JUDGE CARDAMONE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BERTON M. HOCHFELD and HOCHFELD CAPITAL MANAGEMENT, L.L.C.,

Defendants,

and

HEPPELWHITE FUND, LP,

Relief Defendant.

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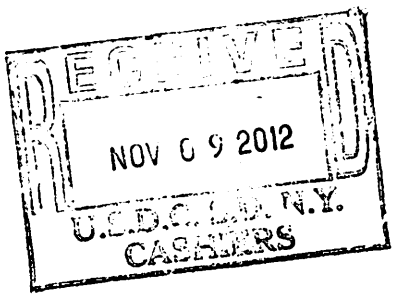
12 CV 8202

Civil Action No._____



COMPLAINT

Plaintiff, U.S. Securities and Exchange Commission (the "Commission") alleges as follows against the above-named Defendants and Relief Defendant:

SUMMARY

1. This case involves violations of the antifraud provisions of the federal securities laws by Berton M. Hochfeld ("Hochfeld") and Hochfeld Capital Management, L.L.C. ("HCM"). Hochfeld, through his wholly-owned entity HCM, managed Heppelwhite Fund, LP ("Heppelwhite" or the "Fund"), a limited partnership that operated as a hedge fund. The Fund has approximately 25 investors and at least $6 million in assets. Since at least April 2011, Hochfeld, through HCM, has been misappropriating assets from the Fund for personal use, including making periodic payments to antique dealers on a collection of valuable antiques he

had purchased. At the same time Hochfeld was misappropriating funds from Heppelwhite, he was materially overstating to the Fund's limited partners the value of their investments in the Fund.

2. This was not the first time Hochfeld deceived Heppelwhite's investors. For example, in a Private Placement Memorandum ("PPM") Hochfeld provided to investors, Hochfeld acknowledged that he and HCM previously had been enjoined from violations of the federal securities laws, but failed to advise the investors that he remained subject to a January 2006 Commission Order barring him from, among other things, association with any investment adviser. Hochfeld's management of the Fund through HCM plainly violated the Commission's Order.

3. By their conduct, Defendants have violated 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 203 and 206 of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 206(4)-8 thereunder. The relief sought herein is necessary to protect Heppelwhite's limited partners.

JURISDICTION AND VENUE

4. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v], Sections 21(d) and (e) of the Exchange Act [15 U.S.C. § 78u], and Sections 209 and 214 of the Advisers Act [15 U.S.C. §§ 80b-9 and 80b-14]. Defendants, directly or indirectly, made use of the mails, or the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices and courses of conduct alleged in this Complaint.

5. Venue is proper in this District pursuant to Section 22 of the Securities Act [15 U.S.C.§ 77v], Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14]. Defendants were inhabitants of or transact business in this District, and certain acts and transactions constituting violations of the federal securities laws occurred in this District.

DEFENDANTS

6. **Berton M. Hochfeld** ("Hochfeld"), age 66, is a resident of Stamford, Connecticut. Hochfeld is the sole shareholder and manager of Hochfeld Capital Management, L.L.C., which is the general partner of the Heppelwhite Fund, a limited partnership that operated as a hedge fund.

7. **Hochfeld Capital Management, L.L.C.** ("HCM") is a Delaware corporation with offices in Stamford, Connecticut. HCM was previously located in New York, New York. HCM is the general partner of Heppelwhite. Hochfeld is HCM's manager and sole shareholder.

RELIEF DEFENDANT

8. **Heppelwhite Fund, LP** ("Heppelwhite" or "the Fund"), is a Delaware limited partnership which operated as a hedge fund with offices in Stamford, Connecticut. Heppelwhite's general partner is Hochfeld Capital Management, L.L.C., which is wholly owned and controlled by Hochfeld.

