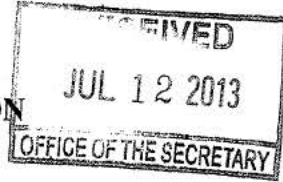


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
FILE NO. 3-15317

In the Matter of

FRANK BLUESTEIN

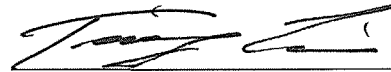
Respondent.

**THE DIVISION OF ENFORCEMENT'S
MOTION FOR SUMMARY DISPOSITION**

The Division of Enforcement ("Division") hereby moves for summary disposition pursuant to Rule 154 and Rule 250 of the Securities and Exchange Commission's Rules of Practice. The Division respectfully submits that summary disposition is appropriate and that the Court should resolve this proceeding in favor of the Division and impose a collateral bar in the public interest against Respondent Frank Bluestein.

In support of this Motion, the Division relies upon the accompanying memorandum of law and the Declaration of Timothy S. Leiman. The Division respectfully requests that the Court grant the Motion.

Respectfully submitted,

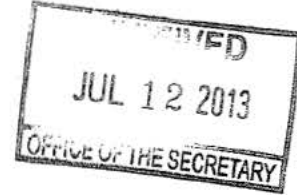


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Dated: July 11, 2013

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
FILE NO. 3-15317



_____ :
: **In the Matter of** :

FRANK BLUESTEIN :
:

Respondent. :
_____ :

**DIVISION OF ENFORCEMENT'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION**

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COUNSEL FOR
DIVISION OF ENFORCEMENT

Dated: July 11, 2013

I. INTRODUCTION

The public interest weighs heavily in favor of barring Respondent Frank Bluestein (“Bluestein”) from the securities industry, as reflected by the undisputed facts and analysis of the *Steadman* factors. Pursuant to Respondent’s consent, the United States District Court for the Eastern District of Michigan has permanently enjoined Respondent from future violations of the antifraud and other provisions of the federal securities laws, and permanently enjoined him from working in the securities industry.

The facts alleged in the Securities and Exchange Commission’s (“Commission”) Complaint, upon which the District Court’s injunctions are based, demonstrate that a collateral bar is the most appropriate remedy. As alleged in the Complaint, the Respondent was the highest-volume salesperson in a \$250 million Ponzi scheme orchestrated by convicted felon Edward May. From 2002 to 2007, Bluestein raised approximately \$74 million from over 800 investors in connection with the sale of ownership interests in a series of limited liability companies (“LLCs”) administered by Ed May’s firm, E-M Management (those interests are referred to here as the “E-M Securities”). Ed May’s LLCs purportedly generated income by providing telecommunications equipment and services to hotels and casinos. Bluestein marketed the E-M Securities as a sure thing: he told prospective investors that they would earn all of their money back within 20 months and would continue to earn interest for years thereafter. In reality, the LLC investments were a sham: the hotel and casino contracts did not exist and May used new investor cash to pay “returns” to old investors and to cover his personal expenses.

The Complaint further alleged that Bluestein (1) violated the antifraud provisions of federal securities law by hiding from investors the fact that he was receiving a “referral fee” from Ed May on every sale, (2) violated the registration provisions of the federal securities laws by offering and

selling the unregistered E-M Securities to investors, (3) sold the E-M Securities without being properly registered as a broker or dealer in accordance with Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and (4) obtained approximately \$3.6 million in ill-gotten gains through his misconduct.

Respondent has not contested the allegations contained in the Order Instituting Proceedings Pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Investment Advisers Act of 1940 (“OIP”), nor has he contested the fact that the District Court (with Respondent’s consent) permanently enjoined him from future violations of the federal securities laws and permanently enjoined him from working in the securities industry. Also, the Respondent remains active in investment-related businesses and, as such, he will continue to have opportunities for future violations. Therefore, it is in the public’s interest that Respondent be collaterally barred from the industry in order to protect investors.

II. STATEMENT OF FACTS

A. Entry of District Court Judgment Against Defendant

The Commission filed its Complaint in *SEC v. Bluestein* on September 28, 2009. (Leiman Decl. Ex. A). The Commission alleged that Bluestein violated Sections 5 and 17(a) of the Securities Act of 1933 (“Securities Act”), Sections 15(a) and 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), and Rule 10b-5 promulgated thereunder.

On July 11, 2012, the Commission moved for partial summary judgment. In support of its summary judgment motion, the Commission submitted excerpts from testimony transcript of the Respondent, summaries of bank records prepared by a Commission accountant, and declarations from investors. Bluestein did not file any opposition to the brief.

On October 24, 2012, a settlement conference and a related hearing was held before the Magistrate Judge. At the settlement hearing, Bluestein stated under oath that he consented to the entry of a permanent injunction from violations of the federal securities laws and from working in the securities industry. As set forth below, the Respondent willingly provided his consent and he was fully aware of the consequences of consenting to a permanent injunction and a permanent industry bar:

THE COURT: Okay. And Mr. Bluestein, you do understand that you have a right on this portion of the case, if you chose to go forward with the case, go forward and have the summary judgment motion decided, and if you were to prevail on that, to go forward and have a trial on this. Do you understand that?

MR. BLUESTEIN: Yes.

THE COURT: You understand by agreeing to this part of the complaint, the injunctive portion, that you will be giving up your right to a trial, there will be no trial, and that once Judge Cox signs the order, you will be enjoined industry-wide as set forth in the language you had a chance to review.

MR. BLUESTEIN: Yes.

* * *

THE COURT: Certainly the other aspect of this case which involves financial – the financial aspect, of the monetary aspect at this point in time is going to be left open, but what we're settling today is merely the injunctive part. Do you understand that?

MR. BLUESTEIN: Yes, I do.

THE COURT: Anybody coerced you or threatened you to take the settlement, the partial settlement?

MR. BLUESTEIN: No.

THE COURT: You're doing it because you think it's in your best interests?

MR. BLUESTEIN: Yes.

(Leiman Decl. Ex. B at 6:15-7:3; 7:22-8:8). Further, the District Court found that "Bluestein agreed in open court, under oath, to accept the terms of a settlement agreement whereby he would

be permanently barred from working in the securities industry, including exchanges.” (Leiman Decl. Ex. C at 11). On January 24, 2013, the Commission filed a motion for permanent injunction based on Bluestein’s consent.¹

On March 7, 2013, the Magistrate Judge filed his Report and Recommendation, recommending that the District Court grant the Commission’s motions for partial summary judgment and permanent injunction. (Leiman Decl. Ex. C). Among other things, the Magistrate Judge found that the Respondent “admitted he was receiving significant additional compensation, or ‘referral fees,’ from Ed May, and that he failed to disclose that fact to investors,” which established his intent. (*See id.* at 7). The Magistrate Judge also found that:

Bluestein’s activities were egregious (he was a major participant in a multi-million dollar Ponzi scheme), he knew he was selling unregistered securities and withholding material information from investors, his conduct was recurrent (it continued for a period of five years), and he has provided no assurances against future violations.

(*Id.* at 10).

On April 24, 2013, the District Court adopted the Magistrate Judge’s Report and Recommendation and granted the Commission’s Motions for Partial Summary Judgment and Permanent Injunction as to Sections 5 and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder. (Leiman Decl. Ex. D). The District Court also adopted the Magistrate Judge’s recommendation that Respondent be permanently enjoined from working in the securities industry. On May 6, 2013, a final judgment was entered permanently enjoining Bluestein from violations of Sections 5 and 17(a) of the Securities Act, Sections 10(b)

¹ At the October 24, 2012 settlement conference, Bluestein agreed to work with the Commission on a signed, written consent to be filed with the Court and to continue discussions regarding the monetary relief. Despite repeated requests by the staff, Respondent failed to execute the consent. Thus, the Commission filed the motion for permanent injunction.

and 15(a) of the Exchange Act and Rule 10b-5 thereunder. (Leiman Decl. Ex. E). The final judgment also permanently barred Bluestein from working in the securities industry. (*Id.*).

B. The Order Instituting Proceedings Against Respondent

This proceeding was instituted on May 21, 2010 by an Order Instituting Proceedings Pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Investment Advisers Act of 1940 (“OIP”). The OIP alleges, in relevant part, that:

A. RESPONDENT

1. From 2002 through 2007, Bluestein was a registered representative of a broker-dealer registered with the Commission and an associated person of an investment adviser registered with the Commission. Bluestein, 63 years old, is a resident of Boca Raton, Florida.

B. ENTRY OF THE INJUNCTION

2. On April 24, 2013, a judgment was entered against Bluestein, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Frank Bluestein, Civil Action Number 2:09-cv-13809, in the United States District Court for the Eastern District of Michigan.

3. The Commission’s complaint alleged that Bluestein was the single largest salesperson in a \$250 million Ponzi scheme perpetrated by another individual. In connection with the sale of about 110 private offerings, Bluestein misrepresented to investors that the investments were low risk and that he had conducted adequate due diligence with respect to the investments. Bluestein also misled investors about the compensation he received for the sale of the offerings by failing to disclose that he received at least \$2.4 million in commissions from the perpetrator of the scheme. The complaint also alleged that Bluestein sold unregistered securities.

This Court held a prehearing conference on June 3, 2013, during which this Court set a briefing schedule for summary disposition motions. To date, Bluestein has not filed an answer to the OIP.

III. ARGUMENT

A. Summary Disposition Standard

Rule 250(b) of the Commission's Rules of Practice expressly provide that summary disposition may be granted "if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law." Summary disposition is particularly well-suited to proceedings that are based on the entry of an injunction against a respondent, such as the instant case. See *In the Matter of Jeffrey L. Gibson*, Exchange Act Rel. No. 57266, Advisers Act Rel. No. 2700, 2008 WL 294717, at *5 (Feb. 4, 2008) ("Use of the summary disposition procedure has been repeatedly upheld in cases such as this one where respondent has been enjoined or convicted, and the sole determination concerns the appropriate sanction.") (citations omitted), *aff'd*, *Gibson v. SEC*, 561 F.3d 548 (6th Cir. 2009); *Marshall E. Melton*, Advisers Act Rel. No. 2151, 2003 WL 21729839, at *3 (July 25, 2003) ("the Commission has concluded that a consent injunction, 'no less than one issued after trial upon a determination of the allegations, may furnish the *sole basis* for remedial action...if such action is in the public interest'") (citation omitted; emphasis added).

B. The Undisputed Material Facts Compel Summary Disposition in Favor of the Division

Based on the record before it, the Commission should conclude as a matter of law that remedial sanctions are in the public interest and for the protection of investors. No genuine issue of material fact exists precluding summary disposition for the Division.

The undisputed facts of this case call for the imposition of a bar against Bluestein. The District Court determined that Respondent violated Sections 5 and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, and permanently

enjoined him from violation of those provisions. (Leiman Decl. Ex. D). The uncontested fact that Bluestein has been permanently enjoined from, among other things, violating antifraud provisions is controlling here. *See Currency Trading International, Inc., et al.*, Initial Dec. Rel. No. 263, 2004 WL 2297418, at *3 (Oct. 12, 2004). Ordinarily, and in the absence of evidence to the contrary, it is in the public interest to bar from the securities industry a respondent who is enjoined from violating the antifraud provisions of the federal securities laws. *Id.* (citing, *Marshall E. Melton*, 80 SEC Docket 2812, 2825-26 (July 25, 2003)). The District Court also permanently barred Respondent from working in the securities industry. (Leiman Decl. Ex. D).

