

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NANCY J. CHEAL, individually and
d/b/a RELIEF ENTERPRISE,

Defendant,

and

RICHARD L. BIRMINGHAM,

Relief Defendant.

CIVIL ACTION NO.

00 CV 10182 EFH

COMPLAINT

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

PRELIMINARY STATEMENT

1. This is an emergency enforcement action brought by the COMMISSION to stop an on-going "Prime Bank" like fraud conducted over the Internet and through other means. Defendant NANCY J. CHEAL ("CHEAL"), doing business as Relief Enterprise, has perpetrated the scheme by selling investments in a so-called bank debenture trading program. CHEAL induces investments through promises of a return of *100% per week*. Since October 1999, over \$1.5 million has been raised from more than several hundred investors across the U.S. and abroad, including ten in Massachusetts.

DOCKETED
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2. CHEAL or her representatives have misrepresented to potential investors that CHEAL is associated with one of the seven "licensed Bank Debenture traders" in the world and that the 100% weekly return would be generated by his trading activities. CHEAL or her representatives have also have misrepresented to investors that all of the funds invested in the program will be placed in special escrow or other "Safe-Keeping" accounts where they will be held virtually risk-free to serve as collateral for, or otherwise facilitate, the debenture trading activity. The program, as described by CHEAL and her representatives, has many of the hallmarks of so-called Prime Bank trading programs which do not exist.

3. In fact, CHEAL had no reasonable basis for representing that sufficient revenue could be generated to pay the 100% weekly return. Moreover, it appears that none of the money raised has been used to collateralize or facilitate any debenture trading activity. In fact, a substantial amount of the money raised was deposited to a bank account controlled by Relief Defendant RICHARD L. BIRMINGHAM ("BIRMINGHAM"), an associate of CHEAL, who used it to pay expenses. Most investors were told that they would begin receiving their returns by early December 1999. To date, however, none of the investors are known to have received any such return. Although CHEAL has returned some investments in response to law enforcement inquiries, at least \$1.3 million of investors' funds has not been returned and she has continued to solicit investors.

4. In connection with this scheme, CHEAL directly and indirectly has engaged, is engaging or is about to engage in transactions, acts, practices and courses of business which constitute violations of the antifraud and securities registration provisions of the federal securities laws -- i.e., Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act"), as amended, [15 U.S.C. §§ 77e(a) ,

77e(c) and 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), as amended, [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

5. The COMMISSION seeks a temporary restraining order immediately prohibiting CHEAL from continuing to violate those provisions. The temporary restraining order is necessary to stop the fraudulent scheme. The COMMISSION also seeks other emergency equitable relief, including an asset freeze to preserve funds taken from investors and otherwise maintain the *status quo* pending final resolution of this action. In addition, the COMMISSION seeks preliminary and permanent injunctions, disgorgement of CHEAL's ill-gotten gain and BIRMINGHAM's unjust enrichment plus prejudgment interest and other equitable relief. Finally, the COMMISSION seeks the imposition of civil monetary penalties against CHEAL 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. § 78u(d)(3)].

JURISDICTION

6. The COMMISSION brings this action pursuant to the 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)].

7. 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 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa]. Jurisdiction against BIRMINGHAM, as a relief defendant, also is based on those statutes as well as Section 1367(a) of the Judicial Improvements Act of 1990 [20 U.S.C. § 1367(a)].

8. In connection with the conduct alleged, CHEAL has made use of the means and instrumentalities of interstate commerce, of the mails, and/or of the means and instruments of

transportation or communication in interstate commerce.

THE DEFENDANT

9. CHEAL, age 60, is a resident of Bunnell, Florida. The fictitious name Relief Enterprises is registered to CHEAL with the Florida Department of State. CHEAL holds herself out as the pastor of the Christian Complex Church in Bunnell, Florida. CHEAL has been falsely described to potential investors in the fraudulent scheme as having acquired great wealth "working on a commission basis, dealing with world banks and other financial interests to structure and coordinate multi-billion dollar transactions."