THE PRIOR COMMISSION ACTION AND ORDER

9. In 2005, the Commission filed a settled fraud case against Hochfeld and HCM. See SEC v. Berton M. Hochfeld and Hochfeld Capital Management, L.L.C., Case No. 05-CIV-

9921 (S.D.N.Y. 2005). The complaint in that action alleged that, while acting as a research analyst for a registered broker-dealer, Hochfeld failed to disclose that Heppelwhite maintained positions in stocks that were the subject of his research reports, and that at times he traded stocks contrary to his research reports. A final judgment entered on January 5, 2006, included a fraud injunction against Hochfeld and HCM and ordered disgorgement and a civil penalty. In a follow-on administrative proceeding pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act, the Commission entered an Order barring Hochfeld from associating with any broker, dealer, or investment adviser, with a right to reapply after four years. See In the Matter of Berton M. Hochfeld, AP File No. 3-12154 (January 20, 2006). The Order remains in effect and Hochfeld has not applied for reinstatement.

FACTS

10. Heppelwhite commenced operations in 1997 as an investment vehicle designed to seek capital appreciation primarily through investments in publicly-traded companies in the technology sector. HCM serves as the general partner of the Heppelwhite limited partnership and is responsible for all its investment decisions. Hochfeld is the sole shareholder and manager of HCM.

11. Both HCM and Hochfeld were investment advisers within the meaning of Section 202(a)(11) of the Advisers Act.

12. HCM received management fees every quarter at an annual rate of 1% of the value of each limited partner's capital account, and was entitled to a "performance allocation" equal to 20% of the limited partners' pro rata share of net profits for each fiscal year.

13. Hochfeld and HCM solicited investors in Heppelwhite through the PPM and other offering documents. Investors in Heppelwhite were required to sign a Limited Partnership Agreement ("LPA").

14. The PPM stated that in January 2006 Hochfeld entered into a consent order by which he was enjoined from violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

15. The PPM failed to advise the investors that Hochfeld remained subject to a January 2006 Commission Order barring him from, among other things, association with any investment adviser.

16. In fact, Hochfeld knew that he is the subject of a Commission Order issued January 20, 2006, and that it remained in effect.

17. On behalf of HCM, Hochfeld hired a Fund Administrator for the Fund's day-to-day back office functions, which included corresponding with investors and tracking the Fund's asset balances and the value of each investor's capital account with the Fund.

18. The Fund Administrator forwarded to investors periodic statements that included the value of their capital accounts and a monthly update letter prepared by Hochfeld describing the activities of the Fund, including the Fund's monthly net asset value ("NAV"). The Fund's NAV was determined by, or at the direction of, the General Partner, HCM.

19. In December 2010, a new Fund Administrator replaced the Administrator who had been in place since approximately 2002. The new Fund Administrator discovered a discrepancy between the NAV of the Fund that he calculated internally and the NAV calculated by Gar Wood Securities, L.L.C. ("Gar Wood"), the prime broker where Hochfeld maintained the Fund's brokerage accounts. At the time the new Fund Administrator discovered the discrepancy,

the NAV calculated by the Fund Administrator exceeded the NAV calculated by Gar Wood by approximately $150,000.

20. Hochfeld informed the Fund Administrator that the discrepancy was normal and resulted from differences in the amount of time it took for trades to clear.

21. The Fund Administrator continued to send regular statements to the investors based on the internal calculations of the Fund's NAV.

22. As of May 31, 2012, the NAV calculated by the Fund Administrator using internal records exceeded the NAV calculated by Gar Wood by approximately $1.5 million.

23. As a result of the inflated internal NAV calculation, the periodic account statements sent to investors materially overstated their actual assets in the Fund.

24. Hochfeld and HCM knew, or were reckless in not knowing, that the statements sent to investors materially overstated their actual assets in the Fund.

25. In addition, the internal NAV calculation served as the basis for the calculation of the 1% management fee paid to HCM every quarter.

26. Hochfeld regularly withdrew money from HCM's capital account with the Fund. On Hochfeld's instructions, the Fund Administrator would transfer money from the Fund's account to Hochfeld's personal accounts.

