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6/8/01

BY *kly*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

SECURITIES AND EXCHANGE COMMISSION, :
: Plaintiff, :
: v. : CV-S-00-1125-LDG-LRL
: BRYCAR FINANCIAL CORPORATION and :
: BRYAN J. EGAN, :
: Defendants, :
: and :
: CAROL A. EGAN (a/k/a Carol A. DeSalvio), CARA :
: D. SOLORIO and JESSE SOLORIO, :
: Relief Defendants. :
:

SECOND AMENDED COMPLAINT

Plaintiff Securities and Exchange Commission ("SEC") alleges:

NATURE OF THE ACTION

1. This case involves a Ponzi scheme in which defendants BryCar Financial Corporation ("BryCar") and Bryan J. Egan ("Egan") collected millions of dollars from more than five hundred unsuspecting investors in Nevada and elsewhere with guarantees that their "risk

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free" investments in so-called "pre-IPO" stock and other securities would generate 500% returns. These representations were false. In fact, Egan stole the investors' money and then returned relatively small sums of money to some investors for the purpose of creating the illusion of legitimate stock purchases.

JURISDICTION

2. This court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77v(a)], Sections 21(d)(3), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d)(3)(A), 78u(e), and 78aa], and Sections 209 and 214 of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-9 and 80b-14].

3. Defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices, and courses of business alleged herein.

4. By engaging in the conduct alleged in this Second Amended Complaint, each defendant violated the antifraud provisions of the Securities Act, Exchange Act, and the Advisers Act, and also the securities registration provision of the Securities Act. BryCar also violated the broker-dealer registration provisions of the Exchange Act.

5. Defendants will, unless restrained and enjoined, continue to engage in the acts, practices or course of business alleged herein, or in transactions, acts, practices and courses of business of similar purport and object. The SEC seeks a judgment permanently enjoining defendants from future violations and directing disgorgement of illegally derived funds, together with prejudgment interest thereon, pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d) and (e)], and Section

209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)]. The SEC also brings this action for an award of civil penalties against Egan pursuant to pursuant Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

6. By Orders dated September 20, 2000 and September 26, 2000, this Court (a) granted temporary and preliminary injunctions against future violations by defendants of the antifraud and broker-dealer registration provisions of the Securities Act and the Exchange Act; (b) ordered a verified accounting from defendants and relief defendant Carol A. Egan (a/k/a Carol A. DeSalvio) (“Carol Egan”) of the receipt and disbursement of investors’ funds; (c) froze defendants’ assets pending the resolution of this action; (d) froze Carol Egan’s assets to the extent she received such assets from Egan or BryCar; and (e) granted certain other relief.

DEFENDANTS

7. BryCar is a Nevada corporation owned by Egan and his wife, Carol Egan. From BryCar’s December 1998 inception until approximately June 2000, it operated from the Egans’ home located at 1861 Rosemere Court in Las Vegas. From June 2000 until September 2000, BryCar also maintained offices at 7390 West Sahara Avenue, Las Vegas, Nevada. BryCar is not, and has never been, registered with the SEC as a broker-dealer and, therefore, is prohibited by the federal securities laws from selling, offering to sell, or inducing the sale of securities. By Orders dated November 13, 2000 and December 8, 2000, respectively, this Court appointed John E. Ham, Esq. of Santoro, Driggs, Walch, Kearney, Johnson & Thompson in Las Vegas, Nevada as first, temporary receiver, and then as permanent receiver for BryCar.

8. Egan, age 27, resides in Las Vegas, Nevada. At all relevant times, Egan was president, treasurer, and registered agent of BryCar. Egan is not, and has never been, registered

as a broker-dealer or licensed as a salesperson of securities with the SEC, the National Association of Securities Dealers (“NASD”), or the Secretary of State of the State of Nevada.

RELIEF DEFENDANTS

9. Carol Egan, age 56, is Egan’s wife and was, at all relevant times, the corporate secretary of BryCar. She resides with Egan in Las Vegas, Nevada.

10. Cara D. Solorio, age 31, is Carol Egan’s daughter and was, at all relevant times, the office manager of BryCar. She resides in Las Vegas, Nevada.

11. Jesse Solorio, age 29, is the son-in-law of Bryan and Carol Egan, and the husband of Cara D. Solorio. At all relevant times he was the chief operating officer of BryCar. He resides with his wife in Las Vegas, Nevada.