THE RELIEF DEFENDANT

10. BIRMINGHAM, age 59, holds himself out as an attorney. BIRMINGHAM is a resident of Carson City, Nevada.

FACTS

The Offer and Sale of Unregistered Securities

11. Since at least October 1999, CHEAL has promoted and directed the offer and sale of investment contracts in a so-called bank debenture trading program.

12. Those investment contracts are "securities" as that term is defined in Section 2(1) of the Securities Act [15 U.S.C. § 77b(a)] and Section 3(a)(10) of the Exchange Act [15 U.S.C. § 78(a)(10)]. No registration statement has been filed with the Commission, or been made effective, with respect to the offering.

13. Hundreds of investors in forty-eight states and abroad, including at least ten investors in Massachusetts, have invested over \$1.5 million in the bank debenture trading program securities since

October 1999. The amounts of individual investments ranged from \$25 to at least \$50,000.

The Investment Program

14. Since at least October 1999, CHEAL, doing business as Relief Enterprise, has been offering and selling investments in a so-called bank debenture trading program. CHEAL induces investments through promises of a return of *100% per week* payable weekly. The term of the investment is twelve weeks, so that investors are led to anticipate having received by maturity a return of 1200%. According to promotional materials sent to potential investors by CHEAL or her representatives, before the end of the twelve weeks, investors will be offered the opportunity to reinvest all or part of their investments, or add to their investments, for one or more additional twelve week "intervals" on the same terms. The minimum investment amount is \$25.

15. CHEAL has engaged in her offering activity through both direct solicitations of potential investors and by recruiting a network of sales agents to promote the investment on her behalf for a commission. Sales agents are promised a commission of up to 2% per week on the amount of investments attributable to their solicitations.

16. CHEAL and her representatives have conducted their offering activity through materials posted on Internet websites and a penny stock oriented electronic bulletin board, information delivered to potential investors by electronic mail autoresponder, oral solicitations and promotional documents. One website page reads:

“SECURE YOUR FUTURE TODAY”
With This Extraordinary Program [sic] Called
RELIEF ENTERPRISE

* * * *

This Program Pays
100% RETURN PER WEEK! ON YOUR INVESTMENT
If This Is Enough For You Then Check It Out (Pays Weekly)

17. Promotional materials CHEAL or her representatives provided or made available to potential investors falsely state that CHEAL has “associated” herself with “one of the seven licensed Bank Debenture Traders in the world.” Those materials also state that the Trader ranks second among the seven so-called licensed Bank Debenture Traders, that he has been a licensed trader for thirty-one years and that he is “coming out of retirement” to work on the program. CHEAL has stated that, with a staff of thirty, she manages the affairs of the Trader. CHEAL has conducted her activities from a mobile home in which she resides.

18. The offering materials state that the Trader is permitting CHEAL to “‘piggy-back’ funds of small investors on various multi-billion dollar trading projects as they arise.” The particular project associated with the solicitations is described as an \$80 billion deal. CHEAL has represented that the 100% weekly return would be paid with revenues generated by the bank debenture trading. At least one investor has been falsely told that his investment would be used to collateralize a line of credit which the Trader, in turn, would use to finance his trading activities. Another investor has been falsely told that the proceeds of his investment would be used to trade bank debentures directly.

19. Despite the representations to investors, CHEAL has acknowledged that she could not explain how the 100% weekly return would be generated. The program, as described by CHEAL

and her representatives, has many of the hallmarks of so-called Prime Bank trading programs which do not exist. The offering materials acknowledge that the program "requires something of a leap of faith."

20. Promotional materials CHEAL or her representatives have provided or made available to potential investors falsely present the program as essentially no-risk. Promotional materials received by some investors state that the proceeds of the investments are held in an account described at different times as a trust account, a "Safe-Keeping Nondepletion" account and "a private Traders account where every dollar is covered." In some instances, CHEAL or her representatives have falsely told investors that the principal is "never touched" and thus "never at risk," because the Trader uses his own line of credit for the trade. One offering document falsely states, "Every cent of our principal is guaranteed by the U.S. government."