Further, Respondent, under oath and in open court, consented to the entry of the permanent injunction and to being permanently enjoined from working in the securities industry. (Leiman Decl. Ex. B at 6:15-7:3; 7:22-8:8; Ex. C at 11).

C. The Commission Should Impose a Collateral Bar

Section 15(b)(6) of the Exchange Act and Section 203(f), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), authorize the Commission to bar a person from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical ratings organization. *See Vladimir Boris Bugarski*, Exchange Act Rel. No. 66842, 2012 WL 13773577, at *6 (Apr. 20, 2012) (imposing collateral bar).² Section 15(b)(6) of the Exchange Act also authorizes the Commission to bar a person from participating in an offering of penny stock if the person has been,

² Although Bluestein’s conduct occurred prior to the July 22, 2010 effective date of Dodd-Frank, the Commission has authority to impose, and should impose, a collateral bar. *See John W. Lawton*, Advisers Act Rel. No. 3513, 2012 WL 6208750, at *10 (Dec. 3, 2012) (“collateral bars imposed pursuant to Section 925 of Dodd-Frank are not impermissibly retroactive as applied in follow-on proceedings addressing pre-Dodd-Frank conduct”).

among other things, enjoined from any conduct or practice in connection with the purchase or sale of a security.

To determine whether sanctions are in the public interest, and if so what sanctions are appropriate, the Commission considers the following factors enumerated in *Steadman v. SEC*, 603 F.2d 1126 (5th Cir. 1979):

1. Egregiousness of the defendant's actions;
2. Isolated or recurrent nature of the infraction;
3. Degree of scienter involved;
4. Sincerity of the defendant's assurances against future violations;
5. Defendants' recognition of the wrongful nature of his conduct; and
6. Likelihood that the defendant's occupation will present opportunities for future violations

Id. at 1140 (citing *SEC v. Blatt*, 583 F.2d 1325, 1334, n.29 (5th Cir. 1978)). The inquiry is a flexible one and no one factor is dispositive. *Gary M. Kornman*, Exchange Act Rel. No. 59403, Advisers Act Rel. No. 2840, 2009 WL 367635, at *6 (Feb. 13, 2009).

The *Steadman* factors weigh heavily in favor of imposing a collateral bar against the Respondent. First, the District Court determined that Bluestein's actions were egregious, committed with a high degree of scienter and recurrent over a period of five years. Second, as the District Court also concluded, Bluestein has not provided any credible assurances against future violations. (Leiman Decl. Ex. C). Indeed, Respondent has never recognized the wrongful nature of his conduct. Specifically the court concluded:

Bluestein's activities were egregious (he was a major participant in a multi-million dollar Ponzi scheme), he knew he was selling unregistered securities and withholding material information from investors, his conduct was recurrent (it continued for a period of five years), and he has provided no assurances against future violations.

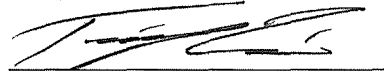
(Leiman Decl. Ex. C at 10). Third, Respondent remains active in investment-related businesses fronted by his close family members and, as such, he will continue to have opportunities for future violations. (Leiman Decl. Exs. F-H).

Finally, and most significantly, Respondent agreed, under oath and in open court, to be permanently barred from the securities industry. (Leiman Decl. Ex. B at 6:15-7:3; 7:22-8:8; Ex. C at 11).

IV. CONCLUSION

For the reasons explained herein, the Division respectfully requests that Respondent Bluestein be barred from association with broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock.

Respectfully submitted,



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Dated: July 11, 2013

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
FILE NO. 3-15317

In the Matter of

FRANK BLUESTEIN

Respondent.

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DECLARATION OF TIMOTHY S. LEIMAN IN SUPPORT OF
DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

I, TIMOTHY S. LEIMAN, pursuant to 28 U.S.C. § 1746, declare:

1. I am an attorney at law admitted to practice before the Illinois Supreme Court and all courts of the State of Illinois, as well as the United States District Court for the Northern District of Illinois. I am presently employed as a Senior Trial Counsel with the Division of Enforcement ("Division") at the Chicago Regional Office of the U.S. Securities and Exchange Commission ("Commission"), and co-counsel for the Division in the above-captioned administrative proceeding. I submit this Declaration in support of the Division's Motion for Summary Disposition ("Motion").

2. I have personal and first-hand knowledge of the facts set forth in this Declaration and, if called and sworn as a witness, could and would competently testify thereto.

3. In 2011, I was assigned to assist in the preparation and presentation of a case entitled: *SEC v. Frank Bluestein*, Case No. 09-cv-13809 (E.D. Mich.) ("District Court Action"). On September 28, 2009, the Commission filed its Complaint for violations of the federal

securities laws against Defendant Frank Bluestein. A true and correct copy of the Complaint is attached hereto as Exhibit A.

4. On October 24, 2012, a settlement conference was held the District Court Action before the magistrate judge. After the conference, the Magistrate Judge conducted a hearing to memorialize the results of the conference and Mr. Bluestein's agreement to settle on the record. A true and correct copy of the transcript of that proceeding is attached hereto as Exhibit B.

5. On March 7, 2013, the Magistrate Judge filed his Report and Recommendation, recommending that the District Court grant the SEC's motions for partial summary judgment and permanent injunction. A true and correct copy of the Report and Recommendation is attached hereto as Exhibit C.

6. On April 24, 2013, the District Court adopted the Magistrate Judge's Report and Recommendation and granted the Commission's Motions for Partial Summary Judgment and Permanent Injunction. A true and correct copy of the Opinion and Order Accepting and Adopting Report & Recommendation is attached hereto as Exhibit D.

7. On May 6, 2013, the District Court issued a final judgment in the District Court Action that, among other things, permanently enjoined Mr. Bluestein from future violations of the antifraud and other provisions of the federal securities laws, and permanently enjoined him from working in the securities industry. A true and correct copy of the Judgment is attached hereto as Exhibit E.


8. A true and correct copy of screen shots from www.mypivotaldirections.com is attached hereto as Exhibit F.

9. A true and correct copy of screen shots from www.freedomroadtrading.com is attached hereto as Exhibit G.

10. A true and correct copy of a July 8, 2009 press release from www.freedomroadtrading.com entitled "Frank Bluestein Resurfaces with New Stock Picking Podcast" is attached hereto as Exhibit H.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 11, 2013



Timothy S. Leiman

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

FRANK BLUESTEIN,

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiff, United States Securities and Exchange Commission (“Commission”),
alleges and states as follows:

NATURE OF THE COMPLAINT

1. Frank Bluestein (“Bluestein”) was the single largest salesperson in a \$250 million Ponzi scheme perpetrated by an individual named Edward May (“May”) and May’s company, E-M Management Company LLC (“E-M”).

2. From 2002 to 2007, Bluestein, while employed as a registered representative of a broker-dealer and an associated person of a registered investment adviser, raised approximately \$74 million from over 800 investors in connection with the sale of about 110 supposedly separate E-M private offerings.

3. Bluestein misrepresented to investors that the investments in E-M securities were low risk investments. He made these statements even though he had no basis for doing so. In addition, Bluestein misrepresented to investors that he conducted adequate due diligence with respect to the investments when, in fact, he did little to

investigate the legitimacy of the E-M offerings. Bluestein failed to investigate even when confronted with serious red flags regarding the existence of some of the transactions underlying the E-M offerings.

4. Bluestein's misconduct was particularly egregious when he solicited investors using unscrupulous tactics such as: (1) specifically targeting potential investors who were retired and/or elderly; (2) luring these retired or elderly investors through so-called "investment seminars"; and (3) encouraging many of these investors to refinance their mortgages for their homes in order to fund their investments.

5. Bluestein misled investors about the compensation he received from the E-M offerings by not disclosing that he received at least \$2.4 million in commissions from May and E-M.

6. Bluestein also received an additional \$1.4 million in disclosed compensation from investors in the form of fees for his company Fast Frank, Inc. ("F.F. Inc.").

7. Bluestein has violated and, unless enjoined, will continue to violate Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)], Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78o(a)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

8. The Commission seeks against Bluestein an order of permanent injunction enjoining him from future violations of the foregoing provisions of the federal securities laws, disgorgement, plus prejudgment interest, of all ill-gotten gains, civil penalties and such other ancillary and equitable relief as is sought herein and may be appropriate.

9. The Commission brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

DEFENDANT

10. Frank Bluestein, age 59, is a resident of Oakland County, Michigan. He is a former registered representative of a broker-dealer and a former associated person of a registered investment adviser. At all times relevant to this case, Bluestein held his series 6, 7 and 65 licenses.

JURISDICTION

11. This Court has jurisdiction pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa] and 28 U.S.C. § 1331. Venue is proper in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

12. The acts, practices and courses of business constituting the violations alleged herein occurred within the jurisdiction of the United States District Court for the Eastern District of Michigan and elsewhere.

13. Defendant is an inhabitant of, and transacts business in, the Eastern District of Michigan.

14. Defendant, directly or indirectly, has made use of the mail or the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices and courses of business alleged herein.

FACTS

THE UNDERLYING MASSIVE PONZI SCHEME

15. Beginning at least as early as 1998, and as recently as July 2007, May and E-M sold shares, or “percentages,” of limited liability companies to investors. May and E-M raised as much as \$250 million from approximately 1,200 investors through approximately 180 purportedly separate private offerings of securities. May told investors, many of whom are senior citizens, that each LLC would install and service telecommunication equipment in various hotels, casinos, and truck stops.

16. Many of the offering materials contained purported contracts between E-M and various hotel chains and casinos. May and E-M guaranteed the return of all principal, in addition to a percentage of the earnings for the contracts. May and E-M also touted that they were involved in similar deals in the past.

17. In reality, these offerings were fraudulent. Many, if not all, of the purported telecommunication service contracts with hotels and casinos simply did not exist. May and E-M misappropriated investor funds to pay other investors the “guaranteed” monthly returns, i.e., to perpetrate a Ponzi scheme, and to pay for Ed May’s personal expenditures and for his other businesses. The scheme eventually collapsed and, in August 2007, E-M stopped issuing checks to investors.

18. On November 20, 2007, the Commission filed an emergency civil injunctive action against Ed May and E-M, alleging violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. On December 18, 2007, this Court entered permanent injunctions against

May and E-M, enjoining them from future violations of the aforementioned federal securities laws.

**BLUESTEIN PLAYED A KEY ROLE IN
PROMOTING THE E-M OFFERINGS**

19. Bluestein was the single largest salesperson who solicited investors on behalf of Ed May and E-M. Of the approximately 1,200 investors who invested \$250 million in the E-M offerings, Bluestein was responsible for soliciting approximately 800 investors who invested close to \$74 million in these offerings.

