

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CASE NO.:

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

SHAWN A. ICELY,

Defendant.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission alleges as follows:

I. INTRODUCTION

1. The Commission brings this action to enjoin Defendant Shawn A. Icelly, a former registered representative with American Portfolios Financial Services, Inc., from violating the antifraud provisions of the federal securities laws.

2. From no later than November 2008 through December 2009, Icelly engaged in a scheme to defraud at least 11 American Portfolios customers by selling their securities and taking approximately \$625,000 from their customer accounts. Icelly diverted the funds to bank accounts in the name of his company, Icelly, Inc. In most instances, Icelly facilitated the transfer of customer funds with wire request or IRA distribution forms that were forged, and that falsely stated the funds would be transferred to a bank account in the customer's name.

3. To conceal his fraud, Icelly told customers he transferred their money to bank accounts in their name or that he transferred their money to new accounts he opened for them at another broker-dealer. In at least two instances, Icelly provided customers with fake account

statements. Icely proceeded to use his customers' funds to pay both his company and personal expenses.

4. By engaging in this conduct, Icely violated, and unless enjoined is reasonably likely to 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 Exchange Act Rule 10b-5 [17 C.F.R. §240.10b-5].

II. DEFENDANT

5. Icely, 34, is a resident of Sarasota, Florida. From February 2007 until December 2009, Icely was a registered representative in the Sarasota branch office of American Portfolios. During the same period, Icely was also associated with American Portfolios Advisors, Inc. as a registered investment adviser. After leaving American Portfolios, Icely was employed at Cambridge Investment Research, Inc., where he was terminated in March 2010 for failing to disclose outside businesses. Throughout the relevant time period, Icely was also the Director and President of Icely, Inc., a Florida corporation he controls.

III. JURISDICTION AND VENUE

6. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d) and 77v(a)]; and Sections 21(d) 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa].

7. The Court has personal jurisdiction over Icely and venue is proper in the Middle District of Florida. Icely's principal place of business while American Portfolios employed him was in the Middle District, and he also resides there. In addition, as described below, the transactions and acts constituting violations of the Securities Act and Exchange Act occurred in the Middle District of Florida.

8. In connection with the conduct alleged in this complaint, Icely, directly and indirectly, made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails. Specifically, Icely used the telephone, facsimiles, and other electronic communication to transfer fraudulently obtained funds to Icely, Inc., a company he controlled.

IV. ICELY'S FRAUDULENT SCHEME

9. From February 2007 until December 2009, American Portfolios employed Icely as a registered representative at a branch office located in Sarasota, Florida.

10. During his employment at American Portfolios, Icely was involved in at least one business activity outside the scope of his employment, including acting as the Director and President of Icely, Inc.

11. Icely illegally used customer funds to pay for Icely, Inc.'s company expenses and his personal expenses by selling some or all of his customers' securities holdings and transferring the proceeds to his Icely, Inc. bank accounts at Wachovia Bank (n/k/a Wells Fargo Bank). In most instances to facilitate these transfers, Icely used wire request or IRA distribution forms that were forged and unauthorized by the customers.

12. For example, in February 2009, Icely transferred to an Icely, Inc. bank account at Wachovia \$20,128.86 from IRA accounts belonging to a customer residing in New Port Richey, Florida. The funds for the transfer came from the sale of the customer's holdings in a mutual fund just days earlier. The signature on the IRA distribution form was a forgery, as the customer never signed the form or authorized American Portfolios to make the transfer. The form also falsely stated the funds would be transferred to a bank account at Wachovia in the customer's name.

13. When the customer later questioned Icely about this transfer and more than twenty other transfers totaling more than \$297,000 from his and his wife's American Portfolios accounts, Icely claimed he was transferring the money to the customer's new accounts at Cambridge. However, the customer's Cambridge account statements never reflected the funds.

14. In May 2010, Icely provided the customer with a statement purportedly reflecting funds in various unidentified accounts. However, Icely had actually used the funds from this customer's American Portfolios accounts for Icely, Inc.'s company expenses and his personal expenses. For example, in late April and May 2009, Icely transferred approximately \$51,500 from the customer's account and used the money to buy a truck, pay a credit card bill, pay a mortgage, and make a transfer to his wife's personal bank account, among other things.

