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96 SEP 30 PM 1:53 UNITED STATES DISTRICT COURT

For The CLERA U.S. MST. SOUTHERN DISTRICT OF S.D. OF FLAT-MAMI

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SECURITIES AND EXCHANGE COMMISSION,

CIVIL ACTION NO

MAGISTRATE JUDGE TURNOFF

Plaintiff,

COMPLAINT FOR

PERMANENT

INJUNCTION AND

OTHER EQUITABLE

RELIEF

v.

JAMES S. FALLER II, and ROLAN COLON,

Defendants.

It appears to Plaintiff, Securities and Exchange Commission ("Commission"), and it alleges that:

- 1. Defendants James S. Faller II ("Faller") and Rolan Colon ("Colon") have engaged, and unless restrained and enjoined by this Court, will continue to engage in acts and practices which constitute and will constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77q(a)] and 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].
- 2. Pursuant to the authority granted by Sections 10(b) and 23(a) of the Exchange Act [15 U.S.C. 78j(b) and 78w(a)], the Commission has promulgated Rule 10b-5 [17



C.F.R. 240.10b-5]. Said rule was in effect at all times mentioned herein and is now in effect.

JURISDICTION AND VENUE

- 3. The Commission brings this action to enjoin such acts and practices pursuant to 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)], and for other relief.
- 4. This Court has jurisdiction of this action under Sections 20(c) and 22(a) of the Securities Act [15 U.S.C. 77t(c) and 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. 78u(d), 78u(e), and 78aa].
- 5. Certain of the acts and practices constituting violations of the Securities Act and the Exchange Act have occurred within the Southern District of Florida, and were perpetrated through the use of the mails and the means and instrumentalities of interstate commerce. Upon information and belief, defendant Colon resides within the Southern District of Florida.

THE DEFENDANTS

6. James S. Faller II is a resident of Augusta, Georgia.

7. Rolan Colon conducts business from Hialeah, Florida.

OTHER PERSONS INVOLVED

- 8. Evro Corporation ("Evro") is a Florida corporation, headquartered in Tampa, Florida. Evro's stock is traded on NASDAQ. Evro is registered with the Commission pursuant to Section 12(q) of the Exchange Act.
- 9. Jerry Diamond ("Diamond"), during the relevant period of time, was president and chief executive officer of Evro.
- 10. International Business Service Alliances of Tampa, Inc. ("IBSA") was, during the relevant period, a Florida corporation. It was dissolved administratively on August 26, 1994. Faller was president and Colon was vice-president of IBSA. Faller ran an IBSA office in Tampa, Florida and Colon ran an IBSA office in Fort Lauderdale, Florida.
- 11. Richard Adam ("Adam"), during the relevant period of time, was affiliated with IBSA, Faller and Colon. Adam was represented to be able to arrange financing for companies in need of cash from European trusts. He was engaged as a consultant to Evro as a

result of negotiations between Daimond on behalf of Evro and Faller and Colon on behalf of IBSA.

FACTS

- 12. During 1993, Evro was primarily involved in developing and attempting to sell equipment used to detect breast abnormalities without the use of X-rays. It also operated recreational vehicle parks.
- 13. In or about March 1993, Faller, as president of IBSA, contacted Evro and represented that IBSA could obtain millions of dollars in financing for Evro from a European trust.
- 14. Faller represented to Evro that Adam was a person who had contacts with various entities in Europe through which IBSA could obtain loans for American companies in need of cash.
- 15. On or about May 10, 1993, Evro entered into an agreement with Colon and Adam pursuant to which Colon and Adam, or their assignees, were to act as consultants for Evro to obtain a \$30 million loan net to Evro and funds to purchase \$225 million of "Top 100 Prime Bank Guarantees." The Guarantees allegedly were to be used as collateral for the loan.

