

ORIGINAL

CTS

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FORT WORTH DIVISION
2009 MAY 11 AM 11:03

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

CLERK OF COURT

SECURITIES AND EXCHANGE COMMISSION,

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Plaintiff,

COMPLAINT

v.

Civ. No.:

**KISELAK CAPITAL GROUP, LLC,
GEMSTAR CAPITAL GROUP, INC.,
MICHAEL J. KISELAK, and
JEFFREY J. SYKES,**

4-09CV-256-A

Defendants.

Plaintiff Securities and Exchange Commission alleges:

BACKGROUND

1. From approximately June 2007 to the present, Michael J. Kiselak solicited investments in Kiselak Capital Group, LLC ("KCG"). Kiselak raised at least \$24 million from 14 investors by promising high returns and misrepresenting how investor funds would be invested. For example, Kiselak told investors that KCG made a 2.25% per month profit trading treasury bills. In fact, Kiselak invested all investor funds in Gemstar Capital Group, Inc., a California-based private equity and venture capital fund. In addition, Kiselak failed to disclose to investors that KCG took a 35% performance fee on all trading profits.

2. In April 2009, Kiselak requested that Gemstar provide brokerage statements substantiating the value of KCG's investments. Gemstar, through its president, Jeffrey J. Sykes, produced to Kiselak a brokerage statement showing that Gemstar, as of March 31, 2009, had over \$23 million in segregated accounts for the benefit of KCG. Sykes fabricated this document. As of March 31, 2009, Gemstar had only \$20 million in its brokerage accounts. And these

monies were not segregated for the benefit of KCG investors. WBB Securities did not draft, sign, or send the above-referenced account statement to Gemstar or Sykes.

3. By conduct detailed in this Complaint, Defendants violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. Unless enjoined, Defendants are likely to commit such violations again.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this action under 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].

5. Defendants, directly or indirectly, used the means or instruments of interstate commerce, the mails, or the facilities of a national securities exchange in connection with the acts described herein.

6. Venue is proper under 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] because certain of the transactions, acts, practices, and courses of business occurred within this judicial district.

DEFENDANTS

7. Kiselak Capital Group, LLC, is a limited liability company organized in 2007 under the laws of the state of Texas. Its registered principal place of business is Kiselak's residence in Westlake, Texas. KCG is not registered with the Commission.

8. Gemstar Capital Group, Inc., is a corporation organized in 2003 under the laws of the state of Nevada. Its principal place of business is 19 E. Citrus, Suite 301, Redlands, California 92373. Gemstar is not registered with the Commission.

9. Michael J. Kiselak (CRD# 4816462), age 42, of Westlake, Texas, is the principal of KCG. Kiselak is a former NFL player, and played for the Dallas Cowboys from 1998 to 2000. He is not currently affiliated with a registered broker-dealer or investment adviser. He currently holds a series 7 license that was termed in 2006, and has no known disciplinary history.

10. Jeffrey J. Sykes, age 51, of Redlands, California, is the president of Gemstar. He does not hold any securities licenses.

STATEMENT OF FACTS

A. KCG's Offering

11. In or around June 2007, Kiselak formed KCG and began soliciting funds from investors. Kiselak marketed the investment as a "friends and family" fund.

12. In his offering documents and communications with investors, Kiselak represented the following:

- (i) KCG investor funds are invested with a portfolio manager that "developed a computer program where he traded the 30-year T-Bill at Institutional/Wholesale levels, also known as agency to agency transactions. [The manager] left to go on his own as an independent Proprietary Trader. [The manager's] reputation allowed him to gain clients quickly and over the past eleven 11 years, has grown his portfolio to over \$1.5 billion;"
- (ii) The investment is "managed through KCG in conjunction with two AA rated financial institutions in New York City. These 'Wholesale/Institutional' transactions are, at all times, overseen by the professional management of highly experienced financial experts, who provide KCG with information as to

the gains achieved on a regular basis. The transaction is based on the daily purchase and resale of high-grade government securities;” and

- (iii) “Historically, [KCG’s] 10-year ‘monthly average’ has been better than 2% to the client. [Kiselak’s] personal experience is that since I have been involved over the past 3 years, [KCG has] done a little better: averaging more than 2.25% per month.”

B. KCG’s Investor Funds Were Not Invested As Represented

13. Kiselak and KCG invested over 95% of the investor funds with Gemstar, a private equity and venture capital company. Gemstar invested in a variety of venture capital investments, including vineyards, a private jet, and other private investments.

14. Until allocated to a particular private equity or venture capital investment, Gemstar maintains investors’ funds, including KCG’s investments, in money market funds and capital reserve subaccounts.

15. Contrary to Kiselak’s offering documents and communications with investors, KCG investor funds were not invested in T-bills or managed in conjunction with New York-based financial institutions.

C. KCG Failed to Disclose Its 35% Performance Fee

16. In April 2009, Gemstar provided KCG with an account statement that showed for the first quarter of 2009, KCG purportedly earned between 2.89% and 3.77% monthly (which is a total of 9.61% for the quarter, or approximately \$2.7 million), and that KCG’s ending balance, as of March 31, 2009, was \$26,566,981.

17. Using this account statement, Kiselak calculated quarterly returns for KCG’s investors and produced to them account statements reflecting profits of 6.7% for the quarter

(2.23% per month). The return on investment percentage reflected in KCG's communications to its investors represented only 65% of the profit Gemstar purportedly earned investing on behalf of KCG. Kiselak, without disclosure to KCG investors, took 35% of the purported Gemstar profits as a performance fee.