21. The written offering materials repeatedly state that the program is secret and warn recipients not to disclose any information about the program to anyone other than relatives, friends and associates. For, example, one Internet website page states that the investment program is an "extremely private and confidential program." Investors also are required to sign a so-called Non-Circumvention/Non-Disclosure Agreement, which purports to provide Relief Enterprise legal remedies in the event the investor discloses information about the program without Relief Enterprise's authorization.

22. The written promotional materials also include the suggestion that investments in the program will benefit unspecified humanitarian projects. The offering materials state that CHEAL has an interest in "helping those not so fortunate" and that the Trader is "sympathetic to this interest." CHEAL has characterized the program to investors as a "great endeavor."

23. CHEAL or her representatives encourage investors to send their investments to her by check or money order payable to "cash," and have acknowledged that those instructions are designed to minimize the paper trail. One of CHEAL's assistants, on at least one occasion, stated to an investor that it would be even better if his investments was sent in cash, wrapped in foil.

Cheal's False Lulling

24. Investors were told that the bank debenture trading that would generate the promised investment returns was expected to begin no later than mid-November and that the first payment of returns would be mailed no more than two weeks later. To date, however, investors are known to have received only excuses and promises of payments in the future. For example, CHEAL has stated that the Trader was in the process of moving to London (where he purportedly must reside for one year to participate in the program). CHEAL or her representatives also have stated that the program had been delayed because the Trader had been ill. Later, Cheal told investors that the Trader had not performed as promised but that she had found an alternative that would pay the same return.

Cheal Transfers Investment Proceeds to Birmingham

25. CHEAL has used the funds received from investors in a manner inconsistent with representations to investors about the uses of their investments.

26. On November 12, 1999, BIRMINGHAM and another individual attempted to open an account at a securities brokerage firm and deposit to it at least some of the proceeds of CHEAL's securities offering. BIRMINGHAM and the other individual presented the brokerage firm with more than eight hundred checks and money orders from hundreds of investors, totaling approximately \$1.3 million. BIRMINGHAM and the other individual indicated that they wanted to

withdraw immediately at least several hundred thousand dollars and were interested in investing the rest of the money and/or future deposits in high yielding fixed income investments. BIRMINGHAM also indicated that he would consider investing the money in junk bonds.

27. BIRMINGHAM and the other individual attempted to open the brokerage account in the name of First American International Bank, Inc., a bank formerly chartered under the laws of the Pawnee Nation, a Native American tribe. The Pawnee Nation had revoked the bank's charter several years earlier.

28. The brokerage firm refused to accept the checks and money orders and returned them to BIRMINGHAM.

29. Soon, the checks and money orders began to be negotiated and deposited or cashed at various financial institutions. BIRMINGHAM added the name Relief Enterprise to one account he controlled and deposited over \$400,000 to that account during the month of November 1999. Those deposits consist of checks payable to CHEAL and Relief Enterprise and also include at least some of the same checks and money orders BIRMINGHAM and his colleague had tried to deposit at the brokerage firm. That same month, at least \$146,000 of that \$400,000 was withdrawn to pay for various expenses, including debit card withdrawals from a gambling casino. As of late December 1999, all of the \$400,000 had been withdrawn.

30. Other checks and money orders returned by the brokerage firm were deposited to an account maintained by an attorney designated as a trust account. As of late January 2000, that account had a balance of approximately \$1 million. CHEAL also held approximately \$125,000 of investor funds in an account she controls.

31. The total amount remaining in the accounts described above is not sufficient to repay all of the remaining investors their principal investments.

**Cheal Misleads Law Enforcement Authorities
and Attempts to Cover Her Tracks**

32. In October 1998, CHEAL's activities became the subject of an investigation by the United States Postal Inspection Service. In response to that investigation, CHEAL represented to a postal inspector and other law enforcement authorities that she would cease her offering and selling activity and return the money she already had received from investors. CHEAL returned about \$171,000 to investors pursuant to that agreement. She nonetheless continued her offering and selling activity, urging new investors to send their money by private overnight delivery service and not the U.S. mail. CHEAL also sent letters to at least some investors offering them the option of requesting the return of their money, but worded in a manner that discouraged them from doing so.