20. From 2002 to 2007, Bluestein solicited investors for the E-M offerings while he was a registered representative for two broker-dealers and an associated person of two registered investment advisers.

21. Bluestein operated his branch office through a private company he co-owned, Maximum Financial Group, Inc. ("Maximum Financial").

22. As an associated person of a registered investment adviser, Bluestein owed a fiduciary duty to his clients, including an affirmative duty of good faith and the full disclosure of all material facts.

23. Bluestein did not sell the E-M securities through either broker-dealer.

24. For instance, the E-M offerings did not appear on the brokerage statements for either broker-dealer, nor were the investments processed through either firm.

25. Bluestein's role as a registered representative of these financial firms provided the E-M offerings with an aura of legitimacy and engendered trust from potential investors, many of whom were unsophisticated and non-accredited.

26. Bluestein was highly successful in soliciting a large number of investors through his frequent use of so-called "investment seminars" to lure potential investors.

27. Bluestein, through his company Maximum Financial, conducted numerous investment seminars in at least Michigan and California to find new E-M investors.

28. Bluestein was methodical in the way he introduced E-M offerings to investors to avoid alerting attendees to the fact that these "seminars" were really a forum to pitch the E-M offerings. For instance, Bluestein was careful not to discuss the E-M offerings openly during these seminars. Instead, he first gained the trust of the attendees by discussing generic financial planning topics and other investment products during the seminars. However, he would invite individuals who had already invested in E-M offerings and, under the guise of informal conversations, generate talks among attendees about E-M offerings. For instance, Bluestein would often ask attendees who had already invested in E-M offerings if they had "received their Ed May checks?" or "How do you like those Ed Mays?" in order to drum up discussion of the investments.

29. Bluestein also purposely arranged for existing E-M investors to be seated with new potential investors again to generate discussions about E-M offerings. After exposing potential investors to E-M offerings during the seminar, Bluestein would then schedule one-on-one appointments with potential investors he met during the seminar, at which time he would solicit them to invest in the offerings.

30. As part of his sales strategy, Bluestein specifically targeted retirees and seniors.

31. For example, Bluestein compiled his invitation lists for his investment seminars by purchasing lists with the names and addresses of individuals from a direct mail marketing company. He specifically requested lists of individuals who were age 50 and over. Bluestein told one investor that he worked strictly with retirees. It is thus not a

surprise that a large number of E-M investors solicited by Bluestein were elderly and/or retired.

32. To maximize the amount of funds such investors could invest in E-M offerings, Bluestein urged numerous investors to refinance their home mortgages in order to purchase interests in the E-M LLCs.

33. In some cases, Bluestein referred clients to certain mortgage brokers to handle the refinance.

34. As a result of his encouragement, several Bluestein clients used home equity lines of credit to borrow \$100,000 or more. Bluestein even encouraged one investor to borrow \$1 million on her home to purchase interests in the Ed May projects.

35. As part of his strategy to tap into potential investors' home equity, Bluestein co-hosted some of his investment seminars with mortgage brokers. Again, Bluestein was methodical in his approach. He first established relationships with several mortgage brokers by attending a mortgage broker convention in San Antonio hosted by a coaching program for mortgage brokers and real estate agents. Bluestein gave a presentation to mortgage brokers regarding real estate investment trusts, or REITs, and other investments.

36. Bluestein met at least two mortgage brokers, both from California, while at the convention.

37. Thereafter, Bluestein co-hosted at least three investment seminars with these two mortgage brokers in California, at which he solicited additional investors for E-M projects.

**BLUESTEIN FALSELY ASSURED INVESTORS
THAT E-M INVESTMENTS INVOLVED LOW RISKS**

38. In attracting investors who, in some cases, refinanced their homes to invest in E-M offerings, Bluestein made representations to investors about the purported transactions underlying the E-M offering and assured these investors that the E-M projects were safe investments and that they posed little to no risk.

39. Bluestein explained to investors that Ed May coordinated LLCs that had contracts with hotels for the installation of equipment such as televisions, gaming consoles, internet, etc. and that money was earned by charging for the use of the equipment.

40. Bluestein told investors that the money they invested would be used to purchase equipment and that they would receive a guaranteed repayment of their initial investment within 20 to 22 months.

41. Bluestein also represented to investors that, after the guarantee period, they would continue to receive distributions for up to 12 years.

42. Bluestein also told a number of investors that the projects were his best cash flow piece and were low risk investments.

43. He misrepresented to at least one investor that the E-M projects were a "unique" product because they minimized risk.

44. Bluestein also falsely told some investors that the Ed May investments were insured and that the guaranteed payments in some instances were covered by the insurance should something happen to the properties. According to Bluestein, if a hotel property was destroyed, for example by a natural disaster, the investors would continue to receive their guaranteed payments.

45. These representations were all false since the supposed transactions did not exist and the offerings were a Ponzi scheme. Bluestein did not have any reasonable basis for his representations.

**BLUESTEIN MADE MISREPRESENTATIONS TO INVESTORS
ABOUT THE PURPORTED DUE DILIGENCE HE CONDUCTED**

46. Bluestein affirmatively lied about the due diligence he supposedly conducted regarding the E-M offerings. Further, Bluestein was aware of serious red flags regarding the existence of some of the purported hotel transactions underlying the E-M offerings.

47. Bluestein assured many investors by telling them that he conducted due diligence with respect to the E-M LLCs.

48. In fact, Bluestein told some investors that he never recommended a project that he did not thoroughly investigate or purchase himself.

49. Bluestein told investors that he had performed several acts of due diligence, including traveling to Las Vegas to visit hotels and perform an "audit" and reviewing purported contracts between the LLCs and hotels.

50. In reality, Bluestein conducted little, if any, meaningful due diligence.

51. For instance, in an answer to an arbitration claim, Bluestein claimed to fly to Las Vegas to meet with Randal Wolf (a purported executive for MGM-Mirage Inc. ("MGM")), Reed Stewart (a purported executive for Tropicana Resorts Inc. ("Tropicana")) and two other unnamed hotel executives. However, no one named Randal Wolf or Reed Stewart had ever served as executives for MGM or Tropicana.

52. Bluestein claimed that when he met with purported hotel executives in Las Vegas, he only received one business card, which was for a concierge at Hilton. Indeed,

the only business card that Bluestein provided the Commission was for an executive slot host at Bellagio. This person turned out to be a victim of the E-M fraudulent scheme, who lost \$192,000.

53. Bluestein also testified before the Commission staff that he met with an individual who was an associate of Ed May at least three times in Las Vegas between 2005 and 2007. This individual is a business man located in Las Vegas who was paid by May.

54. Bluestein met with this person purportedly to verify the existence of the Ed May deals. According to Bluestein, the only information that the individual provided him was via the individual's laptop. This information purportedly showed the money flow for the projects. However, the individual supposedly refused to provide Bluestein with a hard copy of any supporting documentation for the deals.

55. Bluestein claims that when he raised this issue with Ed May, May stated that he could not give him information regarding the phone deals in hard copy. Bluestein declined to raise the issue any further with May.

56. During sworn testimony, Bluestein stated that he visited truck stops on the West Coast that were purportedly part of the E-M projects.

57. Bluestein, however, admitted that he did not know whether the phone equipment at the truck stops was part of the Ed May phone deals. He also admitted that he spoke with no one at the truck stops, he did not see the hotel rooms at the truck stop and he made no effort to make a connection between the phone equipment and the Ed May phone deals.

58. Bluestein also testified that Ed May told him he would never be able to determine if the phones were installed by May or E-M during his trips to hotels and truck stops “because there is nobody in a local hotel that would know or be privy to that information.”

59. Not only did Bluestein fail to conduct any meaningful due diligence with respect to the Ed May deals, Bluestein also ignored significant red flags regarding the legitimacy of the E-M offerings. For instance, when one of Bluestein’s employees at Maximum Financial brought to his attention that at least two different Ed May offerings involved the same property, Bluestein merely responded that it was a typographical error without any further investigation.

60. Bluestein investors even received distribution payments for a hotel that did not even exist. Specifically, investors continued to receive distribution payments for a purported project with the Stardust Hotel in Las Vegas, even after the Stardust Hotel, from which revenue was purportedly derived, was demolished in March 2007.

61. In testimony, Bluestein admitted he was aware the hotel had been demolished and he did not know how the distribution payments were actually being funded.

62. These red flags should have caused Bluestein serious concerns as to the existence of the purported transactions underlying the E-M offerings.

63. While Bluestein represented to investors that he thoroughly investigated each project he recommended, the truth is Bluestein did not carry out any meaningful due diligence and he ignored significant red flags concerning the projects.

**BLUESTEIN MISLED INVESTORS REGARDING HIS
COMPENSATION FOR PROMOTING THE E-M OFFERINGS**

64. While offering E-M securities to investors, Bluestein represented to investors that a private company he co-owned, F.F. Inc., would receive a "fee," typically around \$1000, for each investment a client purchased.

65. Bluestein collected approximately \$1.4 million in fees through F.F. Inc.

66. Bluestein provided a variety of often inconsistent reasons for this fee to different investors. Bluestein told some investors that the fee was used to process investments on their behalf, while he told others that the fee was for an "internal audit" or for due diligence. Bluestein also told at least a few investors that the F.F. Inc. fee was for insurance, which would be used to cover distribution payments during the guarantee period should something happen to the hotel property.

67. These statements regarding the purpose of the fees were false since Bluestein did little if any due diligence and there was never any insurance for the supposed hotel transactions.

68. While representing to investors that he was receiving a fee via F.F. Inc., Bluestein received an additional amount of approximately \$2.4 million from Ed May for selling interests in the LLCs that was not disclosed to investors.

69. Bluestein testified before the Commission staff that he had a verbal agreement with Ed May to receive a referral fee between 2.5% and 4% of the money raised from clients for each deal.

70. Bluestein received payment from May in the form of referral fees or under the guise of distributions from Bluestein's supposed personal investment in E-M offerings.

71. Bluestein admitted to the staff, during sworn testimony, that he did not disclose this compensation to investors.

72. In fact, Bluestein affirmatively told a number of investors that he did not receive any compensation for the sale of E-M securities, beyond the fees he received via F.F. Inc.

BLUESTEIN SOLD UNREGISTERED SECURITIES TO INVESTORS

73. Bluestein raised approximately \$74 million through the sale of interests in the LLCs, which were unregistered securities.

74. No registration statements have ever been filed or in effect for any of the interests of LLCs that Bluestein offered and sold to investors, nor is there a valid exemption from registration under federal securities laws.

COUNT I

**Violations of Sections 5(a) and 5(c) of the Securities Act
[15 U.S.C. §§ 77e(a) and 77e(c)]**

75. Paragraphs 1 through 74, are realleged and incorporated by reference as though set forth herein.

76. From 2002 to 2007, Bluestein, directly and indirectly, made use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell and offer to sell securities in the form of interests in LLCs through the use and medium of offering materials and otherwise, securities to which no registration statement was in effect; and carried such securities and caused them to be carried through the mails and in interstate commerce by the means and instruments of transportation for the purpose of sale and delivery after sale.