18. Gemstar's brokerage records do not reflect significant profits from trading. Gemstar invested approximately \$20 million "on behalf" of KCG investors in money market funds or similar securities. During the first quarter of 2009, Gemstar's account at WBB Securities earned approximately \$20,000 or 0.09% on these money market-type investments. And Gemstar's brokerage accounts at Royal Alliance Associates and Hanlon Investment Management, totaling approximately \$1.8 million, earned approximately \$3,200 for the month of March 2009.

19. Gemstar misrepresented to Kiselak that KCG investors earned approximately \$2.7 million during the first quarter of 2009, a 9.6% return on investment.

D. Sykes Falsified Brokerage Account Information

20. In April 2009, Kiselak requested supporting documentation from Gemstar/Sykes for the March 31, 2009 KCG account statement. In response, Sykes sent to Kiselak a letter that he purportedly received from WBB Securities, Gemstar's broker-dealer, showing that Gemstar's accounts at WBB Securities held \$23,462,541.11 as of March 31, 2009, and that all of the money was held "on behalf" of KCG.

21. WBB Securities did not draft, sign, or send the above-referenced letter. Instead, WBB Securities sent an April 23, 2009 letter to Sykes, indicating that a Gemstar account held \$20,462,541.11 as of March 31, 2009 – exactly \$3 million less than the amount represented in the letter Sykes provided to Kiselak.

22. The WBB Securities' letter did not indicate that the funds were held "on behalf" of anyone, including KCG.

23. After receiving the forged letter from Sykes, KCG reinvested in Gemstar.

E. Recent depletion of Brokerage Account Funds

24. On April 21, 2009, Gemstar, at Sykes direction, transferred approximately \$759,570 from its accounts at WBB Securities to KCG. On May 7, 2009, Gemstar, at Sykes direction, transferred approximately \$220,000 from its accounts at WBB Securities to KCG leaving, as of May 7, 2009, approximately \$19 million under the control of Gemstar and Sykes at brokerage accounts at WBB Securities as of May 7, 2009.

25. Gemstar and Sykes have been unable to account for at least \$7 million of KCG investor funds.

FIRST CLAIM

**FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES
Violations of Exchange Act Section 10(b) and Exchange Act Rule 10b-5**

26. The Commission realleges paragraphs 1 through 25.

27. Defendants, with scienter, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (i) employed devices, schemes, or artifices to defraud; (ii) made untrue statements of material fact or omissions 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/or (iii) engaged in acts, practices or courses of business that operated or would operate as a fraud or deceit.

28. Defendants representations and omissions were material.

29. By reason of the actions alleged herein, Defendants violated Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R.

§ 240.10b-5].

SECOND CLAIM

**FRAUD IN THE OFFER OR SALE OF SECURITIES
Violations of Section 17(a) of the Securities Act**

30. The Commission realleges paragraphs 1 through 25.

31. Defendants, with scienter, by use of the means or instrumentalities of interstate commerce or of the mails, in the offer or sale of securities: (i) employed devices, schemes or artifices to defraud; (ii) obtained money or property by means of untrue statements of material fact or omissions 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/or (iii) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon the purchasers of the securities offered and sold by Defendants.

32. By reason of the actions alleged herein, Defendants violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

REQUEST FOR RELIEF

For these reasons, the Commission respectfully requests that the Court enter a judgment:

(i) finding that Defendants violated the antifraud provisions of the federal securities laws as alleged herein;

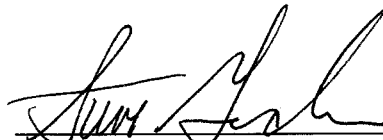
(ii) permanently enjoining Defendants from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

(iii) ordering Defendants to disgorge the losses avoided as a result of the actions alleged herein and to pay prejudgment interest thereon;

(iv) ordering Defendants to a pay civil monetary penalty under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)];
and

(v) granting such other relief as this Court may deem just and proper.

Respectfully submitted,



TOBY M. GALLOWAY

Texas Bar No. 00790733

J. KEVIN EDMUNDSON

Texas Bar No. 24044020

MICHAEL D. KING

Texas Bar No. 24032634

STEVE GRAHAM

Texas Bar No. 00792542

U.S. Securities and Exchange Commission

Burnett Plaza, Suite 1900

801 Cherry Street, Unit #18

Fort Worth, TX 76102-6882

(817) 978-6447 (tmg)

(817) 978-4927 (fax)

CTS

ORIGINAL
CIVIL COVER SHEET

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NORTHERN DIST. OF TX
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2009 MAY 11 AM 11:01
CLERK OF COURT

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

I. (a) PLAINTIFF

SECURITIES AND EXCHANGE COMMISSION

DEFENDANTS

**Kiselak Capital Group, LLC, Gemstar Capital Group, Inc.,
Michael J. Kiselak, and Jeffrey J. Sykes.**

4-09CV-256-A

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant: Tarrant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEY (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

TOBY M. GALLOWAY
U.S. Securities & Exchange Commission, Burnett Plaza, Ste. 1900,
801 Cherry Street, Unit #18, Fort Worth, TX 76102-6882
(817) 978-6447

ATTORNEYS (If known):

David B. Giles
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Dallas, Texas 75231
(counsel for Kiselak Capital Group, LLC and Michael Kiselak)

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11755 Wilshire Boulevard, 15th Floor
Los Angeles, California 90025
(counsel for Gemstar Capital Group, Inc. and Jeffrey J. Sykes)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | PTF | | PTF | PTF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery Of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 156 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copy rights <input type="checkbox"/> 830 Patient <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395FF) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened

Sections 17(a) and 10(b) of the Securities Act of 1933, [15 U.S.C. §§ 77q(a) and 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND YES NO

VIII. RELATED CASE(S) (See Instructions):
IF ANY

JUDGE _____

DOCKET NUMBER _____

DATE

5/11/2009

FOR OFFICE USE ONLY

Receipt # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____