- 16. In return for the services to be rendered by Faller, Colon, Adam, or their assignees, Evro issued approximately 300,000 shares of common stock to Adam. The stock certificate bore a restrictive legend prohibiting its transfer unless certain conditions were met. Evro also agreed to pay the consultants three percent of any loan proceeds obtained.
- Adam provided that all information provided to the consultants constituted "material representations." The consultants agreed "to preserve and protect the confidentiality" of information relating to Evro's financial condition. The agreement also stated: "Essentially the spirit behind the agreement is one of mutual trust and confidence, and of the reliance on each other to do what is fair and equitable."
- 18. The conditions set forth in the agreement were understood by the parties and Faller as also applying to Faller and anyone else associated with the consultants.
- 19. The agreement created a fiduciary duty running from the consultants and their associates, including Faller, to Evro and its shareholders, pursuant to which the consultants and their associates obtained information

which was to be kept confidential by them and only used in connection with the business purposes of Evro.

- July 14, 1993, stating that a "bankable" loan commitment would be issued soon. At about the same time, Faller suggested that Evro should issue a press release announcing the funding. Faller was told that Evro should receive a written commitment before making any announcement.
- 21. On or about August 18, 1993, Diamond received a purported \$30 million loan commitment from what was represented to be a Liechtenstein entity named the Multika Trust Reg. The purported commitment was signed by Adam, among others.
- 22. On or about August 18, 1993, Faller was in Europe. He discussed the loan commitment with Dominick F. Maggio ("Maggio"), who was requested to draft a press release. Maggio had been employed by Evro Corporation but in August 1993 was operating independently. Maggio wrote the press release. Pursuant to Faller's direction, a copy of the press release was sent to Faller in Europe for his review and approval. Faller approved the proposed release. At Faller's direction, a copy of the

release was then faxed to Colon in Fort Lauderdale, Florida, for Colon's review. The press release was then sent by Maggio to Diamond, who approved it.

- 23. Faller and Colon, at the time the press release was sent to Diamond, knew that the purported loan commitment was fictitious.
- 24. On or about August 19, 1993, Faller, under the pseudonym of Jarret Rouge, and Colon, under his own name, opened accounts at Paragon Securities, Inc. ("Paragon"), a registered securities broker-dealer.
- 25. On or about August 20, 1993, Faller and Colon each purchased 20,000 shares of common stock of Evro at \$0.795 per share through their accounts at Paragon for \$15,908.25. Payment for the Evro stock purchased in the Rouge account was made by a wire transfer from a bank account belonging to Faller.
- 26. On or about August 23, 1993, Evro issued the press release announcing that it had obtained a \$30 million financing commitment. The press release further claimed that the funding would give Evro the financial strength to implement a business plan, and, among other things, test a new product.

- 27. The press release had an immediate and positive impact on the price and volume of trading in Evro's common stock. The volume increased from approximately 100,000 shares per day during the week before the announcement to over 300,000 shares per day during the two weeks after the announcement. Likewise, the price rose from a closing price of \$0.84375 on August 23, 1993, to a closing price of \$1.875 on September 3, 1993.
- 28. On or about August 31, 1993, Faller sold 6,057 of his shares of common stock of Evrc Corporation at the price of \$1.12850 per share. He sold the remaining 13,943 of his shares of common stock of Evro Corporation on or about September 1, 1993, at the price of \$1.15625 per share. Faller received \$22,940.41 for his 20,000 shares of common stock of Evro Corporation, or approximately forty percent more than he had paid for them. The dollar amount of Faller's profit was approximately \$7,032.
- 29. On or about September 3, 1994, Colon sold his 20,000 shares of common stock of Evro Corporation for \$1.50 per share. He made a profit of approximately \$13,677.

- 30. Neither Faller nor Colon has ever made another trade in his account with Paragon.
- 31. No funds were ever provided to Evro by the Multika Trust Reg., despite repeated requests by Evro through Diamond. In March, April and May 1994, Diamond received letters purportedly written by an attorney in Coral Springs, Florida, claiming to represent IBSA. These letters, one of which was faxed from Colon in the Southern District of Florida to Diamond, continued to represent that the funding had been approved.
- 32. On March 31, 1994, Colon faxed a letter from himself in Fort Lauderdale, Florida to Diamond, describing the current status of the transaction and claiming that the loan contract would be executed "next week."
- 33. Faller and Colon knowingly and intentionally caused Evro Corporation to issue a materially false press release announcing the receipt of a commitment for \$30 million in funding for Evro Corporation thereby causing the market for the common stock of Evro to materially increase in price and volume, all to the detriment of purchasers of the common stock of Evro Corporation.