77. No valid registration statement was filed or was in effect with the Commission, in connection with interests in the LLCs.

78. No valid exemption from registration under the federal securities laws existed for these offerings of interests in the LLCs.

79. By reason of the activities described in paragraphs 1 through 74, Bluestein violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

COUNT II

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

80. Paragraphs 1 through 79, are realleged and incorporated by reference as though set forth herein.

81. By engaging in the conduct described above, Bluestein, in the offer and sale of securities, by the use of means and instruments of transportation or communication in interstate commerce or by use of mails, directly or indirectly, employed devices, schemes and artifices to defraud.

82. Bluestein intentionally or recklessly engaged in the devices, schemes, and artifices as described above.

83. By reason of the foregoing, Bluestein violated Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT III

Violations of Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

84. Paragraphs 1 through 83, are realleged and incorporated by reference as though set forth herein.

85. By engaging in the conduct described above, Bluestein, in the offer and sale of securities, by the use of the means and instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- a. obtained money or property by means of untrue statements of material fact or by omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- b. engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon the purchasers of such securities.

86. Bluestein made untrue statements and omissions of material fact and engaged in the devices, schemes, and artifices described above.

87. By reason of the foregoing, Bluestein has violated Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and (3)].

COUNT IV

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]

88. Paragraphs 1 through 87, are realleged and incorporated by reference as though set forth herein.

89. As more fully described in paragraphs 1 through 74 above, Bluestein, in connection with the purchase and sale of securities, by the use of the means and instrumentalities of interstate commerce and by the use of the mails, directly and indirectly: used and employed devices, schemes and artifices to defraud; made untrue

statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and courses of business which operated or would have operated as a fraud and deceit upon purchasers and sellers and prospective purchasers and sellers of securities.

90. Bluestein intentionally or recklessly engaged in the devices, schemes, and artifices as described above.

91. By reason of the foregoing, Bluestein violated 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].

COUNT V

Violations of Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)]

92. Paragraphs 1 through 91, are realleged and incorporated by reference as though set forth herein.

93. From 2002 to 2007, Bluestein, by the conduct described above, namely the sale of interests in the E-M offerings, directly and indirectly, made use of the mails and means and instrumentalities of interstate commerce to effect transactions in, and induced or attempted to induce the purchase and sale of the securities, without being properly registered with the Commission as a broker or dealer in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)].

94. By reason of the conduct described above, Bluestein violated Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I.

Find that Defendant Bluestein committed the violations charged and alleged in this Complaint.

II.

Enter an Order of Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining Defendant Bluestein, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with him who receive actual notice of the Order, by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)], Sections 10(b) and 15(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78o(a)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

III.

Issue an Order requiring Defendant Bluestein to disgorge the ill-gotten gains that he received as a result of his wrongful conduct, including prejudgment interest.

IV.

With regard to Defendant Bluestein's violative acts, practices and courses of business set forth herein, issue an Order imposing upon Bluestein appropriate 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. § 78u(d)(3)].

V.

Retain jurisdiction of this action in accordance with the principals of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Grant such other and further relief this Court may deem necessary and appropriate.

Respectfully submitted,

/s/ Adolph J. Dean, Jr.

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Dated: September 28, 2009



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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff, Case No. 09-13809

vs.

FRANK BLUESTEIN,

Defendant.

SETTLEMENT CONFERENCE

BEFORE EXECUTIVE MAGISTRATE JUDGE R. STEVEN WHALEN
United States Magistrate Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, October 24, 2012

APPEARANCES:

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U.S. Securities and
Exchange Commission

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Detroit, Michigan

Wednesday, October 24, 2012

- - -

(Proceedings commenced at 3:19 p.m.)

THE CLERK: All rise.

The United States District Court for the Eastern District of Michigan is now in session, the Honorable R. Steven Whalen, United States Executive Magistrate Judge, presiding. You may be seated.

Court calls criminal -- I'm sorry, Court calls civil matter 09-13809, United States Securities and Exchange Commission versus Frank Bluestein. This is the date and time set for settlement on the record.

THE COURT: Good afternoon. Give counsel's appearance for the record please.

MR. LEIMAN: Tim Leiman and C.J. Kerstetter for the Securities and Exchange Commission.

MR. FOSTER: Your Honor, David Foster for Mr. Bluestein.

THE COURT: Okay. The record should reflect that we engaged in some settlement discussions this afternoon and we've reached a resolution, the parties have reached a resolution as to at least part of the case, not a full resolution. So I'm going to ask Mr. Kerstetter and Mr. Leiman if you would like to step up and put the terms on the record.

1 Mr. Bluestein, I want you to listen closely because
2 we're going to ask you some questions about this in a moment.

3 Go ahead.

4 MR. LEIMAN: Thank you, Your Honor. The terms of the
5 bifurcated settlement would be that today the defendant would
6 agree to have entered a permanent injunction against the
7 offenses therein enumerated in the commission's complaint, and
8 also as part and parcel of that would agree that in a follow-on
9 administrative proceeding, a series of industry bars would be
10 entered against him along the lines of language that's been
11 provided to the defendant. The issue of monetary relief would
12 be left open temporarily to give Mr. Bluestein the opportunity
13 to submit financial information to us in a format that we will
14 provide to him so that he can see what information we require.

15 In connection with the settlement, we will provide
16 him with the language of the injunctive relief in this case as
17 well as the industry bars in the follow-on administrative
18 proceeding.

19 THE COURT: Okay. And Mr. Foster, if you would like
20 to step up with your client, Mr. Bluestein, why don't you step
21 up. I would ask you, Mr. Foster, if the SEC has satisfactorily
22 set forth the terms of the bifurcated settlement and if there's
23 anything else you want to add.

24 MR. FOSTER: Yes, Your Honor. I do not have anything
25 to add.

1 THE COURT: Okay. And the specific language of
2 the -- of the injunction of the bar, including the industry
3 bar, was provided. Mr. Foster, do you and Mr. Bluestein, did
4 you have the opportunity to review that?

5 MR. FOSTER: Yes, Your Honor, and I also believe,
6 although I prefer that Mr. Bluestein speak for himself --

7 THE COURT: Oh, we're going to get to Mr. --

8 MR. FOSTER: -- he has had an opportunity to read it.

9 THE COURT: Yeah, we're going to get to Mr.
10 Bluestein. Mr. Bluestein, why don't you step up a little
11 closer to the mike. Mr. Bluestein, sir -- well, as a matter of
12 fact, I'll tell you what. Mr. Bluestein, I'm going to put you
13 under oath and I'm going to have Mr. Foster ask you some
14 questions about your understanding of the agreement and whether
15 that agreement is acceptable to you, so if you would raise your
16 right hand please, sir.

17 F R A N K B L U E S T E I N
18 was thereupon called as a witness herein, and after being
19 first duly sworn to tell the truth and nothing but the truth,
20 testified on his oath as follows:

21 MR. BLUESTEIN: Yes.

22 THE COURT: And Mr. Foster, you can step a little
23 closer to the mike so we can pick this up on the record.

24 MR. FOSTER: Mr. Bluestein, do you understand that
25 you are consenting today to being permanently barred from the

1 securities industry including all exchanges?

2 MR. BLUESTEIN: Yes.

3 MR. FOSTER: Were you given a document with the
4 identical language that will be incorporated for your case and
5 had an opportunity to read it?

6 MR. BLUESTEIN: Yes.

7 MR. FOSTER: I believe it was Judge Whalen's chambers
8 I believe when all three of us met.

9 MR. BLUESTEIN: Yes.

10 MR. FOSTER: Do you recall that?

11 MR. BLUESTEIN: Yes.

12 MR. FOSTER: Do you have any questions about the
13 document that was handed to you that you do not understand?

14 MR. BLUESTEIN: No.

15 THE COURT: Okay. And Mr. Bluestein, you do
16 understand you have a right on this portion of the case, if you
17 chose to go forward with the case, go forward and have the
18 summary judgment motion decided, and if you were to prevail on
19 that, to go forward and have a trial on this. Do you
20 understand that?

21 MR. BLUESTEIN: Yes.

22 THE COURT: You understand by agreeing to this part
23 of the complaint, the injunctive portion, that you will be
24 giving up your right to a trial, there will be no trial, and
25 that once Judge Cox signs the order, you will be enjoined

1 industry-wide as set forth in the language you had a chance to
2 review?

3 MR. BLUESTEIN: Yes.

4 MR. FOSTER: Your Honor, just one small
5 clarification.

6 THE COURT: Go ahead.

7 MR. FOSTER: You may have misspoken unintentionally.
8 Mr. Bluestein, do you understand there are two parts to the
9 case? The part that you're consenting to today has to do with
10 a bar of working in the securities industry in any facet. The
11 part that is left open that Judge Whalen is alluding to that
12 you have the opportunity to contest either representing
13 yourself or by attorney is the financial part. Am I right or
14 wrong?

15 THE COURT: Well, I don't think I misspoke, but just
16 to clarify -- maybe I wasn't clear.

17 MR. FOSTER: I apologize.

18 THE COURT: When I say you have a right to a trial as
19 well on the injunctive part of it, you could have the judge
20 decide that or you could have the Court decide that.

21 MR. FOSTER: I apologize.

22 THE COURT: Certainly the other aspect of this case
23 which involves financial -- the financial aspect, the monetary
24 aspect at this point in time is going to be left open, but what
25 we're settling today is merely the injunctive part. Do you

1 understand that?

2 MR. BLUESTEIN: Yes, I do.

3 THE COURT: Anybody coerced you or threatened you to
4 take the settlement, the partial settlement?

5 MR. BLUESTEIN: No.

6 THE COURT: You're doing it because you think it's in
7 your best interests?

8 MR. BLUESTEIN: Yes.

9 THE COURT: Okay. Very good. Then I will direct the
10 parties to draft the appropriate injunctive order or you can
11 present that to Judge Cox. He's going to have to sign off on
12 that.

13 Now, as to the other part of the case, the money, as
14 I indicated in chambers and I'll indicate on the record, that
15 once Judge Cox signs the injunctive order, then the parties
16 will have 60 days, Mr. Bluestein, you'll have 60 days to
17 provide the requested financial information to the SEC, okay?
18 Once you do that, they'll determine -- they'll make a
19 determination, the SEC will make a determination as to whether
20 there's some basis for settlement to the financial, the
21 monetary portion of this. At the end of those 60 days, and
22 I'll set a date certain, I will reconvene the parties, that
23 will be you, Mr. Bluestein, the SEC's attorneys, we can do that
24 by telephone, you'll advise me as to whether you've reached a
25 settlement, whether you're close to a settlement such that it

1 would be productive to come back to my court and try to hammer
2 out on the details or whether you have not reached a
3 settlement. If the latter is the case, then I will provide
4 additional time, and I'll put this in my order, Mr. Bluestein,
5 for you to respond to the pending summary judgment motion and
6 I'll go forward with a report and a recommendation on that. Do
7 you understand that, sir?

8 MR. BLUESTEIN: Yes.

9 THE COURT: Okay. Anything else for the record?

10 MR. LEIMAN: Yes, Your Honor. One sort of logistical
11 point is that the injunctive order and the industry bar will be
12 two separate pieces of paperwork.

