

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

DONALD J. MARTINEAU,

Defendant.

CIVIL ACTION NO.

00cv10044MEL

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U.S. DISTRICT COURT
THE DISTRICT OF
MASSACHUSETTS

COMPLAINT

Plaintiff SECURITIES AND EXCHANGE COMMISSION, for its
Complaint, alleges that:

SUMMARY

1. This enforcement action is based upon the conversion of funds from at least nine brokerage customers by DONALD J. MARTINEAU, a stock broker, during the period from at least November 1989 to June 1998. MARTINEAU fraudulently induced his customers to invest \$4,765,000 in promissory notes by falsely stating that the proceeds would be invested in certain high-yield but low-risk transactions. Martineau also fraudulently induced his customers to sell their existing securities to invest \$4,459,300 in commercial paper which, in fact, did not exist. MARTINEAU used the funds obtained from his customers for several undisclosed purposes, including financing his personal options trading and other personal uses as well as making pon

RECEIPT \$ N/A
AMOUNT \$ N/A
SUMMONS ISS. yes
LOCAL RULE 41 ✓
WAIVER OF SERV. ✓
DECT ISSUED NO
AO 120 OR 121 NO
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(1)

repayments of principal and payments of interest to earlier investors in his schemes.

2. The COMMISSION requests that this Court enter a final judgment that permanently enjoins MARTINEAU from future violations of Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and imposes a civil monetary penalty against MARTINEAU pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 77u(d)].

JURISDICTION

3. The COMMISSION brings this action pursuant to the enforcement authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

4. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa].

5. MARTINEAU, directly or indirectly, has 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 acts, practices and courses of business alleged herein.

6. MARTINEAU, unless enjoined, will continue to engage in acts, practices and courses of business alleged herein, or in acts, practices and courses of business of similar object and purpose.

BACKGROUND

7. MARTINEAU, age fifty-six, is a resident of Tewksbury, Massachusetts. At all relevant times, MARTINEAU was employed in Boston, Massachusetts, as a stock broker for Merrill Lynch, Pierce, Fenner & Smith, Inc.

8. On or about June 29, 1990, MARTINEAU agreed at the behest of his supervisor to stop trading options in his personal account at Merrill Lynch due to large losses he had suffered. On July 1, 1990, MARTINEAU established an options account in his wife's name at another brokerage firm. MARTINEAU immediately resumed trading options in that account and continued to suffer large losses.

MARTINEAU'S SCHEMES

9. From at least November 1989 to June 1998, MARTINEAU financed his highly unprofitable options trading with funds obtained under false pretenses from at least nine of his brokerage customers. Specifically, Martineau fraudulently induced his customers to: (i) purchase promissory notes by falsely claiming that the proceeds from the sale of those promissory notes would be used to make secured, essentially riskless loans to other customers; and (ii) sell their existing securities based on false promises that the proceeds would be used

to purchase higher yielding and/or less risky financial instruments, including commercial paper issued by Merrill Lynch.

1. The Promissory Note Scheme

10. From at least November 1989 to June 1998, MARTINEAU persuaded six customers to invest \$4,765,000 in promissory notes issued by him with maturities ranging from 30 days to one year or which were payable upon demand. Martineau told victims of his scheme that the notes had interest rates ranging from 11% to 24% annually and would offer a better hedge against inflation for their funds, including some intended for their retirement, than the existing securities investments held in their Merrill Lynch accounts. MARTINEAU told the victims of his scheme that he only offered the notes to his best customers.

11. Martineau represented that the notes were issued for the purpose of making short term loans to certain of his other customers who were "insiders" at publicly traded companies. Martineau also told the victims of his scheme that those insider customers needed the money to complete virtually no-risk yet highly profitable transactions involving restricted securities issued by the companies with which they were affiliated.

12. For example, Martineau stated to several victims that the proceeds from the sale of one of his insider customer's restricted stock had been frozen by Merrill Lynch pending an upcoming earnings announcement by the issuer and that the insider customer needed a loan until Merrill Lynch released the proceeds. In other cases, Martineau told the victims of the scheme that the

insider customer would soon have an opportunity to sell his restricted stock but wanted a loan to purchase put options to hedge against a possible decline in the value of the stock in the meantime.

13. Martineau also told victims that the notes were fully collateralized by his assets, the assets of a purported entity he claimed to own and the assets of the insider customer.

14. In reality, none of the funds MARTINEAU obtained from the sale of the promissory notes were used to make loans.

2. Commercial Paper Scheme

15. From at least January 1994 to July 1998, MARTINEAU convinced three customers to sell existing securities held in their Merrill Lynch account and to invest the proceeds in what he represented was commercial paper issued by Merrill Lynch. The three customers invested \$4,459,300 in the purported commercial paper. MARTINEAU informed these customers that the commercial paper had maturities of six months and carried interest rates, ranging from 4 1/2% to 7 1/4% annually.

16. Martineau told these customers that the rates of return on the commercial paper were superior to the rates that they were receiving on the existing securities investments held in their Merrill Lynch accounts. Martineau also told these customers that the commercial paper was registered "off the books" and would not appear on their securities account statements.

17. None of the funds MARTINEAU obtained from these customers was used to purchase commercial paper.

**3. Martineau Dissipated the Funds
Obtained From His Customers**

18. Martineau dissipated the \$9.2 million he obtained from his schemes instead of making the secured loans or purchasing the commercial paper, as he had represented to his customers. Specifically, MARTINEAU used at least \$3.9 million of those funds to finance his unsuccessful personal options trading. He used the remainder for other personal uses as well as to make occasional ponzi-like payments of interest and repayments of principal to the customers who invested in his schemes.

CLAIM

**Violation 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 Thereunder [17 C.F.R. § 240.10b-5]**

19. Paragraphs 1 through 18 are realleged and incorporated herein by reference.

20. By reason of the foregoing acts, practices and courses of conduct, MARTINEAU violated 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 thereunder [17 C.F.R. § 240.10b-5].

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PRAYER FOR RELIEF

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

I.

Permanently restraining and enjoining MARTINEAU, his agents, servants, employees, attorneys, successors and assigns, and each of them, and all persons in active concert or participation with him, and each of them who receive actual notice of the Final Judgment by personal service or otherwise, from violating the following: (A) Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]; and (B) 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].

II.

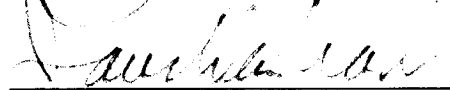
Ordering MARTINEAU to pay a civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 77u(d)].

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III.

Grant such other relief as this Court deems just and equitable under the circumstances.

Respectfully submitted,



JUAN MARCEL MARCELINO
DISTRICT ADMINISTRATOR

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Assistant District Administrator
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Dated: January 10, 2000