34. Faller and Colon, on or about August 20, 1993, while in possession of material non-public information concerning the impending press release of Evro Corporation announcing a \$30 million loan commitment, which information they had obtained during the course of their employment by Evro Corporation, in breach of a fiduciary duty or other relationship of trust and confidence improperly used that material non-public information and bought, through their accounts at Paragon, 20,000 shares of Evro Corporation common stock and thereafter sold the stock, as described in paragraphs 24, 25, 28 and 29, for a profit.

COUNT I

Violations of Section 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. 77q(a)(2), and $\frac{77q(a)(3)}{}$

- 35. Paragraphs 1 through 34 are hereby realleged and are incorporated herein by reference.
- 36. From in or about August 1993 through in or about September 1993, defendants Faller and Colon, singly and in concert, in the offer and sale of Evro common stock by use of means and instruments of transportation

and communication in interstate commerce and by use of the mails, directly and indirectly:

- obtained money and property by means of (a) untrue statements of material facts and 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
- (b) engaged in transactions, practices, and courses of business which operated and would operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described in paragraphs 1 through 34 above.
- 37. By reason of the foregoing, defendants Faller and Colon have violated, and, unless restrained and enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. 77q(a)(2) and 77q(a)(3)].

COUNT II

Violations of Sections 17(a)(1) of the Securities Act [15 U.S.C. 77q(a)(1)]

- 38. Paragraphs 1 through 34 are hereby realleged and are incorporated herein by reference.
- 39. From in or about August 1993 through in or about September 1993, Faller and Colon, singly and in concert, in the offer and sale of Evro common stock by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes, and artifices to defraud purchasers of such securities, all as more particularly described in paragraphs 1 through 34 above.
- 40. Defendants Faller and Colon knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes, and artifices to defraud.
- 41. By reason of the foregoing, defendants Faller and Colon have violated, and, unless restrained and enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. 77q(a)(1)].

COUNT III

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]

- 43. Paragraphs 1 through 34 are hereby realleged and are incorporated herein by reference.
- 44. From in or about August 1993 through in or about September 1993, defendants Faller and Colon, singly and in concert, in connection with the purchase and sale of Evro common stock, by the use of means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:
 - (a) employed devices, schemes, and artifices to defraud;
 - (b) made untrue statements of material facts and 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; and
 - (c) engaged in acts, practices, and courses of business which operated as a fraud and deceit upon persons all as more

particularly described in paragraphs 1 through 30 above.

- 45. Defendants Faller and Colon knowingly, intentionally, and/or recklessly engaged in the above-described conduct.
- 46. By reason of the foregoing, defendants Faller and Colon have violated, are violating, and, unless restrained and 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]

WHEREFORE, Plaintiff Securities and Exchange Commission respectfully prays for:

Section 17(a) of the Securities Act [15 U.S.C. 77q(a)]

1. Permanent injunctions restraining and enjoining defendants Faller and Colon, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, and each of them, whether as principals or as aiders and abettors, in the offer or sale of the common stock of Evro Corporation, or any other security, by the use of any means or instruments of transportation or communication

in interstate commerce or by the use of the mails, from, directly or indirectly:

- (a) employing any device, scheme, or artifice to defraud;
- (b) obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any purchaser of such securities.

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]

2. Permanent injunctions restraining and enjoining defendants Faller and Colon, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, and each of

them, whether as principals or as aiders and abettors, in connection with the purchase or sale of the common stock of Evro Corporation, or any other security, by the use of any means or instrumentality of interstate commerce or of the mails, from directly or indirectly:

- (a) employing any device, scheme, or artifice to defraud;
- (b) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit on any person.

Additional Equitable Relief

3. An order directing that Faller and Colon disgorge all profits received, directly or indirectly, from the sale of the common stock of Evro Corporation, plus interest, to deprive the defendants or any unjust enrichment.

- 4. Findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure.
- 5. Such other and further relief as this court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

Respectfully submitted,

Dated:

9/30 , 1996

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CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil doubter sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

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