33. On November 23, 1999, after being contacted by the postal inspection authorities and becoming aware that the COMMISSION was investigating her activities, CHEAL wrote to at least one investor and falsely recharacterized the circumstances under which he had been solicited. Specifically, CHEAL falsely stated in that letter that, when he was originally solicited, the investor was told that his investment would not be used in conjunction with the trading program in any way, and that CHEAL would put up her own funds to facilitate the trading and share the profits with the investor. Finally, she falsely stated in the letter that, when originally solicited, the investor was told that his funds would be used to purchase a bank that would provide mortgages to individuals with poor or inadequate credit records.

FIRST CLAIM

**FRAUD IN CONNECTION WITH THE PURCHASE AND SALE OF SECURITIES
(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder)**

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

35. CHEAL, directly or indirectly, intentionally, knowingly or recklessly, by the use of means or 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 facts or have omitted, or are omitting to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) have engaged, or are engaging, in acts, practices, or courses of business which have operated, or are operating as a fraud or deceit upon persons, in connection with the purchase or sale of securities as set forth above, in violation of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

SECOND CLAIM

**FRAUD IN THE OFFER AND SALE OF SECURITIES
(Violations of Section 17(a) of the Securities Act)**

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

37. CHEAL, directly and indirectly, intentionally, knowingly or recklessly, in the offer or sale of securities by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly: (a) has employed, or is employing devices, schemes, or artifices to defraud; (b) has obtained, or is obtaining money or 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 (c) has engaged, or is engaging in transactions, acts, practices, or courses of business which operate, are operating or are about to operate as a fraud upon purchasers of securities as set forth above, in violation of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

THIRD CLAIM

OFFER AND SALE OF UNREGISTERED SECURITIES (Violations of Sections 5(a) and (c) of the Securities Act)

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

39. CHEAL, directly and indirectly: (a) has made, are making or is about to make use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities through the use or medium of a prospectus or otherwise as to which no registration statement has been filed with the COMMISSION and for which no exemption from registration has been available; (b) for purposes of sale or delivery after sale, have carried and/or caused, is carrying and/or causing or is about to carry and/or cause to be carried through the mails or in interstate commerce, by means or instruments of transportation, securities as to which no registration statement has been in effect and for which no exemption from registration has been available; and (c) has made, is making or is about to make use of means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell through the use or medium of a prospectus or otherwise, securities as to which no registration statement has been filed and for which no exemption from registration has been available.

40. By reason of the transactions, acts, practices and courses of business set forth herein,

CHEAL violated, is violating or is about to violate Sections 5(a) and (c) of the Securities Act [15 U.S.C. § 77e(a) and (c)].

FOURTH CLAIM

**CIVIL MONETARY PENALTIES
(Statutory Penalties for Violations
of Sections 5(a) and (c) and 17(a) of the Securities Act
and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder)**

41. Plaintiff repeats and realleges Paragraphs 1 through 40 above.
42. CHEAL's violations of Sections 5(a) and (c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a) and (c) and 77q(a)] and Sections 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder involved fraud, deceit or deliberate or reckless disregard of regulatory requirements, and resulted in substantial losses or significant risk of substantial losses to other persons.
43. By reason of the foregoing, CHEAL is liable for civil penalties 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. § 78(d)(3)] in an amount to be determined by the Court.

FIFTH CLAIM

UNJUST ENRICHMENT OF BIRMINGHAM

44. Plaintiff repeats and realleges Paragraphs 1 through 33 above.
45. BIRMINGHAM has been unjustly enriched. He has received and applied proceeds of CHEAL's fraudulent offering under circumstances dictating that, in equity and in good conscience, he should not be allowed to retain them.

THE NEED FOR EMERGENCY RELIEF

46. This is an ongoing fraud. Contrary to her express agreement with the postal inspection authorities, CHEAL continues to solicit investors. Without this Court's action, it is unlikely that CHEAL will discontinue her fraudulent solicitations.

47. CHEAL already has dissipated assets belonging to investors by transferring them to BIRMINGHAM, who, in turn, converted them to his own use.

