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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MARLON D. TROPEANO and
DAVID BARROSO, JR.,

Defendants,

and

GOLF EMPORIUM CORPORATION, ISABEL
MUNOZ, and V.M.C. HOLDINGS INC.,

Relief Defendants.

99 CIV. 10260

99 Civ. ____

COMPLAINT
AND JURY,
DEMAND

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FILED
DISTRICT COURT


Plaintiff Securities and Exchange Commission (the "Commission") for its Complaint against defendants Marlon D. Tropeano ("Tropeano") and David Barroso, Jr. ("Barroso") (collectively, "Defendants"), and relief defendants Golf Emporium Corporation ("Golf"), Isabel Munoz ("Munoz"), and V.M.C. Holdings Inc. ("VMC") (collectively, "Relief Defendants"), alleges that:

NATURE OF THE ACTION

1. This action concerns the fraudulent conduct of Tropeano and Barroso while they were associated with Briarwood Investment Counsel, Inc. ("Briarwood"), a broker-dealer registered with the Commission. From October 1997 through April 1998, Tropeano -- on one occasion with the assistance of Barroso -- defrauded various Briarwood customers by, among other things, selling securities in their accounts without authorization and misappropriating over \$150,000 of the proceeds of those sales.

VIOLATIONS

2. Tropeano and Barroso, directly or indirectly, singly or in concert, have engaged and, unless enjoined, will again engage in acts, practices, or courses of business that constitute, and would constitute, violations of 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.

JURISDICTION AND VENUE

3. The Commission brings this action pursuant to the authority conferred upon it by Sections 21(d)(1) and 21(d)(3) of the Exchange Act, 15 U.S.C. §§ 78u(d)(1) and 78u(d)(3), seeking final judgments that: (a) permanently enjoin each of the Defendants from violating Section 10(b) of the Exchange Act and Rule 10b-5; (b) order Tropeano to disgorge his ill-gotten gains, and to pay prejudgment interest thereon; (c) order the Relief Defendants to disgorge the funds that they received as a result of the violations alleged herein, and to pay prejudgment interest on those amounts; and (d) impose civil penalties against each of the Defendants pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

4. This Court has jurisdiction over this action and venue is proper pursuant to Sections 21(d), 21(e) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e) and 78aa.

5. The Defendants, directly and indirectly, singly or in concert, made use of the means or instrumentalities of interstate commerce or of the mails, in connection with the acts, practices, and courses of business alleged herein. Certain of the acts, practices, and courses of business alleged herein took place within the Southern District of New York, including the unauthorized transfer of, and liquidation of securities in, Briarwood customer accounts.

DEFENDANTS

6. Tropeano is 30 years old and lives in Brooklyn, New York. From August 1997 through February 1998, Tropeano was a registered representative at Briarwood's branch office at 40 Exchange Place in Manhattan ("Exchange Place office").

7. Barroso is 34 years old and lives in Forest Hills, New York. From February 1997 through August 1997, Barroso was a registered representative of Chatfield Dean & Co., Inc. ("Chatfield Dean"), a broker-dealer registered with the Commission. Barroso briefly worked at Briarwood's Exchange Place office in 1998, but he was not a registered representative of Briarwood.

RELIEF DEFENDANTS

8. Golf is a New York corporation of which Tropeano's brother, Frederick Tropeano, is, and at all relevant times was, the president and majority shareholder. Golf received \$24,000 that Tropeano fraudulently diverted from a Briarwood customer's account.

9. Munoz is Tropeano's step-mother. Munoz received \$35,890 that Tropeano fraudulently diverted from Briarwood customers' accounts.

10. VMC is a New York corporation whose stockholders are, and at all relevant times were, Tropeano, his brother, and their father. VMC received \$16,671 that Tropeano fraudulently diverted from a Briarwood customer. VMC also received \$67,550 that Tropeano and Barroso fraudulently diverted from another Briarwood customer.