FACTS

12. Although neither BryCar nor Egan was registered to deal in securities, by September 1999 Egan had started to market BryCar as an investment firm, offering long- and short-term investment programs to consumers in several states. Between September 1999 and September 19, 2000, Egan and BryCar collected approximately \$2.5 million from investors for investment in these programs.

13. Under BryCar’s “long-term” program, investor funds were to be pooled for the purchase of securities from three sources: initial public offerings (commonly known as “IPOs”), “pre-IPO shares,” and shares of private placements. Defendants required a minimum investment of \$2,500 for participation in this program.

14. Egan required each investor in BryCar’s “long-term” program to sign an “Investment Brokerage Agreement.” Those agreements purported to give BryCar “total control” and absolute discretion to invest investors’ funds in stocks, options, or other investments as it

deemed appropriate, and entitled BryCar to 50% of the total profit earned on investors' initial investments. The agreements also purported to create joint venture relationships between the investors and BryCar. The agreements recited that "Clients [sic] initial investment . . . is never at risk and is guaranteed by . . . [BryCar] as long as the Joint Venture is in effect."

15. Some versions of the Investment Brokerage Agreements further elaborated that "Clients [sic] initial investment . . . is never at risk and is guaranteed by . . . [BryCar] with Triple 'A' Net Bonds issued by 'Lloyds of London Bank' and held in escrow by the SEC." Moreover, some agreements stated that BryCar was an offshore corporation subject only to a 3% tax liability on its trading profits and that BryCar would pay all capital gains taxes on behalf of investors. Each of these statements was false: there never were any bonds; the SEC held nothing in escrow for BryCar; BryCar was not an offshore corporation; and BryCar did not pay capital gains taxes on behalf of investors.

16. Under BryCar's "short term" program, investor funds were to be pooled and used for day trading, a practice in which publicly-traded securities are held for a limited time in an attempt to profit on market swings. Defendants required a minimum investment of \$1,000 for participation in this program.

17. Egan required that investors in BryCar's "short-term" program sign a "QuikTrade Customer Agreement," "Full Trading Authorization," and "Customer Option Agreement." The QuikTrade Customer Agreements described QuikTrade, Inc. as a broker-dealer and member of the NASD for whom BryCar acted as clearing broker. The QuikTrade Customer Agreements provided that "[a]ll decisions relating to your investment or trading activity shall be made by a [QuikTrade] authorized representative" and that "[QuikTrade] charges a 15% (Fifteen) Percentage and/or points on all profits earned and charges a 3% (Three) capital gains tax that is

paid through BryCar Financial Corporation's offshore foundation." The QuikTrade Customer Agreements further stated that, "for purposes of the Securities Investment Protection Act of 1970 and the financial responsibility rules of the Securities and Exchange Commission, your accounts are the responsibility of [BryCar]."

18. In reality, QuikTrade, Inc. did not exist. Rather, it was simply a name invented by Egan. No such company is registered with the NASD as a broker-dealer.

19. Between September 1999 and September 2000, defendants held seminars at Las Vegas hotels during which prospective customers were given dinner and then exhorted by Egan to invest in the BryCar programs. Egan's sales pitch contained numerous false and misleading statements concerning himself, BryCar, and BryCar's purported investment programs. In at least one such presentation, on June 21, 2000 at the Mandalay Bay Hotel, Egan told prospective customers that his own day trading over the past eight years had reaped him between \$5 million and \$6 million per year on average in profits. Egan further stated that the SEC had approved BryCar's investment programs, that BryCar guaranteed its investments, that investors could not lose money, and that BryCar's investments were both "risk free" and "tax free." Egan touted BryCar's "short-term" investment program as "fund managed day to day trading" where "we make all the decisions."

20. Egan also disseminated, or caused dissemination of, promotional literature that contained false claims of BryCar's ability to provide risk-free, high-yield investments. For example, one brochure promised investors "an average return of 500% in an 8-12 week period, without the RISK to you . . ." Similarly, Egan's business card proclaimed BryCar's investment programs "risk free."

21. In addition, defendants operated a website at <http://www.brycar.com> on which the

phony investment programs were promoted and equally fictitious account information was provided to customers. In one BryCar posting, titled "A word from our President," Egan described BryCar as "[a]n Investment Firm that provides "Risk Free" investing, high returns and structuring the investment around our most important asset . . . you."