27. At the time the new Fund Administrator began work in December 2010, HCM's capital account with the Fund had a balance of approximately $400,000. By April 2011, the HCM capital account had a negative balance, meaning that the amount Hochfeld had taken from the Fund exceeded the value of HCM's assets in the Fund.

28. According to the PPM, Heppelwhite is prohibited from making loans to, or purchasing debt obligations issued by, HCM or any of its principals.

29. By October 2012, Hochfeld, through HCM, had misappropriated a total of approximately $1.3 million from the Fund.

30. Hochfeld used the money he misappropriated from the Fund for personal use, including making payments to antique dealers on a collection of valuable antiques he purchased.

FIRST CLAIM

Fraud in Connection with the Purchase and Sale of Securities in Violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

(Hochfeld and HCM)

31. Plaintiff repeats and realleges Paragraphs 1 through 30 above.

32. By engaging in the conduct described above, each of the Defendants, directly or indirectly, acting knowingly or recklessly, in connection with the purchase or sale of securities, and by the use of the means and instrumentalities of interstate commerce, or of the mails: (a) have employed or are employing devices, schemes or artifices to defraud; (b) have made or are making untrue statements of material fact or have omitted or are omitting to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) have engaged or are engaging in acts, practices or courses of conduct which operate as a fraud or deceit upon certain persons.

33. By engaging in the conduct described above, Defendants violated and, unless enjoined, will continue to violate 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].

SECOND CLAIM

Fraud in the Offer and Sale of Securities in Violation of Section 17(a)(1), (2) and (3) of the Securities Act

(Hochfeld and HCM)

34. Plaintiff repeats and realleges Paragraphs 1 through 33 above.

35. By engaging in the conduct described above, each of the Defendants directly or indirectly, in the offer or sale of securities, by the use of the means and instrumentalities of interstate commerce, or of the mails, and acting knowingly or recklessly, (a) have employed or are employing devices to defraud, (b) have obtained or are obtaining money or property by means of untrue statements of material fact or omissions to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) have engaged or are engaging in acts, practices or courses of conduct which operate as a fraud or deceit upon certain persons.

36. By engaging in the conduct described above, defendants violated and, unless enjoined, will continue to violate Section 17(a)(1), (2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(1), (2) and (3)].

THIRD CLAIM

Control Person Liability Under Exchange Act Section 20(a) For HCM's Violations Of Exchange Act Section 10(b) and Rule 10b-5 thereunder

(Hochfeld)

37. Plaintiff repeats and realleges Paragraphs 1 through 36 above.

38. Hochfeld, the sole shareholder and manager of HCM, controlled the general affairs of HCM, which conducted the above-described activities. Hochfeld also had the power to directly or indirectly control or influence the specific policies which resulted in violations 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], as described above. By reason of the foregoing, Hochfeld controlled HCM. Pursuant to Exchange Act Section 20(a) [15 U.S.C. §78t(a)], Hochfeld is liable jointly and severally with and to the same extent as HCM, with regard to the HCM's violations 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].

FOURTH CLAIM

Fraud in Connection with Acting as an Investment Adviser in Violation of Sections 206(1) and 206(2) of the Advisers Act

(Hochfeld and HCM)

39. Plaintiff repeats and realleges Paragraphs 1 through 38 above.

40. At all relevant times, Defendants each acted as an investment adviser, as defined by Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)].

41. By engaging in the conduct described above, each of the Defendants, acting as investment advisers, using the mails and the means and instrumentalities of interstate commerce, directly and indirectly, employed schemes and artifices to defraud one or more advisory clients and/or prospective clients.

42. By engaging in the conduct described above, Defendants violated and, unless enjoined, will continue to violate Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

FIFTH CLAIM

Fraud in Connection with Acting as an Investment Adviser in Violation of Section 206(4) of the Advisers Act and Rule 206(4)-8 Thereunder

(Hochfeld and HCM)

43. Plaintiff repeats and realleges Paragraphs 1 through 42 above.

44. At all relevant times, Defendants each acted as an investment adviser, as defined by Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)].