48. A temporary restraining order and freeze of assets is necessary to prevent further harm and violations of law and minimize the risk of further dissipation of assets.

PRAYER FOR RELIEF

WHEREFORE, the COMMISSION respectfully requests that this Court issue orders and judgments:

I.

Temporarily restraining and preliminarily and permanently enjoining CHEAL, from violating, directly or indirectly:

- 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];
- b. Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]; and
- c. Sections 5(a) and (c) of the Securities Act [15 U.S.C. § 77e].

II.

Immediately freezing, and otherwise preventing any withdrawal, sale, payment, transfer, dissipation, pledge, alienation, encumbrance or diminution in value whatsoever of, the following:

- a. all funds or other assets held for the direct or indirect benefit, or subject to the direct or indirect control, of CHEAL;
- b. up to an amount equal to the amount money BIRMINGHAM derived from the conduct described herein, all funds or other assets held for the direct or indirect benefit, or subject to the direct or indirect control, of BIRMINGHAM; and
- c. all funds obtained from investors or any assets derived therefrom .

III.

Immediately prohibiting CHEAL from accepting or depositing any monies obtained from actual or prospective investors pending the resolution of this action.

IV.

Requiring CHEAL and BIRMINGHAM to provide written accountings to the COMMISSION within three (3) business days of service of the Temporary Restraining Order, identifying the following:

1. by name, address, amount and date of investment and present location of the proceeds of the investment, as to each and every investor who made an investment in the so-called bank debenture trading program known described herein;
2. assets of every type and description with a value of at least one thousand dollars (\$1000) presently held for the direct or indirect benefit, or subject to the direct or indirect control, of CHEAL or BIRMINGHAM, whether in the U.S. or elsewhere;
3. all transfers of funds or other assets received or obtained through the conduct alleged herein, including the names and locations of all persons, entities and accounts to and

from which the transfers were made, the dates, amounts and purposes of the transfers and the identity and location of any assets derived from such funds;

4. all transfers of assets of \$1000 or more by CHEAL or BIRMINGHAM since August 1, 1999, including the names and locations of all persons, entities and accounts to and from which the transfers were made, the dates, amounts and purposes of the transfers and the identity and location of any assets derived from such funds; and
5. all accounts held at any bank, brokerage or any other financial institution in the U.S. or elsewhere in the name of CHEAL or BIRMINGHAM or otherwise under their control, or in which CHEAL or BIRMINGHAM have or had any direct or indirect beneficial interest, at any time during the period August 1, 1999, to the present.

V.

Requiring CHEAL and BIRMINGHAM, within three (3) business days of service of the Temporary Restraining Order, to submit to the COMMISSION in writing certain identifying information including residential, business and mailing addresses, telephone numbers, postal boxes, safe deposit boxes and storage facilities used by either of them or under either's control, at any time from August 1, 1999 through the present.

VI.

Immediately prohibiting CHEAL and BIRMINGHAM from destroying, mutilating, altering, concealing, or disposing of any documents relating to the defendants or to the relief defendants or to any of their securities, financial or other business dealings.

VII.

Immediately establishing a schedule of expedited discovery in this action.

VIII.

Requiring CHEAL to disgorge her ill-gotten gain, including prejudgment interest, with said monies and interest to be disbursed in accordance with a plan of distribution to be ordered by the Court.

IX.

Requiring CHEAL 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)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] in an amount to be determined by the Court.

X.

Requiring BIRMINGHAM to disgorge his unjust enrichment, including prejudgment interest, with said monies and interest to be disbursed in accordance with a plan of distribution to be ordered by the Court.

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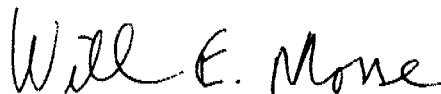
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XI.

Ordering such other and further relief as this case may require and the Court deems appropriate.

Respectfully submitted,

A handwritten signature in black ink that reads "Will E. Mone". The signature is written in a cursive style with a horizontal line underneath it.

JUAN MARCEL MARCELINO
DISTRICT ADMINISTRATOR

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Dated: January 31, 2000