

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

CV 95 4475

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

FRANK DUCA,

Defendant,

and

JAN JUSKO,

Relief Defendant,

Civil Action No.

COMPLAINT FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF

FILED
U.S. DISTRICT COURT, E.D. N.Y.

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SEYBERT, J.
LINDSAY, M.

Plaintiff, Securities and Exchange Commission
("Commission"), for its Complaint against defendant Frank Duca
("Duca") and relief defendant Jan Jusko ("Jusko") alleges that:

SUMMARY

1. From May 1991 through September 1993, Duca, the chief executive officer of Island Securities, Inc. ("Island"), a registered broker-dealer, misappropriated more than \$535,000 from sixteen of his customers' accounts using an elaborate scheme involving, among other things, material misrepresentations, forged client authorizations, forged endorsement signatures on mutual fund redemption checks, and fabricated account statements. Duca used a portion of the misappropriated money for his own personal expenditures and diverted some of the misappropriated

funds to Jusko, who was also a principal of Island. Duca still owes over \$300,000 to various customers.

STATUTES AND RULES ALLEGED TO HAVE BEEN VIOLATED

2. Defendant Duca, directly or indirectly, has engaged in, and unless enjoined, will continue to engage in transactions, acts, practices or courses of business which constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 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, 17 C.F.R. §240.10b-5, thereunder.

NATURE OF RELIEF BEING SOUGHT

3. The Commission brings this action pursuant to the authority conferred upon it by Sections 20(b) and 20(d) of the Securities Act, 15 U.S.C. §§ 77t(b) and 77t(d), and Sections 21(d) and 21(e) of the Exchange Act, 15 U.S.C. §§ 78u(d) and 78u(e), to permanently restrain and enjoin Duca from engaging in the transactions, acts, practices and courses of business alleged herein, and from engaging in conduct of similar purport or object, and to obtain certain ancillary and further relief as is necessary and appropriate.

JURISDICTION

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. The defendant, directly or indirectly, has made use of the mails, the means or instruments of transportation or communication in interstate commerce, the means or instrumentalities of interstate commerce, or of the facility of a national securities exchange in connection with the transactions, acts, practices, and courses of business described in this Complaint.

DEFENDANT

6. Duca, age 66, was the chief executive officer of Island, a broker-dealer registered with the Commission since 1989 located on Long Island, New York. Duca has been a registered representative since 1983. He currently resides on Long Island, New York.

RELIEF DEFENDANT

7. Jusko, age 43, is a former principal and president of Island. In February 1995, Jusko sold his entire interest in

Island to another individual. Jusko currently resides on Long Island, New York.

The Misappropriation Scheme

8. From on or about May 1991 through September 1993, Duca, directly or indirectly, engaged in a scheme to misappropriate at least \$535,000 from sixteen customers of Island. Duca was the registered representative on all of these accounts. As described below, Duca employed three primary methods to defraud these customers of their money.

I. The Allvest Corporation Scheme

9. Duca misappropriated approximately \$187,000 from at least five of the sixteen customers by inducing them to redeem shares in their mutual funds and to then invest the proceeds in what he claimed was a "tax-free government bond." Duca made various material misrepresentations to these customers in order to induce them to invest in the vehicle which he recommended, as described in paragraphs 10 through 26 below.

10. In or about June 1992, Duca telephoned two customers, Peter and Helen Ciolino ("the Ciolinos"), and stated that he had a wonderful investment opportunity, paying 10% interest, tax-free. Duca recommended that the Ciolinos invest \$40,000 in this

vehicle and induced them to entrust him with the \$40,000 by making the following material misrepresentations:

- a. that he would be investing their money in a "tax-free government bond," when, in fact, Duca knew that he would not be investing the Ciolino's money in any type of government bond;
- b. that the government bond was backed by insurance companies and was completely safe, when Duca knew that there were no insurance companies backing the alleged government bond; and
- c. that he was not affiliated with Allvest Corporation ("Allvest Corp."), the entity that was issuing the bond, when, in fact, Duca had formed Allvest Corp., was an officer of Allvest Corp., and was a signatory on its bank account.

11. In or about April 1993, Duca solicited the Ciolinos again and stated that he had another tax-free government bond available for them to invest in. Duca represented that the nature and terms of this investment were identical to that of their previous \$40,000 investment and recommended that they invest an additional \$20,000.