22. On a number of occasions during the first half of 2000, and again at the June 21, 2000 Mandalay Bay seminar, defendants told BryCar investors in the "long-term" program that their funds had been used to purchase shares of AT&T Wireless stock in an IPO at \$8.50 per share. Thereafter, defendants claimed to have sold all of the AT&T Wireless stock purchased by BryCar at a substantial profit, and BryCar even distributed "payouts" of the claimed profits to a number of BryCar investors. In fact, defendants never purchased or received an allocation of AT&T Wireless stock in connection with the AT&T Wireless IPO. The payouts to some BryCar investors of profits relating to the sale of AT&T Wireless stock were sham transactions funded with money invested by more recent BryCar investors.

23. Egan and BryCar's misrepresentations about defendants and their investment programs were both relevant and material to investors' decisions to invest with BryCar. Neither defendant could lawfully deal in securities. Moreover, securities transactions involve risk and are generally subject to taxation.

24. Egan and BryCar knowingly or recklessly made the foregoing materially false statements concerning the defendants and their investment programs, and omitted to state material facts necessary to make the statements made not misleading.

25. Before May 2000, BryCar did not even have its own bank account. Egan deposited BryCar investor funds in a bank account in the name of Basic Needs, LLC, a Nevada limited liability company controlled by Egan. Beginning in May 2000, however, Egan deposited

at least some investors' funds in a checking account opened in BryCar's name at a Bank of America, N.A. in Las Vegas. From May 2000 until sometime after the appointment of a receiver for BryCar, Bryan and Carol Egan had sole authority to withdraw funds from the latter account.

26. At no time did BryCar have a securities trading account in its name in which publicly-traded securities were purchased for or on behalf of BryCar investors. Instead, to the extent Egan purchased publicly-traded securities purportedly for or on behalf of BryCar or its investors, he did so in securities trading accounts held exclusively in his own name. From September 1999 through September 2000, Egan repeatedly and routinely transferred BryCar investor funds from the Basic Needs, LLC or BryCar bank accounts to his personal securities trading accounts. .

27. On numerous occasions, the Egans looted investor funds from BryCar in order to support their lavish lifestyle. Investor funds were used to pay for family vacations, artwork, luxury vehicles, and other personal expenses.

28. For example, in April 2000 Egan purchased a new BMW luxury vehicle, using at least \$33,000 of BryCar investor funds toward the total \$50,000 purchase price. Egan also purchased two all-terrain vehicles, a motorcycle, and a trailer with BryCar investor funds. On June 25, 2000, Egan purchased \$19,000 worth of artwork for his home with BryCar investor funds.

29. The Egans also funded a ten-day vacation trip to Orlando, Florida for at least eleven family members and friends during the period August 14-24, 2000 with money looted from BryCar's checking account at Bank of America, N.A. While in Florida, in addition to visiting amusement parks, the Egans shopped for a new home. On August 30, 2000, Egan used \$75,000 of BryCar investors' funds to make an initial deposit on a luxury home that was being constructed in a country club residential development in Heathrow, Florida. The asking price for the home was over

\$1.5 million. The Egans planned to move their family and BryCar to this Heathrow, Florida home.

30. The Egans also repeatedly transferred substantial sums from BryCar's Bank of America, N.A. checking account to bank accounts in Egan's name, and made ATM withdrawals therefrom.

31. On September 8, 2000, the Securities Division of the Office of the Secretary of State for the State of Nevada issued a summary cease and desist order against BryCar and Egan that, among other things, prohibited (i) BryCar from holding itself out to the public as a broker-dealer of securities, (ii) Egan from holding himself out to the public as a licensed sales representative, and (iii) BryCar and Egan from making false statements and failing to disclose material information in connection with the purchase and sale of securities. The cease and desist order also prohibited Egan from engaging in securities transactions for or on behalf of BryCar or its investors. Despite his knowledge that such trading was unlawful, in an effort to recoup earlier trading losses, Egan nevertheless continued to trade securities after the issuance of the September 8, 2000 cease and desist order.

32. On September 14, 2000, at approximately 9:00 a.m. (PDST), Egan ordered Bank of America, N.A. to wire transfer \$380,000 from BryCar's checking account to a personal account maintained in his name at WingspanBank.com. This transaction left BryCar's checking account with a zero balance.