13 THE COURT: I understand.

14 MR. LEIMAN: So the injunctive order we will present
15 for Judge Cox. The industry bar will get submitted to the
16 administrative law judge.

17 THE COURT: I understand. And the settlement
18 obviously covers both.

19 MR. FOSTER: It was -- the language in the document
20 that you gave me to review and Mr. Bluestein to review, was
21 that industry bar language or was that injunctive order
22 language?

23 MR. LEIMAN: That was the industry bar language.

24 THE COURT: The injunctive -- the injunctive order as
25 to this case relates to the allegations in this case, is that

1 correct?

2 MR. LEIMAN: It's -- it's an injunction against any
3 violations under the statutes that are in the complaint.

4 THE COURT: Right.

5 MR. LEIMAN: So, for example, it will enjoin your
6 client from any further violations of Section 5 of the
7 Securities Act and Section 10 of the Exchange Act.

8 MR. FOSTER: May I approach, Your Honor, with --

9 THE COURT: Sure.

10 (Whereupon a brief discussion was held off the
11 record)

12 THE COURT: Okay. Back on the record. I think we've
13 clarified that. Again, there's two -- actually it says
14 superseding. There's this case and then the administrative
15 case, and in terms of this case, you'll present the proposed
16 injunctive order to Judge Cox, and in terms of the
17 industry-wide injunction -- and that's -- you read, Mr.
18 Bluestein, and Mr. Foster, you had the opportunity to read the
19 language -- excuse me -- that will be presented to an
20 administrative law judge. The monetary issues that are at
21 issue in this case are reserved under the terms I just stated.
22 Hopefully in 60 days we'll make some progress on that, and if
23 not, we'll go forward with the case.

24 MR. LEIMAN: Thank you, Your Honor.

25 THE COURT: Okay. Mr. Bluestein, do you have any

1 questions, sir?

2 MR. BLUESTEIN: No.

3 THE COURT: Okay. Good luck. And I'll -- in my
4 order, I'll set forth specific dates certain that you're to get
5 back to the Court.

6 One other thing for the record. Mr. Foster, I know
7 that you have a motion for -- to withdraw as counsel that I
8 took under advisement pending these proceedings. What I'm
9 going to do is I'm going to grant that motion. I'll enter an
10 order granting that motion effective, effective after the
11 injunctive order is signed by Judge Cox.

12 What I'll do then, Mr. Bluestein, I'll give you
13 30 days to try to get another lawyer. You do that, fine. If
14 you don't do that or if you're unable to do that, you will be
15 proceeding pro se, which means you'll be representing yourself.
16 That doesn't reduce or diminish in any way your obligations to
17 this Court or your obligations to comply with orders of the
18 Court or participate in further settlement discussions
19 including providing the financial information.

20 MR. BLUESTEIN: Would you have any help for me with
21 legal aid because I have no money so what could I --

22 THE COURT: You know what? We'll give you a number
23 for legal aid.

24 MR. BLUESTEIN: I appreciate that. Thank you.

25 THE COURT: Okay. Thank you.

1 MR. LEIMAN: Thank you, Your Honor.

2 MR. FOSTER: Thank you, Your Honor.

3 And, Your Honor, again I want to put on the record
4 it's been a pleasure.

5 THE COURT: Thank you very much, Mr. Foster, and good
6 luck.

7 Oh, this doesn't have to be on the record. Mr.
8 Bluestein, we also -- I need you to give a -- for yourself --
9 and I don't know if you may be getting a lawyer or not -- give
10 the correct address and telephone number to Ms. Curry.

11 MR. BLUESTEIN: Is there a way to get ahold of her
12 because I don't know --

13 THE COURT: Sitting right here.

14 MR. BLUESTEIN: No, I know, but I don't know where it
15 is. Now it's same address that's on here but it won't be
16 after --

17 THE COURT: Well, give him our phone number, okay?

18 MR. FOSTER: Judge, thank you for your phone number.

19 MR. BLUESTEIN: My phone number?

20 MR. FOSTER: Yeah.

21 THE COURT: Give her your phone number and contact
22 the Court with the address. Okay.

23 MR. LEIMAN: Thank you, Your Honor.

24 THE CLERK: All right. Court is in recess.

25 (Court in recess at 3:34 p.m.)

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C E R T I F I C A T I O N

I, Linda M. Cavanagh, Official Court Reporter for the United States District Court, Eastern District of Michigan, do hereby certify that the foregoing pages 1 through 12 comprise a full, true and correct transcription, to the best of my ability, of the digital sound recording taken in the matter of U.S. Securities and Exchange Commission vs. Frank Bluestein, Case No. 09-13809, on Wednesday, October 24, 2012.

s/Linda M. Cavanagh
Linda M. Cavanagh, RPR, RMR, CRR

Date: November 8, 2012
Detroit, Michigan

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Case No. 09-13809

Plaintiff,

District Judge Sean F. Cox

v.

Magistrate Judge R. Steven Whalen

FRANK J. BLUESTEIN,

Defendant.

REPORT AND RECOMMENDATION

Before the Court are Plaintiff United States Securities and Exchange Commission's Motion for Partial Summary Judgment [Doc. #45] and Motion for Permanent Injunction [Doc. #53], which have been referred for Reports and Recommendations pursuant to 28 U.S.C. § 636(b)(1)(B). For the reasons discussed below, I recommend that both motions be GRANTED.

I. FACTS

Plaintiff United States Securities and Exchange Commission ("SEC") filed suit in this Court on September 28, 2009 under the Securities Act and the Exchange Act, alleging Defendant Frank Bluestein's ("Bluestein") involvement in a \$250 million Ponzi scheme. *Complaint* at ¶1.¹ In Count I, Plaintiff alleges that Bluestein violated of §§ 5(a) and 5(c)

¹ Attached as an Appendix are a number of supporting documents, including Bluestein's investigative testimony, a declaration from SEC accountant Jean Javorski, and some financial records and investor files. References to these documents are by page number, e.g., App. 5.

of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c), by selling unregistered securities. In Count II, Plaintiff alleges that Bluestein “intentionally or recklessly engaged in...devices, schemes, and artifices” to defraud, in violation of §§ 17(a)(1) of the Securities Act, 15 U.S.C. §§ 77q(a)(1). In Count III, Plaintiff alleges that Bluestein omitted material facts in selling the securities, in violation of §§ 17(a)(2) and (3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2) and (3). In Count IV, Plaintiff made untrue statements and omitted to state material facts in selling the securities, in violation of § 10(b) of the Exchange Act, 15 U.S.C. § 78j(b).

From 2002 to 2007, Bluestein was a registered representative of a broker/dealer, as well as an associated person of a registered investment advisor. Bluestein and his firm sold approximately \$74 million of Ed May securities to approximately 800 investors. Ed May was, to put it bluntly, a con artist who devised a massive Ponzi scheme for which he was indicted in 2009. May pled guilty and was sentenced to 16 years in prison. Relevant to the present motions, the SEC alleges that Bluestein violated 15 U.S.C. § 77e by selling unregistered Ed May (“E-M”) securities, and that he committed fraud, in violation of 15 U.S.C. §§ 77(q)(A) and 78(j), by failing to disclose to investors that he received “referral fees” from Ed May.

In investigative testimony before the SEC, Bluestein admitted that the E-M securities he sold were not registered (App. 24, 28). Bluestein also admitted that he received a commission, or “referral fee” of 2.5% of the money raised from the sale of May’s securities (App. 27). At one point, the commission was raised to 4%. *Id.* He conceded that he did not

tell investors about the commission or fee he was earning (App. 34). Investors also testified that Bluestein never disclosed to them that he was receiving a commission from Ed May (App. 282-283, 285-287, 290, 292, 294).

On October 24, 2012, Bluestein appeared in this Court for a settlement conference, accompanied by his attorney, David Foster. The parties reached a settlement agreement as to the SEC's request for injunctive relief, leaving the monetary issue open. Specifically, Bluestein agreed to a permanent injunction barring him from working in the securities industry for all time. This settlement was placed on the record, and a transcript of the proceedings is filed as Doc. #51. Counsel for the SEC placed the terms on the record as follows:

“The terms of the bifurcated settlement would be that today the defendant would agree to have entered a permanent injunction against the offenses therein enumerated in the commission's complaint, and also as part and parcel of that would agree that in a follow-on administrative proceeding, a series of industry bars would be entered against him along the lines of language that's been provided to the defendant. The issue of monetary relief would be left open temporarily to give Mr. Bluestein the opportunity to submit financial information to us in a format that we will provide to him so that he can see what information we require.

In connection with the settlement, we will provide him with the language of the injunctive relief in this case as well as the industry bars in the follow-on administrative proceeding.” Transcript, 4.

Bluestein testified under oath that he understood that he was consenting “to being permanently barred from the securities industry including all exchanges.” Transcript, 5-6. He said that he understood the terms of the settlement, and understood that he would be giving up his right to trial on the SEC's claim for injunctive relief. *Id.* 6-8. He denied that anyone

coerced him or threatened him to agree to the settlement, and acknowledged that he was agreeing to the settlement because he believed it to be in his best interest. *Id.* 8.

II. STANDARD OF REVIEW

A. Summary Judgment

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R.Civ.P. 56(c). To prevail on a motion for summary judgment, the non-moving party must show sufficient evidence to create a genuine issue of material fact. *Klepper v. First American Bank*, 916 F.2d 337, 341-42 (6th Cir. 1990). Drawing all reasonable inferences in favor of the non-moving party, the Court must determine “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Entry of summary judgment is appropriate “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celetox Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). When the “record taken as a whole could not lead a rational trier of fact to find for the nonmoving party,” there is no genuine issue of material fact, and summary judgment is appropriate. *Simmons-Harris v. Zelman*, 234 F.3d 945, 951 (6th Cir. 2000).

Once the moving party in a summary judgment motion identifies portions of the

record which demonstrate the absence of a genuine dispute over material facts, the opposing party may not then “rely on the hope that the trier of fact will disbelieve the movant’s denial of a disputed fact,” but must make an affirmative evidentiary showing to defeat the motion. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479 (6th Cir. 1989). The non-moving party must identify specific facts in affidavits, depositions or other factual material showing “evidence on which the jury could *reasonably* find for the plaintiff.” *Anderson*, 477 U.S. at 252 (emphasis added). If, after sufficient opportunity for discovery, the non-moving party cannot meet that burden, summary judgment is clearly proper. *Celotex Corp.*, 477 U.S. at 322-23.