15. In August and September 2009, Icely transferred funds from the account of another customer who resides in Sarasota, Florida, to Icely, Inc.'s bank account at Wachovia. The transfers took place after Icely liquidated the customer's money market and mutual fund holdings. Icely facilitated the transfers with five IRA distribution forms that requested distributions totaling more than \$68,000 from the customer's accounts and requested transfer to an account at Wachovia purportedly in the name of the customer.

16. The customer, however, never authorized the transfers, and the signatures on the IRA distribution forms were forgeries. When the customer asked Icely about the money missing from his accounts, Icely claimed the money would be transferred to the customer's new accounts at Cambridge. The money, however, was never transferred. Icely also sent the customer an account statement printed on Icely's stationary. The customer could not determine from the statement where his money was actually located.

17. In October 2009, Icely transferred funds from the account of a third customer who resides in Kissimmee, Florida, to Icely, Inc.'s bank account at Wachovia. The customer's IRA distribution form requested a distribution of \$44,395.84 from the account to another account purportedly in the name of the customer. The distribution followed the sale of the customer's holdings in a money market account.

18. Again, the signature on the IRA distribution form was a forgery, and the customer never authorized the transfer. In fact, when the customer discovered the unauthorized transfer and asked Icely about it, Icely falsely represented he had moved the funds to a money market account at Wachovia. He also said he planned to move the funds to the customer's new account at Cambridge. The customer's Cambridge account statement, however, never reflected the funds.

19. In similar fashion, throughout the period from November 2008 through December 2009, Icely made approximately 50 transfers of customer funds primarily with unauthorized wire request or IRA distribution forms that falsely stated the funds would be transferred to a bank account in the name of the customer.

20. Icely illegally diverted at least \$624,773 from customer accounts to his Icely, Inc. account during this time.

V. CLAIMS FOR RELIEF

COUNT I

Icely Violated Section 17(a)(1) of the Securities Act

21. The Commission repeats and realleges Paragraphs 1 through 20 of this complaint.
22. From no later than November 2008 through December 2009, Icely 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 in this complaint, has knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

23. By reason of the foregoing, Icely directly or indirectly violated and, unless enjoined, is reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)].

COUNT II

Icely Violated Sections 17(a)(2) and 17(a)(3) of the Securities Act

24. The Commission repeats and realleges Paragraphs 1 through 20 of this complaint.

25. From no later than November 2008 through December 2009, Icely 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 in this complaint, has been: (a) 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 are made, not misleading; or (b) engaging in transactions, practices and courses of business which are now operating and will operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

26. By reason of the foregoing, Icely directly or indirectly violated and, unless enjoined, is reasonably likely to continue to violate, Section 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §77q(a)].

COUNT III

Icely Violated Section 10(b) of the Exchange Act and Rule 10b-5

27. The Commission repeats and realleges Paragraphs 1 through 20 of this complaint.

28. From no later than November 2008 through December 2009, Icely, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly: (a) employed devices, schemes or 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 the light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices and courses of business which have operated as a fraud upon any person in connection with the sale of any security.

29. By reason of the foregoing, Icely directly or indirectly violated and, unless enjoined, is reasonably likely to continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. §240.10b-5].

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests the Court:

Declaratory Relief

Declare, determine and find that Icely committed the violations of the federal securities laws alleged in this complaint.

Permanent Injunction

Issue a Permanent Injunction, restraining and enjoining Icely, his agents, servants, employees, attorneys, and representatives, and all persons in active concert or participation with them, and each of them, from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) and Rule 10b-5 of the Exchange Act [15 U.S.C. §78j(b) and 17 C.F.R. §240.10b-5].

Disgorgement

Issue an Order directing Icely to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts and/or courses of conduct alleged in this complaint.

Penalty

Issue an Order directing Icely to pay a civil money penalty 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. § 78u(d)].

Further Relief

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

Retention of Jurisdiction

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

October 20, 2010

Respectfully submitted,

By:



Christine Nestor, Lead Counsel
Senior Trial Counsel
Fla. Bar No. 597211
Direct Dial: (305) 982-6367
Facsimile (305) 536-4154
E-mail: nestorc@sec.gov

Laura R. Smith, Senior Counsel
California Bar No. 205159
Direct Dial: (305) 982-6387
E-mail: smithla@sec.gov

Attorneys for Plaintiff
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800, Miami, FL 33131