12. On both occasions that they were solicited by Duca to invest in the purported tax-free government bonds, the Ciolinos redeemed shares from their mutual funds in order to obtain the total of \$60,000 in funds required for the investments.

13. At the time that the Ciolinos redeemed \$40,000 from their mutual fund to give to Duca to invest in the purported government bond, Duca gave them a document entitled "promissory note" dated July 14, 1992. The promissory note had a "maturity date" of July 14, 1994 and was signed by the borrower in the name of Allvest Corp. The Ciolinos also signed the document and Duca signed as a witness.

14. At the time that the Ciolinos redeemed \$20,000 from their mutual fund to give to Duca to invest in the purported government bond, Duca gave them a document entitled "promissory note" dated April 8, 1993. The promissory note had a maturity date of April 8, 1995 and was signed by the borrower in the name of Allvest Corp. The Ciolinos also signed the document and Duca signed as a witness.

15. Duca subsequently misappropriated the \$60,000 entrusted to him by the Ciolinos for investment in government bonds and used the money for his own personal expenditures. Duca did not disclose to the Ciolinos that he used their money for his personal use.

16. In or about July 1994, which was the maturity date on the \$40,000 promissory note, the Ciolinos asked Duca for the return of the \$40,000 principal. Duca did not return their money to them, and, instead, Duca made the following additional material misrepresentations:

- a. that their money would be returned to them in a few weeks, when, in fact, Duca knew that he would not return their money;
- b. that Allvest Corp. had mailed a check to them for the full amount of their principal and that they would be receiving it in a few days, when, in fact, Duca knew that no such check had ever been mailed by Allvest Corp. to the Ciolinos; and
- c. when they still had not received their check and when they contacted Duca again, that Allvest Corp. was bankrupt and that the insurance company backing the investment had also failed, when, in fact, Duca knew that there never had been any insurance company backing the investment.

17. Duca also induced two other customers, Adrienne Sharlup ("Sharlup") and Anthony Colitti ("Colitti"), to invest in what Duca represented to be a two year "government loan" which paid 10% interest, tax-free, when, in fact, Duca knew that he would not make such an investment on behalf of Sharlup and Colitti.

18. Duca told Sharlup and Colitti that the interest due under the loan would be "reinvested" and would be paid upon maturity of the loan.

19. As a result of Duca's material misrepresentations, as described in paragraphs 17 and 18 above, Sharlup gave Duca \$25,000 and Colitti gave Duca \$25,000 to invest in these "government loans." At the time that each gave Duca his or her \$25,000, Sharlup and Colitti did not receive any documents evidencing their investments in the "government loan."

20. Duca misappropriated the \$25,000 entrusted to him by Sharlup and the \$25,000 entrusted to him by Colitti and used it for his personal expenditures.

21. Duca did not disclose to Sharlup or Colitti that he would use their money for his own personal expenditures.

22. In or about 1995, Sharlup and Colitti both asked Duca about the status of their investments. Duca subsequently mailed

each of them a copy of an Allvest Corp. promissory note, substantially similar to the documents that he had given to the Ciolinos.

23. In or about June, 1991, Duca also induced Eva Benigno ("Benigno"), another one of his customers, to invest \$75,000 in a "government loan." Duca also gave Benigno a copy of an Allvest Corp. "promissory note", substantially similar to the "promissory notes" that he had given to the Ciolinos.

24. Duca misappropriated the \$75,000 entrusted to him by Benigno for investment and used this money for his own personal expenditures.

25. Duca did not disclose to Benigno that he used her money for his personal expenditures.

26. From in or about May 1991 through October 1992, Jusko received approximately 32 checks issued by Allvest Corp. totaling at least \$50,000. This amount represents funds that were misappropriated by Duca and to which Jusko was not entitled.

**II. Duca Misappropriated Money That Customers Had Entrusted
to Him For The Purchase of Mutual Fund Shares.**

27. From July 1991 through July 1992, Duca misappropriated a total of approximately \$46,000 from at least two customers of Island who entrusted money to Duca for the purchase of mutual fund shares, as described in paragraphs 28 through 32 below.