B. Permanent Injunctive Relief

In *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 2008 WL 2218427, *7 (E.D.Mich. 2008)(Cox, J.), the Court set forth the standard for granting permanent injunctive relief as follows:

“The standard for a permanent injunction is essentially the same as for a preliminary injunction with the exception that the plaintiffs must show actual, as opposed to a likelihood of, success on the merits.’ *A.C.L.U. v. Rutherford County*, 2006 WL 2645198 (6th Cir.2006) (citing *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 546 n. 12, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987)). Thus, the Court must consider four factors when determining to grant or deny Plaintiff’s request for a permanent injunction: 1) the Plaintiff’s success on the merits; 2) whether Plaintiff may suffer irreparable harm absent the injunction; 3) whether granting the injunction will cause substantial harm to others; 4) the impact of an injunction upon the public interest. *Id.*”

III. DISCUSSION

A. Summary Judgment

Despite being ordered to do so, Bluestein has not filed a response to the motion for summary judgment, and likewise has not responded to the motion for permanent injunction. Therefore, the facts set forth in the motion for summary judgment are deemed undisputed. Fed.R.Civ.P. 56(e)(2) (“If a party...fails to properly address another party’s assertion of fact as required by Rule 56(c), the court may...consider the fact undisputed for purposes of the motion.”). In addition, Rule 56(e)(3) provides that if a party fails to respond, the Court may “grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it.” I note that the Plaintiff’s assertions of facts are well-supported by its attached exhibits. For this reason alone, summary judgment should be granted on Counts I to IV.

The Plaintiff’s exhibits clearly show a *prima facie* Security Act violation, i.e., that no registration statement was on file for the E-M securities, that Bluestein directly or indirectly sold or offered to sell the securities, and that interstate means were used in connection with the offer or sale. *See SEC v. Cavanaugh*, 445 F.3d 105, 111, n. 13 (2nd Cir. 2006). In addition, Bluestein has not met his burden of showing that his sales fell within an exemption from registration. *See SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953). Moreover, apart from the fact that Bluestein has not responded to the summary judgment motion, he has *admitted* that he sold unregistered securities.

As to the fraud claims under § 17(a) of the Securities Act and § 10(b) of the

Exchange Act, the Plaintiff must show that Bluestein directly or indirectly (1) employed any device, scheme or artifice to defraud; (2) obtained money or property by means of an untrue statement of material fact or omission of material fact; and (3) engaged in any transaction, practice or course of business that operates as a fraud or deceit upon the purchaser. *Basic, Inc. v. Levinson*, 485 U.S. 224, 231 (1988). A misstatement or omission is material if a reasonable investor would consider the fact important in making an investment decision. *Id.* at 231-232.

Again, in his investigative testimony before the SEC, *supra*, Bluestein admitted that he was receiving significant additional compensation, or “referral fees,” from Ed May, and that he failed to disclose that fact to investors. This also establishes the requisite element of scienter. *See S.E.C. v. Curshen*, 372 Fed.Appx. 872, 882, 2010 WL 1444910, *8 (10th Cir. 2010)(“Once the district court found that Mr. Curshen had been compensated for his promotional activities, there is nothing controversial about drawing the logical conclusion—he knew he was being compensated, and he knew failing to disclose this compensation would mislead those reading his postings by making his opinions seem objective.”).

Accordingly, the SEC should be granted summary judgment on Counts I to IV of its complaint, granting both injunctive and monetary relief, in the form of disgorgement and prejudgment interest.

B. Monetary Relief–Disgorgement

As to disgorgement, in *S.E.C. v. Blavin*, 760 F.2d 706, 713 (6th Cir. 1985), the Sixth Circuit reasoned that disgorgement is meant to compel “‘a defendant to give up the amount by which he was unjustly enriched’ rather than to compensate the victims of fraud.” *Id.* (Citing *S.E.C. v. Commonwealth Chemical Securities, Inc.*, 574 F.2d 90, 102 (2d Cir. 1978)). Moreover, “[o]nce the SEC has established that a defendant has violated the securities laws, the district court possesses the equitable power to grant disgorgement without inquiring whether, or to what extent, identifiable private parties have been damaged by...fraud.” *U.S. S.E.C. v. Midwest Investments, Inc.*, 1996 WL 229783, *7 (6th Cir. 1996) (citing *S.E.C. v. Blavin*, 760 F.2d 706, 713 (6th Cir. 1985)). Because disgorgement is an equitable remedy, and because a precise calculation may be impossible it “need only be a reasonable approximation of profits causally connected to the violation.” *S.E.C. v. Salyer*, 2010 WL 3283026 at *2 (E.D. Tenn. 2010) (citing *S.E.C. v. Inorganic Recycling Corp.*, 2002 WL 1968341 at *2 (S.D.N.Y. 2002)).

The SEC calculates the total fees generated by Bluestein’s sale of E-M securities at \$3,603,538.90, including \$1,383,225 paid by investors to Bluestein’s company, Fast Frank, Inc., and \$2,220,313.90 in referral fees paid to Bluestein and his company. *See App.* 561-563. I recommend that the Court order disgorgement in the amount of \$3,603,538.90.

C. Monetary Relief–Prejudgment Interest

The SEC also seeks prejudgment interest of \$835,932.24. “The decision whether to grant prejudgment interest and the rate used if such interest is granted are matters confided

to the district court's broad discretion, and will not be overturned on appeal absent an abuse of that discretion.” *Endico Potatoes, Inc v. CIT Group/Factoring, Inc.*, 67 F.3d 1063, 1071-72 (2d Cir. 1995). In deciding whether to grant an award of prejudgment interest, a court should consider “(1) the need to fully compensate the wronged party for actual damages suffered; (2) considerations of fairness and the relative equities of the award; (3) the remedial purpose of the statute involved; and/or (4) such other general principles as are deemed relevant by the court.” *S.E.C. v. Mohn et al.*, No. 02-74634, 2005 WL 2179340 at *8 (E.D. Mich., Sept. 9, 2005) (citing *Wickham Contracting Co v. Local Union No. 3*, 955 F.2d 831, 833-34 (2d Cir. 1992)). By awarding prejudgment interest in addition to disgorgement, a defendant is prevented “from obtaining the benefit of an interest free loan procured through their illegal activity.” *S.E.C. v. Gagnon*, 2012 WL 994892, *13 (E.D. Mich. 2012)(Steeh, J.).

The SEC suggest using the “underpayment rate” used by the Internal Revenue Service as the yardstick by which to measure prejudgment interest. *See Gagnon, supra, citing S.E.C. v. First Jersey Sec. Inc.*, 101 F.3d 1450, 1476 (2nd Cir. 1996). Using that rate beginning August, 2007, the last month Bluestein received E-M securities related payments, the SEC calculates prejudgment interest at \$838,932.24. I recommend that the request for prejudgment interest in that amount be granted.

D. Monetary Relief–Civil Penalty

The SEC also asks the court to impose civil penalties. Pursuant to Section 20(d) of the Securities Act, Section 209(d)(3) of the Exchange Act, and Section 209(e) of the Advisers Act, the SEC may seek civil penalties for the violation of federal securities laws. The criteria

for imposing a civil penalty is based upon the Court's discretion in light of the facts and circumstances of each case. *Id.* Courts look to the same factors when imposing civil penalties as in the issuance of a permanent injunction. *See S.E.C. v. Brethen*, 1992 WL 420867 at *25 (S.D. Ohio 1992). (*See Sec. E, infra*).

Bluestein no doubt merits a civil penalty, but regardless, I do not recommend imposing one. While I recognize the egregiousness of the Bluestein's conduct, I fail to see any marginal benefit in imposing additional financial penalties. "[T]he civil penalty framework is of a 'discretionary nature' and each case has 'its own particular facts and circumstances which determine the appropriate remedy to be imposed'" *S.E.C. v. Opulentica, LLC*, 479 F. Supp.2d 319,331 (S.D.N.Y. 2007) (*citing S.E.C. v. Moran*, 944 F. Supp. 286, 296 (S.D.N.Y. 1996)). With disgorgement and prejudgment interest, Bluestein in on the hook for \$4,442,471.14. At this point, it is doubtful that he can pay even that much, and at some point the penalties become "piling on."

E. Injunctive Relief

Finally, the Court should grant a permanent injunction, not only barring future violations of the Securities Act and the Exchange Act, but permanently barring Bluestein from working in the securities industry. Bluestein's activities were egregious (he was a major participant in a multi-million dollar Ponzi scheme), he knew he was selling unregistered securities and withholding material information from investors, his conduct was recurrent (it continued for a period of five years), and he has provided no assurances against future violations. *See S.E.C. v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980).

Perhaps even more importantly, Bluestein agreed in open court, under oath, to accept the terms of a settlement agreement whereby he would be permanently barred from working in the securities industry, including exchanges. This Court has the equitable power to enforce a settlement agreement, *Brock v. Scheuner Corp.*, 841 F.2d 151, 154 (6th Cir.1988), so long as the remedy is restricted to cases where there is no dispute or ambiguity as to either the entry into, or the terms of the agreement. *Kukla v. National Distillers Products Co.*, 483 F.2d 619, 621 (6th Cir.1973). An agreement to settle is enforceable when “parties have agreed on the essential terms of a settlement, and all that remains is to memorialize the agreement in writing....” *Re/Max International, Inc. V. Realty One, Inc.*, 271 F.3d 633, 646 (6th Cir. 2001). In this case, the terms of the settlement as to injunctive relief were clearly explained to Bluestein, both at the settlement conference and on the record. There was nothing ambiguous about the terms, i.e., that Bluestein would be forever barred from the securities industry. He swore under oath that he understood and agreed to the terms. Accordingly, Plaintiff’s motion for a permanent injunction should be granted.

IV. CONCLUSION

For these reasons, I recommend that Plaintiff’s Motion for Partial Summary Judgment [Doc. #45] and Motion for Permanent Injunction [Doc. #53] be GRANTED; that Defendant Bluestein be permanently enjoined from future violations of the Securities Act and the Exchange Act and from working in the securities industry; that he be ordered to disgorge his ill-gotten gains in the amount of \$3,603,538.90; and that he be ordered to pay prejudgment interest in the amount of \$838,932.24. I further recommend that Defendant Bluestein not be

assessed a civil penalty.

Any objections to this Report and Recommendation must be filed within fourteen (14) days of service of a copy hereof, including weekends and intervening holidays, as provided for in 28 U.S.C. §636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sullivan*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within fourteen (14) days of service of any objecting party's timely filed objections, including weekends and intervening holidays, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

s/ R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: March 7, 2013

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States Securities and Exchange
Commission,

Plaintiff,

v.

Case No. 09-cv-13809

Frank Bluestein,

Honorable Sean F. Cox
United States District Court Judge

Defendant.

OPINION AND ORDER
ACCEPTING AND ADOPTING REPORT & RECOMMENDATION

On September 28, 2009, the Plaintiff United States Securities and Exchange Commission (“the Commission”) filed this action, alleging that Defendant Frank J. Bluestein (“Bluestein” or “Defendant”) was involved in a \$250 million Ponzi scheme. The Complaint alleges violations of: (1) Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)]; (2) Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]; (3) Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]; (4) Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]; and (5) Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)]. (Docket Entry No. 1.)

The Court referred this action to Magistrate Judge R. Steven Whalen. (Docket Entry No. 29.)

On July 11, 2012, the Commission filed its Motion for Partial Summary Judgment, moving for summary judgment with regard to Counts 1 through 4 in the Complaint. (Docket Entry No. 45.)

