

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA

MACON DIVISION

1997 02 11 1:41
J. Johnson

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

VS.

W. DAVID BLUNK JR., AUBREY JOHN

ELAM JR., AND STANLEY C. EAVES,

DEFENDANTS.

Civil Action File No. 5:99-cv-323

COMPLAINT

Plaintiff Securities and Exchange Commission ("the Commission") alleges that:

OVERVIEW OF DEFENDANTS' SCHEMES

1. The Commission brings this action to enjoin violations of the federal securities laws by W. David Blunk, Jr. ("Blunk"), Aubrey John Elam, Jr. ("Elam"), and Stanley C. Eaves ("Eaves").
2. This case involves offers that Blunk, Elam and Eaves made to encourage Mercer University in Macon, Georgia ("Mercer" or "the University") to invest between \$5 million and \$10 million in a "Prime Bank" trading program, and similar offers that they made to an undercover agent posing as an investment consultant for the University. In January 1997, Blunk, then a securities lawyer with a Houston law firm, Elam, and Eaves told the President of Mercer and senior members of his staff that the University could earn over 120% per year from a \$10 million investment in the "European Bank Bond Market." Subsequently Blunk, Elam, and Eaves sent the undercover agent documents which represented that Mercer could earn 50% from a \$10 million investment in twenty-five days, said that Mercer's principal would be absolutely safe, and claimed that the profit would be

guaranteed by one of the world's "prime bank[s]." All of these representations were false. Mercer never invested any money in the investments offered by the defendants.

3. Defendants Blunk, Elam and Eaves, by virtue of their conduct, directly and indirectly, have engaged, and unless enjoined will engage, in transactions, acts, practices and courses of business that have constituted and will constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77q(a)].

JURISDICTION AND VENUE

4. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. 77t(b) and 77t(d)], to enjoin the defendants from engaging in the transactions, acts, practices and courses of business alleged in this complaint, and transactions, acts, practices and courses of business of similar purport and object, other equitable relief, and for civil money penalties.

5. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. 77t(b), 77t(d) and 77v(a)].

6. The defendants, directly and indirectly, made use of the mails and the means and instruments of transportation and communication in interstate commerce, in connection with the transactions, acts, practices and courses of business alleged in this complaint.

7. Certain of the transactions, acts, practices and courses of business constituting violations of the Securities Act have occurred in the Middle District of Georgia. Specifically, investors have been solicited to purchase the investments in the Middle District of Georgia.

8. The defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices and courses of business alleged in this complaint, and in transactions, acts, practices and courses of business of similar purport and object.

DEFENDANTS

9. W. David Blunk, Jr. resides at 2122 Chilton Road, Houston, TX 77019-1504. Blunk was admitted to the Texas bar in 1971. During most of the events described below, Blunk practiced with a Houston law firm and represented that he had expertise with matters involving securities, banking, general corporate and business law as well as with various types of investments. Blunk purportedly knew and had successfully completed transactions with the banks and the traders who would carryout the hugely profitable trading programs he, Elam and Eaves proposed to Mercer.

10. Aubrey John Elam, Jr., 42, resides at 6940 Cameron Glen Drive, Charlotte, NC 28210 and is employed by a real estate business. Elam claimed that he, Eaves, and another partner in their business, Charlotte International Investment Consultants, Ltd. ("CIIC"), had diligently researched the investment securities they offered Mercer. Elam claimed that during their research into these investments they had been introduced to Blunk by a banker who assured them Blunk was an expert in the types of investments they subsequently offered to Mercer.

11. Stanley C. Eaves, 61, may be served at 421 S. Sharon Amity Rd, Charlotte, NC 28211-2840 and is self-employed. Eaves worked with Elam and Blunk to assure Mercer and its representatives that the investments that they proposed were well known within the international banking community and almost entirely risk free.

FACTS

12. During 1996, Blunk, Elam and Eaves introduced themselves to officials at Mercer University in Macon, Georgia and proposed certain investments.

