

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff, : Civil Action No.

v.

ROBERT L. DUNCAN

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF

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

OVERVIEW

1. Between at least as early as September 2004 and March 2010, the defendant, Robert L. Duncan ("Duncan"), operated the Seaside Partners Fund ("the Fund"), a fund purporting to invest in securities, in a fraudulent manner. Among other things, Duncan misappropriated assets of the Fund and provided fictitious account statements to investors in the Fund.

2. Duncan created the Fund in 2003 and began seeking investors in the Fund. From 2005 through 2010 the Fund had four to six investors, including two funds of funds that each had 35 – 40 investors.

3. Duncan described the Fund as “a short-term trading fund operating in U.S. equity markets, taking both long and short positions.”

4. In fact, Duncan: (1) misappropriated the Fund’s assets and used them to pay for personal expenses; (2) falsified the account statements that he sent to the Fund’s accountants who created statements for the investors; and (3) fabricated the documents that purported to be the Fund’s audited financial statements.

VIOLATIONS

5. Defendant has engaged, and unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. 77q(a)], 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], and Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”)[15 U.S.C. 80b-6(1),(2), and (4)].

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. 77t and 77v], Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. 78u(d) and 78u(e)], and Sections 209 and 214 of the Advisers Act [15 U.S.C. 80b-9, 80b-14], to enjoin the defendant from engaging in the transactions, acts, practices, and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties and for other equitable relief.

7. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act [15 U.S.C. 77v], Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa] and Section 214 of the Advisers Act [15 U.S.C. 80b-14].

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

9. Certain of the transactions, acts, practices, and courses of business constituting violations of the Securities Act, Exchange Act and Advisers Act occurred

in the Northern District of Georgia. In addition, Defendant Duncan resides in the Northern District of Georgia and maintained an office in the Northern District of Georgia.

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

The Defendant

11. **Robert L. Duncan**, 49, served as the Fund's portfolio manager for its entire existence from 2003 to 2010. In that position, Duncan had "primary responsibility for management of the Fund's investment portfolio." Duncan represented to investors on his website that he had been "managing equity portfolios for institutions and high net worth individuals" for almost two decades.

The Fraudulent Scheme

12. Duncan created the Fund in 2003. From 2005 through 2010, it had four to six investors, including two funds of funds that each had 35 – 40 investors,

a trust established to pay the assisted-living expenses of the 87-year mother of one of Duncan's close friends, and an individual.

13. Duncan described the Fund on his website as "a short-term trading fund operating in U.S. equity markets, taking both long and short positions."

14. The four investors in the Fund in 2010 had invested approximately \$4.5 million in the Fund.

15. The investors generally understood from their discussions with Duncan that the Fund's trading was short term and driven by news or events affecting the particular stocks traded. Duncan told investors that all positions were liquidated at the end of each day.

16. Contrary to his representations to investors, Duncan used investors' funds for his personal benefit.

17. From at least as early as September 2004, Duncan was misappropriating investors' money from the Fund in order to pay legal expenses related to litigation involving another fund that he had managed until 2003.

18. Among other things, Duncan used assets of the Fund to purchase a Maserati for himself and a Mercedes for his wife.

19. The Fund retained an accounting firm (“Accountants”) to prepare monthly statements for each of the Fund’s investors. Duncan told the Accountants that he would have to send them a copy of one of the Fund’s monthly brokerage statement by facsimile each month because a technical problem prevented them from getting those statements on-line directly from the Fund’s broker dealer.

20. Duncan perpetrated the fraud by faxing an altered copy of that monthly brokerage statement for the Fund to the accountants each month. Duncan altered those statements to, among other things, falsify the value of securities traded, to falsify the amount of cash received, and to overstate the value of the assets in the account.

21. Duncan also fabricated the “audited” financial statements that some of the investors received from him. Duncan represented in the Fund’s offering material that the Fund would be audited annually. In fact, the Fund never retained an accounting firm to audit it.

22. Duncan used a color copier, the Accountants’ letterhead, copies of the Accountants’ signature, and language from audits of one of his previous funds, to create the fabricated audited statements that he sent to Fund investors.

Misrepresentations and Omissions

23. For a period of years but since at least September 2004, Duncan, through the Accountants, provided investors with monthly statements containing purported performance data on their investments in the Fund. Those statements purported to show the balance in each of the investor's accounts. Duncan, who provided false information to the Accountants knowing that it would be used to create those statements, knew that the investors' monthly statements were false.

24. Since at least September 2004, Duncan used the false monthly statements that were sent to the investors by the Accountants to lull those already invested into a false sense of security.

25. Duncan also represented in the Fund's offering materials that the Fund was audited annually. Duncan knew that the Fund was never audited and that he had fabricated the documents which appeared to be annual audits that investors in the Fund received.