The motion further requests that the Court enter an order (1) enjoining Bluestein from further

violations of the provisions of the Securities Act and the Exchange Act identified in Counts 1 through 4 in the Complaint and (2) requiring Bluestein to pay disgorgement in the amount \$3,603,538.90, prejudgment interest in the amount of \$835,932.24, and a civil penalty in an amount to be set by the Court. (Docket Entry No. 45, at 1–2.)

On January 24, 2013, the Commission filed its “Motion for Entry of Permanent Injunction Based on Defendant’s Consent.” (Docket Entry No. 53.) The motion contends that the Commission:

hereby moves this Court to enter an order of judgment that permanently enjoins and restrains Defendant Frank Bluestein from violation of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 (‘Securities Act’) [15 U.S.C. §§ 77e(a), 77(c) and 77q(a)]; Sections 10(b) and 15(a) 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] promulgated thereunder, based on Defendant Bluestein’s consent to entry of such an order in open court before Judge Whalen under oath on October 24, 2012.

(*Id.* at 1–2.)

On March 7, 2013, Magistrate Judge R. Steven Whalen issued his Report and Recommendation (“the R&R”), which recommends that (1) the Court **GRANT** Docket Entries 45 and 53; (2) Bluestein be permanently enjoined from future violations of the Securities Act and the Exchange Act; (3) Bluestein be permanently enjoined from working in the securities industry; (4) Bluestein be ordered to disgorge his ill-gotten gains in the amount of \$3,603,538.90; (5) that Bluestein be ordered to pay prejudgment interest in the amount of \$838,932.24; and (6) Bluestein not be assessed a civil penalty. (Docket Entry No. 55, at 11–12.)

Pursuant to FED. R. CIV. P. 72(b), a party objecting to the recommended disposition of a matter by a Magistrate Judge must file objections to the R&R within fourteen (14) days after being served with a copy of the R&R.

The time for filing objections to the R&R has expired and the docket reflects that neither

party has filed any objections to the R&R.

IT IS ORDERED that the Court hereby **ADOPTS** the March 7, 2013, R&R [Docket Entry No. 55];

IT IS FURTHER ORDERED that Docket Entries 45 and 53 are **GRANTED**;

IT IS FURTHER ORDERED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit 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) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

IT IS FURTHER ORDERED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the

statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;

IT IS FURTHER ORDERED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

(a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;

(b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or

(c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h];

IT IS FURTHER ORDERED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are permanently restrained and enjoined from violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] by the use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of any security without being properly registered as a broker or dealer in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)];

IT IS FURTHER ORDERED that Defendant is liable for disgorgement of \$3,603,538.90, representing profits gained as a result of the conduct alleged in the Complaint, together with interest thereon in the amount of \$838,932.24. Defendant shall satisfy this obligation by paying \$4,442,471.14 to the Securities and Exchange Commission within 14 days after entry of this Order.

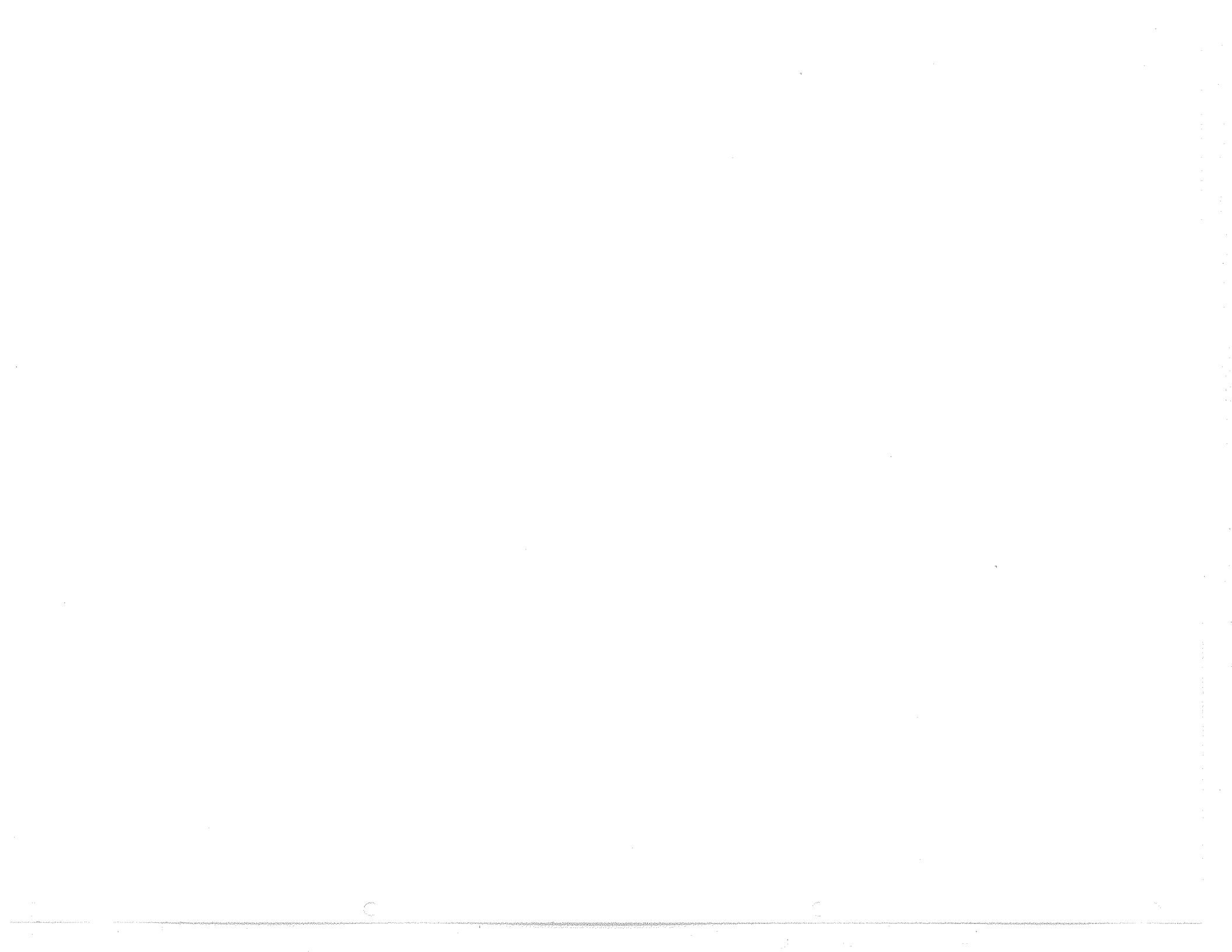
Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Frank Bluestein as a defendant in this action; and specifying that payment is made pursuant to this Order.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Order to the United States Treasury.

The Commission may enforce the Court's Order for disgorgement and interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after



**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

United States Securities and Exchange
Commission,

Plaintiff,

v.

Case No. 09-cv-13809

Frank Bluestein,
Judge

Honorable Sean F. Cox
United States District Court

Defendant.

JUDGMENT

The Court having ordered that Count V is dismissed with prejudice and granted:
(a) Plaintiff Securities and Exchange Commission's (the "Commission's") motion for summary judgment on Counts I through IV of its Complaint against Defendant Frank Bluestein [Docket Entry No. 45]; and (b) Plaintiff's motion for entry of permanent injunction on all counts based on Defendant Bluestein's consent to entry of such an order in open court before Judge Whalen under oath on October 24, 2012 [Docket Entry No. 53]:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by

using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit 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) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

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

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h];

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] by the use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of any security without being properly registered as a broker or dealer in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)];

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$3,603,538.90, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$838,932.24. Defendant shall satisfy this obligation by paying the Securities and Exchange Commission according to the terms and instructions outlined in the

Opinion and Order Accepting and Adopting Report & Recommendation [Docket Entry No. 57, at 5 & 6];

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this action is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

Dated: May 6, 2013

s/ Sean F. Cox
Sean F. Cox
U. S. District Judge

I hereby certify that on May 6, 2013 the above document was served on counsel of record via electronic means and upon Frank Bluestein via First Class Mail at the address below:

Frank Bluestein

██████████
Northville, MI ██████████

Dated: May 6, 2013

s/ Jennifer McCoy
Case Manager

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• About Us

Who Are We?



Nathan Bluestein - President Pivotal Directions

I started Pivotal Directions over 2 years ago. I had just sold my portfolio management company and started trading the S&P e-mini full time.

My former clients kept insisting I teach them this "futures thing." I started teaching them to trade and found that I loved teaching.

I learned to trade stocks and options from my father, who was a master at picking stocks, when I was 13 years old.

At the age of 22, I co-managed a 100 million dollar fund. When the market started tanking, I moved the majority of our clients' money to cash (because I thought the market was going to continue to crash), the regulatory agencies came calling and forbade me to take my clients out of the market. I was shocked really. That sucked, and I didn't feel their rules worked for the best interest of my clients and their money so I quit! Did you know such rules exist and affect your investments?

It is unfortunate that our financial system which includes the stock and futures markets is hardly known by the majority of our citizens. When I graduated high school I went to

college at Michigan State University and now that I look back, I realize that this "stuff" is not taught there.

I paid for my college education (\$100,000+) trading stocks and options as taught to me by my father and actually completed my finance degree without learning how to trade at school. Amazing when you think about it.

I intend on turning that around in my own little corner of the world and I hope you are excited to learn too.

I look forward to teaching our members live, daily – how to trade futures successfully. Imagine waking up tomorrow without worrying about how to make more money. But rather knowing you are learning one way to make money that has been around since the 1800's and learning in a way that will help ensure you are successful. What day is better than today to change your financial life forever?

About Pivotal Directions

After years of trading stocks and options, having to always diagnose dozens of stocks and waiting for the best trade setups among all of them, trying to find the right strategy (calls, puts, spreads, etc...), and the right strike price, it was just too much work and frustration to try to make money in the market.

Pivotal Directions was created to teach others how to successfully trade the S&P E-mini Futures. The futures market allows for opportunities to make a living just trading one instrument. No more worrying about dozens of stocks and strike prices. We don't have to worry about in the money, out of the money, calls, puts, straddles, or spreads. With futures, when we buy we buy, when we sell we sell, it's that simple. As futures traders, we are also not confined to 9:30 am – 4 pm trading, futures trade nearly 24 hours, so we can find opportunities before the equity markets open and after they close. During emergencies and unpredictable events that happen when the market is closed.

We teach traders, of all experience levels, strategies that identify high probability buy and sell areas. We teach our members how to successfully find trades that have targets of 3, 5, and 10+ points, with only risking very little. Our strategies can be used at all times, and its not unlike our members to have made their daily profit goals before 9:30 am. Wouldn't you love that?

Join us now and you too can learn to "make money at home in your underwear".

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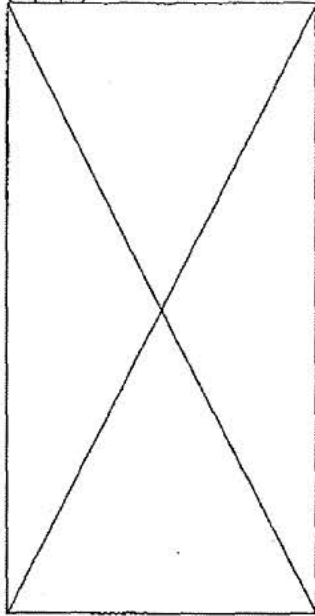
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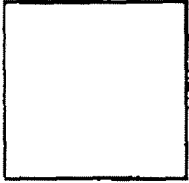
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If you work full-time and can't trade with us daily in the chat room, this might be just the thing for you !!! You can get the info at night and be done trading before the market opens!