FACTS

Account of Philip and Marie C.

11. On or about October 30, 1997, Tropeano opened a money-market checking account (the "Money-Market Account") at Briarwood in the name of a married couple, identified herein as Philip and Marie C., by forging, or causing to be forged, Philip and Marie C.'s signatures on account opening documents.

12. On or about October 30, 1997, Tropeano opened a margin account (the "Margin Account") at Briarwood in the name of Philip and Marie C. by forging, or causing to be forged, Philip and Marie C.'s signatures on account opening documents.

13. From October 31 through November 6, 1997, Tropeano directed the unauthorized transfer of approximately \$6,000 in cash and \$45,000 in securities from Philip and Marie C.'s securities brokerage account (the "Securities Brokerage Account") at Briarwood into the Money-Market Account and Margin Account, respectively. From November 4, 1997 through January 28, 1998, Tropeano caused securities to be purchased and sold in the Securities Brokerage Account by placing, or causing to be placed, unauthorized buy and sell orders.

14. From November 7, 1997 through March 27, 1998, Tropeano used the borrowing potential of the securities transferred into the Margin Account to purchase

additional securities, sell those securities, and transfer the proceeds from the sale into the Money-Market Account.

15. From January 6, 1998 through March 26, 1998, Tropeano caused a \$5,000 check payable to Munoz, a total of \$24,000 in checks payable to Golf, and a total of \$3,000 in checks to other payees to be drawn on the Money-Market Account.

16. Philip and Marie C. did not authorize the opening of the Money-Market Account alleged in paragraph 11, did not authorize the opening of the Margin Account alleged in paragraph 12, did not authorize the transfer of cash and securities from their Securities Brokerage Account into the accounts alleged in paragraph 13, did not authorize the purchase and sale of securities in the Securities Brokerage Account alleged in paragraph 13, did not authorize the purchase and sale of securities in the Margin Account alleged in paragraph 14, did not authorize the transfer of the proceeds from the sale of securities from the Margin Account into the Money-Market Account alleged in paragraph 14, and did not authorize the payments to Golf, Munoz, and other payees from the Money-Market Account alleged in paragraph 15.

The Account of John and Doris M.

17. On or about March 11, 1998, Tropeano directed the unauthorized transfer of a securities brokerage account at Briarwood in the name of a mother and son, identified herein as John and Doris M., to another broker-dealer registered with the Commission, Royal Hutton Securities Corp. ("Royal Hutton"). Tropeano effected this unauthorized transfer by, among other things, forging, or causing to be forged, John and Doris M.'s signatures on account transfer documents and transmitting those documents to Fiserv Correspondent Services, Inc. ("Fiserv"), Briarwood and Royal Hutton's clearing broker.

18. The account of John and Doris M. contained approximately \$23,000 in securities when it was transferred to Royal Hutton.

19. On or about March 16, 1998, a Royal Hutton employee, following Tropeano's instructions, sold all of the securities from John and Doris M.'s account.

20. On or about March 16, 1998, Tropeano forged, or caused to be forged, John and Doris M.'s signatures on instructions to Fiserv to wire \$16,671 of the proceeds from the sale of securities to VMC's bank account, among other instructions. Pursuant to these instructions, Fiserv wired \$16,671 from John and Doris M.'s account to VMC's bank account and approximately \$6,000 to other accounts.

21. John and Doris M. did not authorize the transfer of their account to Royal Hutton alleged in paragraph 17, did not authorize the sale of the securities from their brokerage account alleged in paragraph 19, and did not authorize the transfers of the proceeds from the sale of securities alleged in paragraph 20.

The Account of John and Elizabeth L.

22. On or about March 20, 1998, Tropeano directed the unauthorized transfer of a securities brokerage account at Briarwood in the name of a married couple, identified herein as John and Elizabeth L., to Royal Hutton. Tropeano effected this unauthorized transfer by, among other things, forging, or causing to be forged, John and Elizabeth L.'s signatures on account transfer documents and transmitting those documents to Fiserv.