45. By engaging in the conduct described above, each of the Defendants, acting as investment advisers, using the mails and the means and instrumentalities of interstate commerce, directly and indirectly, employed schemes and artifices to defraud one or more advisory clients and/or prospective clients.

46. By engaging in the conduct described above, Defendants violated and, unless enjoined, will continue to violate Section 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

SIXTH CLAIM

Violations of Section 203(f) of the Advisers Act

(Hochfeld)

47. Plaintiff repeats and realleges Paragraphs 1 through 46 above.

48. Section 203(f) of the Advisers Act provides that: "It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with an investment adviser is in effect willfully to become, or to be, associated with an investment adviser without the consent of the Commission . . . ."

49. By engaging in the conduct described above, Hochfeld directly violated, and unless immediately enjoined, will continue to violate the January 20, 2006 Commission Order

barring him from associating with any broker, dealer, or investment adviser. Hochfeld's violation of the Commission Order constitutes a violation of Section 203(f) of the Advisers Act.

SEVENTH CLAIM

Violations of Section 203(f) of the Advisers Act

(HCM)

50. Plaintiff repeats and realleges Paragraphs 1 through 49 above.

51. Section 203(f) of the Advisers Act provides that: "[I]t shall be unlawful for any investment adviser to permit [an individual barred by the Commission] to become, or remain, a person associated with him without the consent of the Commission, if such investment adviser knew, or in the exercise of reasonable care, should have known, of such order."

52. By engaging in the conduct described above, HCM violated and, unless enjoined, will continue to violate Section 203(f) of the Advisers Act [15 U.S.C. § 80b-3(f)].

EIGHTH CLAIM

Violations of a Commission Order

(Hochfeld)

53. Plaintiff repeats and realleges Paragraphs 1 through 52 above.

54. As described above, Hochfeld, while barred from association with an investment advisor, willfully became, or was, associated with an investment adviser without the consent of the Commission.

55. By reason of the foregoing, Hochfeld directly violated, and unless immediately enjoined, will continue to violate the Commission Order dated January 20, 2006, In the Matter of Berton M. Hochfeld, A.P. File No. 3-12154, barring him from associating with an investment adviser.

PRAYER FOR RELIEF

WHEREFORE, the Commission seeks the following relief:

1. An order of the Court permanently enjoining Defendants, their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 17(a) of the Securities Act [15 U.S.C. §§ 77q(a)] and 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 Sections 206(1), 206(2) and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), 80b-6(2) and 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8];

2. An order of the Court, pursuant to Section 209(d) of the Advisers Act, enforcing compliance with the Commission's January 20, 2006 Order;

3. An order of the Court directing Defendants to disgorge an amount equal to the funds and benefits obtained illegally as a result of the violations alleged, plus prejudgment interest on that amount;

4. An order of the Court directing Defendants to pay civil monetary penalties in an amount to be determined by the Court 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. § 78u(d)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] for their violations of the federal securities laws as alleged herein;

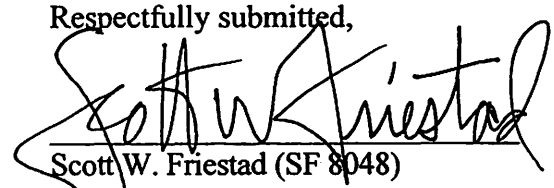
5. An order of the Court appointing a Receiver to preserve the assets of the Defendant HCM and Relief Defendant in order to, among other things, facilitate the ability of the Defendants to disgorge ill-gotten gains;

6. An order of the Court freezing the assets of Defendants and Relief Defendant, requiring Defendants and Relief Defendant to provide a full accounting of any and all funds or other assets or things of value presently held by them, and requiring Defendants and Relief Defendant to preserve any documents relevant to the allegations of this Complaint;

7. An order of the Court awarding such other and further relief as this Court may deem just, equitable, appropriate or necessary for the enforcement of the federal securities laws for the benefit of investors, including such relief contemplated by Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

Dated: November 9, 2012

Respectfully submitted,



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