28. On or about July 5, 1991, Duca recommended to Arnold and Josephine Titus ("the Tituses") that they withdraw \$24,000 from their Franklin New York Tax-Exempt mutual fund and use the money to buy shares in a higher-yielding Oppenheimer New York Tax-Exempt mutual fund.

29. On or about July 5, 1991, the Tituses effected the withdrawal from their Franklin mutual fund account and gave Duca \$24,000 to invest in an Oppenheimer mutual fund on their behalf. However, instead of using the Tituses' money as he had stated that he would, Duca deposited their money into his own personal Franklin New York Tax-Exempt Money Fund and used it for his personal expenditures. Duca failed to disclose this material fact regarding the use of the Tituses' money to them.

30. On or about July 7, 1992, the Tituses gave Duca a check for \$21,912.63 to deposit into their Franklin mutual fund account. However, instead of following their instructions, Duca

deposited the Tituses' check into his own personal Franklin New York Tax-Exempt Money Fund and used their funds for his personal expenditures without their knowledge or consent. Duca failed to disclose to the Tituses this use of their money.

31. In the ordinary course of business, the Tituses had been receiving account statements directly from the Franklin mutual fund reflecting the number of shares that they owned. These statements also notified the Tituses about the payment of dividends or reflected the accumulation of shares in their account if they wanted their dividends reinvested.

32. However, after Duca misappropriated their money, Duca intercepted the mutual fund account statements that were sent directly from the mutual fund to the Tituses. In order to conceal his misappropriations from these customers, and to create the impression that the customers' money was invested in mutual funds on their behalf when, in fact, it was not, Duca sent the Tituses statements which he created and which falsely reflected that the Tituses' money was invested in mutual funds. These statements also falsely indicated that the Tituses were accumulating interest and dividends on their investments, even though the Tituses no longer had such investments because their money had been misappropriated by Duca.

III. Misappropriation of Mutual Fund Shares From Customers

33. From in or about May 1991 through September 1993, Duca misappropriated approximately \$249,000 from Island customers by liquidating their mutual fund positions without their authorization or knowledge and using the proceeds for his own personal expenditures, as described in paragraphs 34 through 38 below. Duca concealed his misappropriations by creating and sending these customers fabricated account statements which falsely indicated the number of shares and total money invested in their respective mutual funds.

34. Duca misappropriated customer monies and concealed his activity by implementing the following scheme: Duca first changed the mailing addresses on his customers' accounts to the Island address without their knowledge or consent. He then redeemed shares from the customers' mutual funds by forging customer signatures on the redemption forms. After the redemption checks were mailed to the Island address, Duca endorsed the checks by forging the customers' signatures. Duca then deposited this money into his personal Franklin New York Tax-Exempt Money Fund and used the money for his own personal expenditures.

35. For example, Duca telephoned the Franklin Fund on or about May 7, 1992 and changed the mailing address on the Tituses'

account to the mailing address of Island without their knowledge or consent. On or about May 12, 1992, Duca mailed a "redemption request form" to the Franklin Fund requesting the withdrawal of \$20,000 from the Tituses' Franklin New York Tax-Exempt mutual fund. Duca had forged the signatures of the Tituses on the redemption form and directed that the redemption check of \$20,000 be mailed to the Island address. Upon receiving the redemption check payable to the Tituses from the Franklin fund, Duca endorsed the check by again forging the Tituses' signatures, and Duca deposited the funds into his own personal Franklin New York Tax-Exempt Money Fund and used the funds for his personal expenditures without the Tituses' knowledge or consent.

36. On or about May 22, 1992, Duca mailed to the Franklin Fund a second redemption request form without the Tituses' knowledge or consent. Duca had forged the signatures of the Tituses on the redemption form and directed that the account be closed. The Franklin Fund issued a check for \$13,530.18, payable to the Tituses, and mailed the check to the Island address. Duca endorsed the check by forging the Tituses' signatures and deposited the check into his own personal Franklin New York Tax-Exempt account and used the money for his own personal expenditures.

37. Similarly, Duca liquidated the Putnam New York Tax-Exempt mutual fund account of Robert and Lynne Jager ("the

Jagers") and the Franklin New York Tax-Free Income Funds of John Lindsey, Jr. ("Lindsey") and Jaime and Yamida Garcia ("the Garcias"), using this same methodology of unauthorized address changes, forged redemption requests and forged customer signatures.