23. At the time the account of John and Elizabeth L. was transferred to Royal Hutton, it contained securities valued at \$30,025 and \$679 in cash.

24. On or about March 26, 1998, a Royal Hutton employee, following Tropeano's instructions, sold all of the securities from John and Elizabeth L.'s account.

25. On or about March 26, 1998, Tropeano forged, or caused to be forged, John and Elizabeth L.'s signatures on instructions to Fiserv to wire all available funds to Munoz's bank account. Pursuant to these instructions, Fiserv wired \$30,890 from John and Elizabeth L.'s account to Munoz's bank account.

26. John and Elizabeth L. did not authorize the transfer of their account to Royal Hutton alleged in paragraph 22, did not authorize the sale of the securities from their brokerage account alleged in paragraph 24, and did not authorize the transfer of the proceeds from the sale of securities to Munoz alleged in paragraph 25.

The Account of Donald and Irene B.

27. In or about March 1998, Tropeano and Barroso entered into a scheme to defraud a married couple, identified herein as Donald and Irene B., who held a joint securities brokerage account at Briarwood. Tropeano and Barroso caused the unauthorized transfer of Donald and Irene B.'s Briarwood account to Chatfield Dean. Tropeano and Barroso then liquidated certain securities in Donald and Irene B.'s account, and diverted a portion of the proceeds from the sale of securities for Tropeano's and Barroso's direct or indirect personal benefit.

28. On or about March 26, 1998, Tropeano and Barroso directed the unauthorized transfer of Donald and Irene B.'s securities brokerage account at Briarwood to Chatfield Dean. Tropeano effected this unauthorized transfer by, among other things, forging, or causing to be forged, Donald and Irene B.'s signatures on the change of address and account transfer documents, and transmitting those documents to Fiserv. Barroso called two Chatfield Dean registered representatives and falsely told them that Barroso had spoken with Donald B. and that Donald B. wanted his Briarwood account transferred to Chatfield Dean.

29. The account of Donald and Irene B. contained approximately \$286,000 in securities and \$1,035 in cash when it was transferred to Chatfield Dean.

30. After Donald and Irene B.'s Briarwood account had been transferred to Chatfield Dean, Tropeano and Barroso fraudulently induced Chatfield Dean to sell certain securities from the account, and wire a portion of the sales proceeds to VMC's bank account, as alleged more fully below in paragraphs 31 through 34.

31. On or about March 26, 1998, Tropeano called one of the Chatfield Dean registered representatives, falsely represented that he was Donald B., and instructed the Chatfield Dean registered representative to sell certain securities from Donald and Irene B.'s Chatfield Dean account.

32. On or about April 1, 1998, Tropeano forged, or caused to be forged, Donald and Irene B.'s signatures on instructions to Fiserv to wire \$67,550 of the proceeds from the sale of securities from Donald and Irene B.'s account to VMC's bank account.

33. On or about April 1, 1998, Barroso called one of the Chatfield Dean registered representatives, and instructed him to sell approximately \$126,000 in securities in Donald and Irene B.'s account and wire \$67,550 of the proceeds to VMC's bank account. Barroso falsely represented that Donald B. had authorized the sale of those securities and transfer of the proceeds to VMC's bank account.

34. On or about April 3, 1998, Chatfield Dean, following Tropeano and Barroso's instructions, sold approximately \$126,000 in securities in Donald and Irene B.'s account and wired \$67,550 of the proceeds to VMC's bank account.

35. Donald and Irene B. did not authorize the transfer of their account to Chatfield Dean alleged in paragraph 28, did not authorize the sale of the securities in their brokerage

account alleged in paragraph 34, did not authorize the transfer of the proceeds from the sale of securities to VMC's bank account alleged in paragraph 34, and did not authorize Barroso to direct the sale of the securities in their account and transfer of the proceeds to VMC's bank account alleged in paragraph 33.