26. Duncan represented to investors on the Fund's website that their money would be invested in "U.S. equity markets, taking both long and short positions." However, since at least September 2004, Duncan had been liquidating the Fund's positions and misappropriating the proceeds.

COUNT I—FRAUD

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

27. Paragraphs 1 through 26 are hereby realleged and are incorporated herein by reference.

28. From at least as early as in or about September 2004 through March 2010, defendant Duncan, in the offer and sale of the securities described herein, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above.

29. Defendant knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

30. While engaging in the course of conduct described above, the defendant acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

31. By reason of the foregoing, the defendant, directly and indirectly, has violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II—FRAUD

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

32. Paragraphs 1 through 26 are hereby realleged and are incorporated herein by reference.

33. From at least as early as in or about September 2004 through March 2010, defendant Duncan, in the offer and sale of the securities described herein, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

a. obtained money and property by means of untrue statements of material fact and 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

b. engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

34. By reason of the foregoing, the defendant, directly and indirectly, has violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT III—FRAUD

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

35. Paragraphs 1 through 26 are hereby realleged and are incorporated herein by reference.

36. From at least as early as in or about September 2004 through March 2010, defendant Duncan, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

a. employed devices, schemes, and artifices to defraud;

b. made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

37. The defendant knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, the defendant acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

38. By reason of the foregoing, the defendant, directly and indirectly, has violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

COUNT IV—FRAUD

**Violations of Section 206(1) of the Advisers Act
[15 U.S.C. § 80b-6(1)]**

39. Paragraphs 1 through 26 are hereby realleged and are incorporated herein by reference.

40. From at least as early as in or about September 2004 through March 2010, defendant Duncan , acting as an investment adviser, using the mails and the means and instrumentalities of interstate commerce, directly and indirectly, employed devices, schemes and artifices to defraud one or more advisory clients and/or prospective clients.

41. Defendant Duncan knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud. In engaging in such conduct, defendant Duncan acted with scienter, that is, with intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

42. By reason of the foregoing, defendant Duncan , directly and indirectly, has violated, and unless enjoined, will continue to violate Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)].

COUNT V—FRAUD

Violations of Section 206(2) of the Advisers Act
[15 U.S.C. § 80b-6(2)]

43. Paragraphs 1 through 26 are hereby realleged and are incorporated herein by reference.

44. From at least as early as in or about September 2004 through March 2010, defendant Duncan, acting as investment advisers, by the use of the mails and the means and instrumentalities of interstate commerce, directly and indirectly, engaged in transactions, practices, and courses of business which would and did operate as a fraud and deceit on one or more advisory clients and/or prospective clients.

45. By reason of the foregoing, defendant Duncan , directly and indirectly, has violated and, unless enjoined, will continue to violate and aid and abet violations of Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)].

COUNT VI—FRAUD

**Violations of Section 206(4) of the Advisers Act
[15 U.S.C. § 80b-6(4)]**

46. Paragraphs 1 through 26 are hereby realleged and are incorporated herein by reference.

47. From at least as early as in or about September 2004 through March 2010, defendant Duncan , acting as an investment adviser, using the mails and the

means and instrumentalities of interstate commerce, directly and indirectly, engaged in acts, practices, or courses of business which were fraudulent, deceptive, or manipulative and violated rules and regulations that were established by the Commission and are reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

48. Defendant Duncan knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud. In engaging in such conduct, defendant Duncan acted with scienter, that is, with intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

49. By reason of the foregoing, defendant Duncan, directly and indirectly, has violated, and unless enjoined, will continue to violate Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully prays for:

I.

Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that the defendant named herein committed the violations alleged herein.

II.

A permanent injunction enjoining the defendant, his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of the order of injunction, by personal service or otherwise, and each of them, from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] promulgated thereunder, and Sections 206(1), 206(2) and 206(4) of the Advisers Act [15 U.S.C. 80b-6(1), 80b-6(2) and 80b-6(4)].

III.

An order requiring an accounting by the defendant of the use of proceeds of the sales of the securities described in this Complaint and the disgorgement by the

defendant of all ill-gotten gains or unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws and an order appointing a receiver for the defendant.

IV.

An order pursuant to Section 20(d) of the Securities Act [15 U.S.C. 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. 80b-9(e)] imposing civil penalties against the defendant.

V.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

Dated this ____ day of September, 2010.

Respectfully submitted,

/S/ Alex Rue
Alex Rue
Senior Trial Counsel
Georgia Bar No. 618950
Telephone (404) 842-7616

E-mail: ruea@sec.gov

William S. Dixon
Staff Attorney
Georgia Bar No. 223420
Telephone (404)842-7615
E-mail: [dixonw@ sec.gov](mailto:dixonw@sec.gov)

Counsel for Plaintiff
Securities and Exchange Commission
3475 Lenox Road, N.E., Suite 1000
Atlanta, Georgia 30326-123
Telephone: 404-842-7600
Facsimile: 404-842-7679