Civil
- 2. Administrative Review/Social Security
- 3. Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. **RELATED OR REFILED CASES.** See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action is RELATED to another PENDING civil case. This action is REFILED pursuant to LR 3.1.

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule 3.8, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county

COUNTY: Ashland

Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY:

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY:

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

- AKRON (Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)
- CLEVELAND (Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)
- YOUNGSTOWN (Counties: Columbiana, Mahoning and Trumbull)

WESTERN DIVISION

- TOLEDO (Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)