If you already trade the S&P E-Mini and would love some extra signals, numbers, trading opportunities to look out for then this is for you. If you don't need the daily hand holding in the chat room and do not need to be trained in our successful techniques sign up for Coach Frank's Signals.

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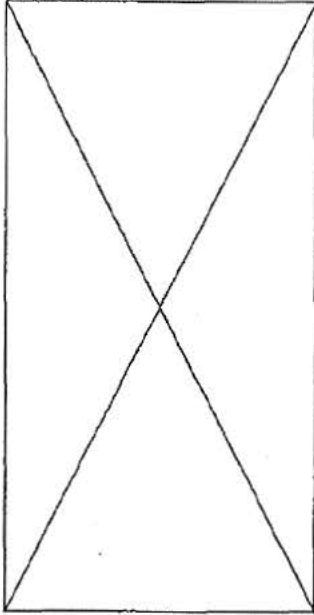
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Hello my name is Frank Bluestein,

I am the chief stock picker for Freedom Road Promotions Inc. Let me tell you about myself, our staff and the Freedom Road Trading philosophy on buying stocks and investing in the market.

I have been buying and selling for thirty eight years, most of those years as a private investor. I was a stock broker for 10 years.

In 2002 I started my own managed account for other people. I was number two financial advisor at my broker dealer in 2003 and the number one financial advisor in 2004. In 2005 money under management topped 75 million dollars. This grew to over 100 million dollars by 2006. As a result it made me portfolio manager of the year.

I retired from corporate life in 2007 and now I am here to offer my services to you. We offer the weekly podcast which I invite you to listen to at your leisure. This will give you our outlooks on the markets and offer picks. We are continually updating our website with fresh information, forecasts and our successes will be available to view also.

Our Philosophy:

To achieve the success that we want with the market, my staff and I seek the opportunities of the ranges that stocks trade in. The market dictates what we should do. Keep in mind that our philosophy is BUY, Hold and SELL, with the emphasis on HOLD. In our view, hold can be as short as days and as long as months, even years.

In our view, profits are the most important element. So, when we can realize a fair profit on our buys, we take advantage of that opportunity, confident that, in this type of market, what goes up will go down (and then up) again. We may not exit at the top in every case, but we will try to take advantage of past histories and conditions in the market and develop at least temporary exit strategies. Our goal is to bring above average returns to you in any type of market scenario. We seek stocks that are trading at the bottom of their typical trading ranges. We buy when they are low and, when they are near the top of that range, we sell.

We also like dividend stocks. We buy these with the same philosophy. Most of the dividend stocks in our portfolio pay over 7% dividends, some monthly, some quarterly. The advantage of dividend stocks is that while the stock goes up in price, it is yielding a very attractive dividend.

There are no guarantees when investing, but our style of buying, selling and shifting into different sectors will give you an edge and complement your own investment philosophy.

We thank you for your continued support and wish you well in your investing. We expect you to be a regular subscriber for a long time.

Disclaimer:

We want you to enjoy our website and use it properly. Please read the following carefully. I do not hold a license anymore to sell stocks and neither does anyone on my staff. The Freedom Road Trading website is an educational website only. There is the potential for profit for the users of the site. As always when investing in the stock market you have an inherent risk to losing your capital.

Yours truly,
Frank Bluestein and staff

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Mission

In response to the “Buy, Hold and Pray” philosophy of most investors and their advisors, Freedom Road was created to help instruct the individual investor to make educated, informed investment decisions. “Luck is not an investment strategy.”

Meet the Freedom Road Research Team

Frank Bluestein

Frank has been picking hot stocks for over 40 years. His unique approach has found big opportunities in both dividend paying stocks and growth stocks with limited risk. After many years as one of the nation’s leading financial advisors, Frank is now sharing his million dollar secrets exclusively with members of Freedom Road.

Frank’s vision is to share his hard earned experience and success with investors on a global scale.

Joe Malgeri

Joe is an adjunct college professor, independent trainer, developer of an upscale Tennessee community and the author of two books for teenagers and their parents. Joe’s interest in trading peaked in the late 2000’s when his 401k became a 101k, and he, like millions of others, discovered that all advisors are not equal. Most cannot outperform the S&P 500.

Since then Joe has changed his luck in the market and meeting Frank has been the cornerstone for that mindset. Learning many important lessons from Frank and under his guidance Joe now manages his own portfolio. He now teaches others how to be successful in the marketplace sharing his insight and personal experiences.

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Joe's luck changed when he met Frank, from whom he learned many important lessons. Today, Joe manages his own portfolio online, with Frank as a guide, while teaching others how to do the same.

Gary Young

Gary spent 33 years as a member of the General Motors Sales, Service, Marketing and Research staff, retiring in 2003. For the past five years, Gary has worked with "Doc" [Frank] in marketing and research. Favorite Quote: "If you don't take care of your money, who will?"

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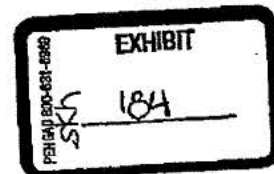
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PBT (Permian Basin Trust) Bought \$13.50 September 13, 2007 SOLD \$24.80 April 11, 2008

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GLD (streetTRACKS Gold) Bought \$82.56 January 2, 2008 SOLD \$95.99 April 11, 2008

AMX (America Movil SAB) Bought \$59.78 March 6th, 2008 SOLD \$66.21 April 2, 2008

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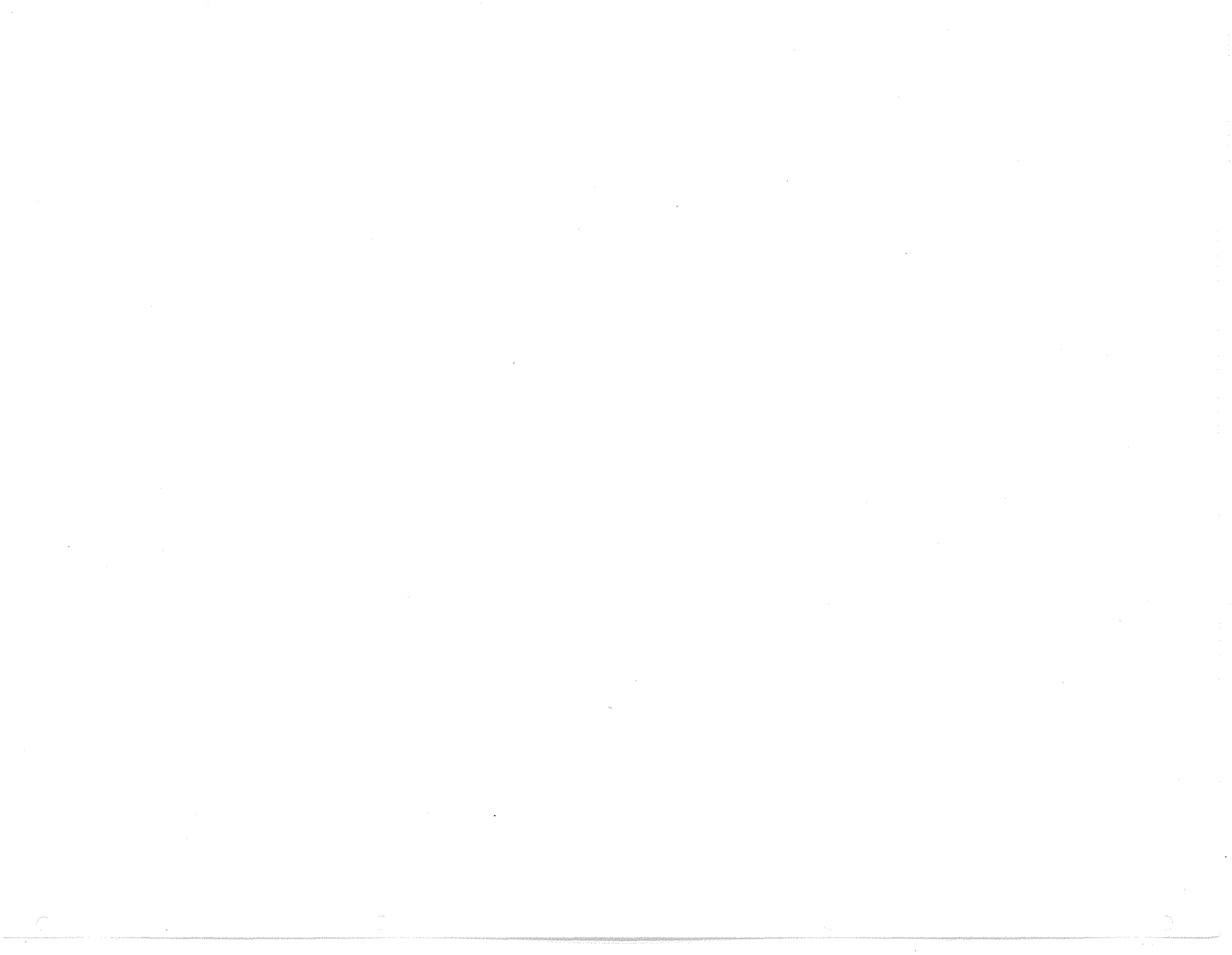
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Frank Bluestein Resurfaces With New Stock Picking Podcast

By [Iadcantu](#) on July 8, 2009 United States of America

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Fox Detroit erroneously labeled Frank Bluestein as "Frankie Blue". Irresponsible note taking on behalf of one television reporter Rob Wolchek is to blame for this error.

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FOR IMMEDIATE RELEASE

([Free-Press-Release.com](#)) July 8, 2009 --

FreedomRoadTrading.Com has launched recently with some new features for [stock traders](#). This website has been highly anticipated among the at-home traders across the country. It is part of a large online promotion through ICantU Media LTD which is based out of Chicago.



The site features Frank Bluestein a Michigan based business developer Frank Bluestein, a retired financial advisor who ran a [stock portfolio](#) in excess of 100 million dollars. Bluestein delivers a power packed daily podcast in addition to featuring his favorite stock picks on the site. Subscribers have a chance to listen to a seasoned professional when it comes to [stock trading](#).

Fox Detroit erroneously labeled Frank Bluestein as "Frankie Blue". Irresponsible note taking on behalf of one television reporter Rob Wolchek is to blame for this error. Mr. Bluestein has never been promoted with this moniker.

This new site has nothing to do with Mr. Bluestein's former business ventures. Freedom Road Trading is the direct result of three years of solid planning before its initial launch in 2007.

The idea to create the site is a result of careful evaluation of the world economy. "I feel that this site launch will definitely help those who care about the market. It is created for the novice as well as the seasoned individual. The subscriber will get a chance to get valuable insight from a daily podcast that gets sent out on a regular basis. We are especially excited about the energy stocks and the auto market".

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