13. On January 3, 1997, Mercer's President, its Senior Vice President for Finance, and its General Counsel, met Blunk, Elam, and Eaves in the offices of Blunk's law firm in Houston, Texas. During that meeting, Blunk explained the investment being offered to Mercer.

14. Blunk represented that the transactions they proposed would be effected in the "European Bond Market," and would generate returns of 10% per month as a result of the difference between the price at which the bonds were purchased and the price at which they were sold. According to Blunk, if the University deposited \$10 million into an account at Barclay's Bank in London, England, the money would be used to purchase and resell bonds issued by the top ten to fifteen banks in the world. Blunk claimed Mercer's principal would be secured with a bank bond that would guarantee Mercer's principal plus 8% interest during the time the traders Blunk knew in Europe were conducting the trading that would generate Mercer's profits.

15. When Mercer University failed to respond to the first offer by February, Elam telephoned officials at Mercer and claimed that the University could also earn 10% per month from a \$5 million investment. This time Elam claimed that the University's money would be deposited at a bank in the United States.

16. Shortly afterwards, Elam sent Mercer a document entitled "Bank Program Procedures" which reiterated that there would be "an annual return of 120%," and represented "100% Assurance of payment of profits (collateral on the profits) comes from one of the world's largest accounting firms, headquartered in the United States and with offices throughout the financial world." The document Elam sent also claimed that the University's money would be secured by a Conditional Letter of Credit "in favor of the Investor by a top 50 World bank. . . ."

17. The officials at Mercer became suspicious of these proposals and discussed them with law enforcement agencies.

18. Subsequently, the University instructed Blunk, Elam, and Eaves to conduct all future discussions regarding their offers with an undercover agent posing as the University's investment consultant.

19. In June 1997, Elam telephoned the undercover agent and introduced himself and the investment opportunity his company, CIIC, was offering to the university. Afterwards, Elam mailed the agent a description of the program that claimed “[i]t is a risk-free investment backed by a Bank Endorsed Guarantee which provides returns on the investment ranging from 60% to 120% annually.” The materials Elam provided contained numerous falsehoods, misrepresentations and omissions that purported to explain why the risk-free, 120% per year investment he and the other defendants were offering Mercer was not “too good to be true.”

20. Thereafter, Blunk, Elam, and Eaves proposed to the undercover agent that Mercer invest \$10 million in a program that would “provide the investor with an annual return of 6% - 8% guaranteed by the bank instrument and could provide the investor with a total annual return of 126% - 128% on his investment.” Blunk, Elam and Eaves represented that the safety of Mercer’s principal would be guaranteed by one of the “top fifty banks in the world,” stated that Mercer’s “principal was not going to be at any risk whatsoever,” and, another time, assured the University that a “very large money-centered” or “prime bank,” such as Midland Bank, Barclays Bank, or National Westminster Bank, would enter a contract or otherwise guarantee that the “University [received] 10% a month paid twice a month.” That contract or guarantee, according to the defendants, would also insure that the University would not lose any of its principal. All of these representations were false and misleading.

21. Eaves and Elam summarized a later version of their proposal in a letter to the agent by claiming, “funds in this investment procedure will earn an investment profit of ten percent (10%) per month paid each twelve bank days. This profit is guaranteed by a bank. . . .”

22. In another letter to the agent, Eaves stated: “[h]opefully, you got the understanding that Mercer University’s \$10,000,000.00 investment will be absolutely safe [with] no possibility of losing their principal.”

23. Banks identified by Blunk, Elam and Eaves do not guarantee that persons who invest in bank guarantees, bank debentures, bonds and letters of credit are paid returns in excess of 100% each year without the risk of losing any of their principal.

24. In order to further assure the undercover agent that the University's investment would be safe, Elam stated that he had discussed this investment program with an FBI agent in London, England who specialized in fraud and banking matters. Elam said that the FBI agent he had spoken with was "very straightforward with me and said if you are going to get involved in this, just make sure that you work with top-rated banks . . . and you will be fine."