33. On the morning of September 19, 2000 the SEC filed its complaint against defendants in this action. Later that same day, Egan directed a broker-dealer in Los Angeles, California at which Egan had a securities trading account containing approximately \$215,340 of BryCar investor funds, to issue a check payable to Egan for that amount. This transaction left that account with a zero balance.

FIRST CLAIM

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

34. Paragraphs 1 through 33 are realleged and incorporated by reference.
35. By reason of the foregoing, BryCar and Egan violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5].

SECOND CLAIM

Fraud in the Offer or Sale of Securities in Violation of Section 17(a) of the Securities Act

36. Paragraphs 1 through 35 are realleged and incorporated by reference.
37. By reason of the foregoing, BryCar and Egan violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

THIRD CLAIM

Fraud Upon Clients of Investment Adviser in Violation of Sections 206(1) and 206(2) of the Advisers Act

38. Paragraphs 1 through 37 are realleged and incorporated by reference.
39. BryCar and Egan, directly and indirectly, engaged, for compensation, in the business of advising clients as to the advisability of investing in, purchasing, or selling securities. Accordingly, BryCar and Egan each acted as an investment adviser within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)].
40. By reason of the foregoing, BryCar and Egan violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

FOURTH CLAIM

Offer and Sale of Unregistered Securities in Violation of Sections 5(a) and (c) of the Securities Act

41. Paragraphs 1 through 40 are realleged and incorporated by reference.
42. BryCar's "long-term" and "short-term" investment programs described above constituted investment contracts, and hence securities, within the meaning of Section 2(1) of the Securities Act [15 U.S.C. § 77b(1)].
43. No registration statement was ever filed with the SEC concerning BryCar's "long-term" or "short-term" investment programs.
44. BryCar and Egan, respectively, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer and sell securities through the use or medium of a prospectus or otherwise when no registration statement was filed or was in effect as to such securities and when no exemption from registration was available.
45. By reason of the foregoing, BryCar and Egan violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and (c)].

FIFTH CLAIM

Unregistered Broker-Dealer in Violation of Section 15(a) of the Exchange Act

46. Paragraphs 1 through 45 are realleged and incorporated by reference.
47. BryCar made use of the means and instrumentalities of interstate commerce and of the mails to effect, induce, and attempt to induce the purchase and sale of securities without being registered with the SEC as a broker or dealer in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)], and when no exemption from registration was available.

48. By reason of the foregoing, BryCar violated Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

SIXTH CLAIM

Claim Against Relief Defendants

49. Paragraphs 1 through 48 are realleged and incorporated by reference.

50. Carol Egan has been and is, upon information and belief, in possession, custody, and control of certain assets of the principal defendants in this case.

51. Cara D. Solorio has been and is in possession, custody, and control of certain assets of the principal defendants in this case including, but not limited to, a BMW 328i automobile purchased on April 12, 2000 with \$45,140.30 advanced to her by BryCar, and \$3,132.25 in BryCar funds given to her by Egan on December 7, 2000.

52. Jesse Solorio has been and is in possession, custody, and control of certain assets of the principal defendants in this case including, but not limited to, \$3,132.25 in BryCar funds given by Egan to Solorio's wife, Cara Solorio, on December 7, 2000, and deposited in a checking account held jointly by Jesse and Cara Solorio.

53. Carol Egan, Cara D. Solorio and Jesse Solorio should each be ordered to disgorge all assets of the principal defendants within their respective possession, custody, and control.

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that this Court enter a judgment:

(i) permanently enjoining BryCar and Egan from violating Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a) and (c) and 77q(a)], 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], and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)];

- (ii) permanently enjoining BryCar from violating Section 15(a) of the Exchange Act [15 U.S.C. § 78m(a)];
- (iii) ordering BryCar, Egan, Carol Egan, Cara D. Solorio, and Jesse Solorio to each provide an accounting and disgorge all ill-gotten gains from the conduct alleged herein, together with prejudgment interest;
- (iv) ordering Egan to pay civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)]; and
- (v) granting such other relief as this Court may deem just and appropriate.

Dated: May 9, 2001
Washington, D.C.

Respectfully submitted,



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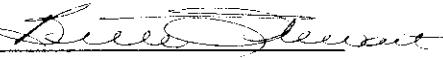
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IT IS FURTHER ORDERED that a permanent injunction is entered against defendants and each of them on the same terms and conditions as set forth in the preliminary injunction.

4:35 p.m. Court adjourns.

LANCE S. WILSON, CLERK

By: 
Deputy Clerk