38. Duca misappropriated in excess of \$50,000 from the Jagers, in excess of \$45,000 from Lindsey, in excess of \$120,000 from the Garcias and in excess of \$75,000 from the Tituses.

FIRST CLAIM FOR RELIEF

VIOLATIONS OF SECTION 17(a)(1) OF THE SECURITIES ACT [15 U.S.C. §77q(a)(1)]

39. The Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 38 above.

40. Duca, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce, or by use of the mails, directly or indirectly, employed devices, schemes or artifices to defraud, as described in paragraphs 8 through 38 above.

41. The misrepresentations and omissions made by Duca, as set forth in paragraphs 8 through 38, were material.

42. Duca knew or was reckless in not knowing of his activities as described in paragraphs 39 through 41 above.

43. By reason of the foregoing, defendant Duca, directly or indirectly, singly or in concert, violated Section 17(a)(1) of the Securities Act, 15 U.S.C. §77q(a)(1).

SECOND CLAIM FOR RELIEF

VIOLATIONS OF SECTIONS 17(a)(2) and (3) OF THE SECURITIES ACT [15 U.S.C. §§77q(a)(2) and 77q(a)(3)]

44. The Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 38 above.

45. Duca, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce, or by use of the mails, directly or indirectly, has (a) obtained money or property by means of untrue statements of material fact or 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; or (b) engaged in transactions, practices and courses of business which have operated or would operate as a fraud or deceit upon

the purchaser of securities, as described in paragraphs 8 through 38 above.

46. The misrepresentations and omissions made by Duca, as set forth in paragraphs 8 through 38 above, were material.

47. By reason of the foregoing, defendant Duca, directly or indirectly, singly or in concert, violated Sections 17(a)(2) and (3) of the Securities Act, 15 U.S.C. §§77q(a)(2) and (3).

THIRD CLAIM FOR RELIEF

VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT [15 U.S.C. §78j(b)] AND RULE 10b-5 PROMULGATED THEREUNDER [17 C.F.R. §240.10b-5]

48. The Commission realleges and herein incorporates by reference the allegations contained in paragraphs 1 through 38 above.

49. Duca, in connection with the purchase or sale of securities, by use of any means or instrumentalities of interstate commerce, by use of the mails, or any facility of any national securities exchange, directly or indirectly, has (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or 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; or (c) engaged in acts, practices and courses of business which operated as a fraud or would operate as a fraud or deceit upon any person, as described in paragraphs 8 through 38 above.

50. The misrepresentations and omissions made by Duca, as set forth in paragraphs 8 through 38 above, were material.

51. Duca knew or was reckless in not knowing of his activities as described in paragraphs 48 through 50 above.

52. By reason of the foregoing, defendant Duca, directly or indirectly, singly or in concert, violated Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. §240.10b-5.

FOURTH CLAIM FOR RELIEF

53. Relief Defendant Jusko received at least \$50,000 of funds to which he was not entitled. These funds were the proceeds of the unlawful activities alleged in paragraphs 8 through 38 herein.

54. Jusko, directly or indirectly, obtained these funds described above as part of, and in furtherance of, the securities violations alleged in paragraphs 8 through 38 above, under

circumstances in which it is not just, equitable or conscionable for him to retain the funds. As a consequence of the foregoing, Jusko has been unjustly enriched.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully requests that this Court:

I.

Issue findings of fact and conclusions of law that defendant Duca committed the violations of law alleged herein.

II.

Issue a final judgment of permanent injunction enjoining and restraining defendant Duca from, directly or indirectly, violating 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.

III.

Issue an Order requiring Defendant Duca to disgorge an amount equal to the sum of all funds and other assets that Duca misappropriated from his customers, plus prejudgment interest, as a result of the activities alleged herein.

IV.

Impose penalties on Duca 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), for violations occurring after October 15, 1990.

V.

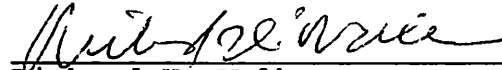
Issue an Order requiring Defendant Jusko to disgorge all of the unjust enrichment which he received as a result of any of the federal securities laws violations herein charged and alleged, plus prejudgment interest.

VI.

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

Dated: November 2, 1995
New York, New York

Respectfully submitted,



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