25. An FBI agent who is an acquaintance of Elam met with him in London. That agent does not specialize in fraud and banking matters and did not discuss any specific types of investment programs with Elam.

26. Similarly, Elam and Eaves claimed that the investment program "had been cleared by [NationsBank's] senior security" officials. Two senior NationsBank employees did meet with both Elam and Eaves before they made this claim. During that meeting, however, the bank officials informed Elam and Eaves that they did not believe that the trading programs they were offering would produce the returns they were describing. Moreover, they told Elam and Eaves that such programs involve highly questionable conduct and that the recipients of the investor's money might be of highly questionable character.

27. In April 1998, Eaves and Elam offered a version of the program for Mercer to earn an "investment profit of ten percent (10%) per month paid each twelve bank days. This profit is guaranteed by a bank and is not performance related such as being on a 'best efforts' basis." Describing the same proposed transaction, Blunk claimed that the specific trade that underlies this transaction is the purchase and resale of bank debenture or unsecured bank bonds issued by major money center banks rated "AA" or better by Standard & Poor's. The trader's name is not recognizable or a known

name, . . . but one of the contracts entered into is a contract with a major money center bank that assures performance.”

28. In May 1998, Blunk, Elam outlined another trading program under which Mercer would earn 50% on a \$10 million investment in twenty-five days. Blunk represented that Mercer would receive a bank guarantee from a “major, major” European bank such as Midland Bank “in an amount to assure that there is absolutely no loss of principal.” He stated that the principal would be “fully secured, absolutely safe,” and “100% safe” with “absolutely no chance of any loss.” Once that guarantee was received, Mercer’s money would be transferred to another bank where a trader would use it to buy and sell undisclosed instruments. All of these representations were false.

29. The representations Blunk, Elam, and Eaves made regarding who had reviewed and endorsed the proposed transactions, the security of the University’s principal, the interest Mercer would earn, and the means by which those returns would be generated were all false.

COUNT I

FRAUD

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

30. Paragraphs 1 through 29 are hereby realleged and are incorporated herein by reference.

31. From in or about January 1997 through June 1998, defendants Blunk, Elam and Eaves, singly and in concert, in the offer of securities, 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 above.

32. The defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

33. By reason of the foregoing, defendants Blunk, Elam and Eaves 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 II

FRAUD

VIOLATIONS OF SECTIONS 17(a)(2) and 17(a)(3) OF THE SECURITIES

ACT [15 U.S.C. 77q(a)(2) AND 77q(a)(3)]

34. Paragraphs 1 through 29 are hereby realleged and are incorporated herein by reference.

35. From in or about January 1997 through June 1998, defendants Blunk, Elam and Eaves, in the offer of securities, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

(a) attempted to obtain money and property by means of 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 above.

36. By reason of the foregoing, defendants Blunk, Elam and Eaves have violated, and, unless restrained and enjoined, will continue to violate Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. 77q(a)(2) and (3)].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Securities and Exchange Commission respectfully prays for:

(1) Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that the defendants committed the violations alleged herein.

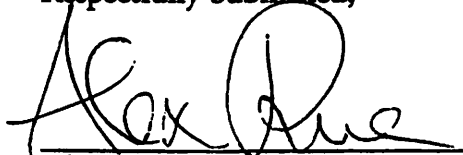
(2) A permanent injunctions, restraining and enjoining defendants Blunk, Elam and Eaves, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, and each of them, whether as principals or as aiders and abettors, from violating Section 17(a) of the Securities Act [15 U.S.C. 77q(a)].

(3) An order pursuant to Section 20(d) of the Securities Act [15 U.S.C. 77t(d)] imposing civil penalties against defendants Blunk, Elam and Eaves.

(4) 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.

September 22, 1999

Respectfully Submitted,



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