The Account of Joseph and Rosalie T.

36. On or about April 9, 1998, Tropeano attempted an unauthorized transfer of a securities brokerage account at Briarwood of a married couple, identified herein as Joseph and Rosalie T., to Royal Hutton. Tropeano attempted to make this unauthorized transfer, by forging, or causing to be forged, Joseph and Rosalie T.'s signatures on account transfer documents and transmitting those documents to Fiserv.

37. The transfer of the account of Joseph and Rosalie T. was not completed.

38. Joseph and Rosalie T. did not authorize the transfer of their securities brokerage account from Briarwood to Royal Hutton.

CLAIM AGAINST THE DEFENDANTS

Violations of Section 10(b) of the Exchange Act and Rule 10b-5

39. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 38, above.

40. Tropeano, from in or about October 1997 through in or about April 1998, and Barroso, from in or about March 1998 through in or about April 1998, directly or indirectly, singly or in concert, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities, knowingly or recklessly: (1) employed devices, schemes and artifices to defraud; (2) 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 are made, not misleading; and (3) engaged in acts, practices, and courses of business which operated or would operate as a fraud or deceit upon the purchasers of securities and upon other persons.

41. As part of and in furtherance of this violative conduct, Tropeano, knowingly or recklessly, engaged in the fraudulent conduct alleged in paragraphs 1 through 38, above.

42. As part of and in furtherance of this violative conduct, Barroso, knowingly or recklessly, engaged in the fraudulent conduct alleged in paragraphs 27 through 35, above.

43. By reason of the foregoing, Tropeano and Barroso have directly or indirectly, singly or in concert, violated and, unless permanently enjoined, are reasonably likely in the future to violate 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.

CLAIM AGAINST THE RELIEF DEFENDANTS

44. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 43, above.

45. Relief Defendant Golf received \$24,000 that Tropeano fraudulently diverted from Philip and Marie C.'s Briarwood account from January 6, 1998 through March 26, 1998. These funds are the proceeds of Tropeano's unlawful activities, as alleged in paragraphs 11 through 16, above.

46. Relief Defendant Munoz received \$35,890 that Tropeano fraudulently diverted from Philip and Marie C. and John and Elizabeth L.'s Briarwood accounts on January 23,

1998 and March 31, 1998, respectively. These funds are the proceeds of Tropeano's unlawful activities, as alleged in paragraphs 11 through 16, and 22 through 26, above.

47. Relief Defendant VMC received \$84,221 fraudulently diverted from John and Doris M. and Donald and Irene B.'s Briarwood accounts during March and April 1998. These funds are the proceeds of Tropeano and/or Barroso's unlawful activities, as alleged in paragraphs 17 through 21 and 27 through 35, above.

48. Relief Defendants Golf, Munoz, and VMC obtained the funds described above as part of and in furtherance of the securities violations alleged in paragraphs 39 through 43 and under circumstances in which it is not just, equitable or conscionable for them to retain the funds. As a consequence of the foregoing, Relief Defendants Golf, Munoz, and VMC have been unjustly enriched.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

I.

Enter a Final Judgment permanently enjoining Tropeano and Barroso, their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating 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.

II.

Enter a Final Judgment requiring Tropeano, Golf, Munoz, and VMC to disgorge an amount equal to the funds and benefits they obtained as a result of the violations alleged herein, plus prejudgment interest on those amounts.

III.

Enter a Final Judgment assessing civil penalties against Tropeano and Barroso pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

IV.

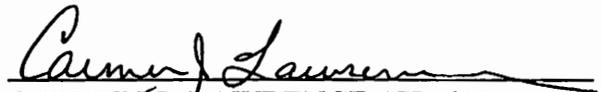
Grant such further and other relief that the Court may deem just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, hereby demands a trial by jury of all issues so triable.

Dated: New York, New York
October 1, 1999

Respectfully Submitted,



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