

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

SECURITIES AND)
EXCHANGE COMMISSION,)
)
Plaintiff,)
v.)
)
MARK BALBIRER,)
)
Defendant.)
_____)

COMPLAINT

Plaintiff Securities and Exchange Commission alleges as follows:

I. INTRODUCTION

1. From approximately November 2011 through December 2011, Defendant Mark Balbirer engaged in a fraudulent scheme involving the stock of a privately held company, So. Florida Film Fund, Inc. The scheme involved an undisclosed kickback to encourage the purchase of the company's stock and a phony invoice to mask the kickback.

2. Balbirer, the de-facto principal of So. Florida Film Fund, paid the kickback to a purported manager and fiduciary of a hedge fund so the fiduciary would invest in So. Florida Film Fund's private placement offering and purchase a specified number of units of company stock.

3. Unbeknownst to Balbirer, the hedge fund was a creation of the FBI. The corrupt hedge fund manager was actually an undercover FBI agent, and the middleman who introduced the undercover agent to Balbirer was a witness cooperating with the FBI.

4. Balbirer attempted to conceal the kickback by making it appear as if the kickback was payment of an invoice for purported services that never were rendered.

5. As a result of the conduct described in this Complaint, Balbirer violated Section 17(a)(1) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77q(a)(1), and Section 10(b) and Rule 10b-5(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(a). Unless restrained and enjoined, Balbirer is reasonably likely to continue to violate the federal securities laws.

6. The Commission respectfully requests that the Court enter: (a) a permanent injunction restraining and enjoining Balbirer from violating the federal securities laws; (b) an order directing Balbirer to pay disgorgement with prejudgment interest; (c) an order directing Balbirer to pay a civil money penalty; and (d) an order barring Balbirer from participating in any offering of a penny stock.

II. DEFENDANT AND RELEVANT ENTITY

A. Defendant

7. Balbirer was the de-facto principal of So. Florida Film Fund. He resides in Pompano Beach, Florida. Between approximately September 1992 and September 1998, Balbirer was associated with various broker-dealers as a registered representative.

B. Relevant Entity

8. So. Florida Film Fund, Inc. was a private Florida corporation with principal offices located in Coral Springs, Florida. The company purportedly was formed to finance two movies and a television plot. The State of Florida administratively dissolved the company in September 2012.

9. So. Florida Film Fund was a “penny stock” as defined by the Exchange Act. At all times relevant to this action, the stock’s shares were offered at \$1.00 per share. During the same time period, the stock did not meet any of the exceptions to penny stock classification pursuant to Section 3(a)(51) and Rule 3a51-1 of the Exchange Act. For example, the stock: (a) did not trade on a national securities exchange; (b) was not an “NMS stock,” as defined in 17 C.F.R. § 242.600(b)(47); (c) did not have net tangible assets (i.e., total assets less intangible assets and liabilities) in excess of \$5,000,000; and (d) did not have average revenue of approximately \$6,000,000 for the last three years. *See* Exchange Act, Rule 3a51-1(g).

III. JURISDICTION AND VENUE

10. The Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(d) and 77v(a); and Sections 21(d) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d) and 78aa.

11. This Court has personal jurisdiction over Balbirer, and venue is proper in the Southern District of Florida, because Balbirer resides in the District and because a substantial part of Balbirer’s acts and transactions constituting violations of the Securities Act and the Exchange Act occurred in the District. For example, Balbirer met with the cooperating witness and the FBI agent on November 4, 2011 in Broward County to discuss the scheme. In addition, between November 2011 and December 2011, Balbirer, while located in the District, exchanged several emails and participated on numerous telephone calls with the FBI agent. Moreover, while located in the District, Balbirer received the signed subscription agreement and mailed the kickback payments to the FBI agent.

12. Balbirer, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce, or of a means or instrumentality of interstate commerce, or of the mails, in connection with the conduct alleged in this Complaint.

IV. THE FRAUDULENT SCHEME

13. On November 4, 2011, through an introduction by the cooperating witness, Balbirer met with the purported hedge fund manager (*i.e.*, the undercover FBI agent) and the cooperating witness in Broward County, Florida, to discuss a possible stock transaction involving a company Balbirer planned to create purportedly to finance the production of films, So. Florida Film Fund.

14. The hedge fund manager told Balbirer he would be willing to have clients of the hedge fund purchase shares in the company so long as the manager was paid a kickback in return, and said he would first need a private placement memorandum from the company.

15. Subsequently, as part of the scheme, Balbirer and the purported hedge fund manager agreed the hedge fund would invest in a private placement offering by So. Florida Film Fund in exchange for an undisclosed kickback the company would pay to the hedge fund manager of 30 percent of the amount invested.

16. To conceal the kickback, the parties also agreed the company would make the payment to a firm for which the hedge fund manager's relative purportedly worked, and would classify the payment as services rendered even though no such services actually would be performed.

17. On November 23, 2011, Balbirer sent the purported hedge fund

manager, via email, a subscription agreement for the private placement offering.

18. On November 28, 2011, the purported hedge fund manager signed the subscription agreement and returned it, via express delivery, to Balbirer at his home address.

19. Pursuant to the terms of the subscription agreement, the hedge fund would purchase 20.8 units of So. Florida Film Fund stock for \$520,000 at \$25,000 per unit. Each unit consisted of 25,000 shares priced at \$1.00 per share.

20. The following day, in furtherance of the scheme, Balbirer sent the purported hedge fund manager, via express delivery, a counter-signed subscription agreement, and the manager sent Balbirer an email attaching a phony invoice for services purportedly rendered to So. Florida Film Fund.

21. On December 1, 2011, the FBI wired \$50,000 from a controlled bank account to So. Florida Film Fund, as payment for the hedge fund's initial stock purchase in the private placement offering.

22. That same day, Balbirer sent the purported hedge fund manager, via express delivery, two So. Florida Film Fund checks totaling \$15,000, representing the undisclosed 30 percent kickback for the \$50,000 wire. One check was made payable to the hedge fund manager and the other to the firm for which the manager's relative purportedly worked.

23. Over the following days, Balbirer attempted to reach the FBI agent and cooperating witness regarding additional funding for So. Florida Film Fund. Ultimately, however, there were no further transactions.

COUNT I

Fraud In Violation of Section 17(a)(1) of the Securities Act

24. The Commission realleges and incorporates paragraphs 1 through 23 of this Complaint.

25. From approximately November through December 2011, Balbirer, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, as described in this Complaint, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

26. By reason of the foregoing, Balbirer, directly and indirectly, violated and, unless enjoined, is reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

COUNT II

Fraud in Violation of Section 10(b) and Rule 10b-5(a) of the Exchange Act

27. The Commission realleges and incorporates paragraphs 1 through 23 of this Complaint.

28. From approximately November through December 2011, Balbirer, directly and indirectly, by use of any means or instrumentalities of interstate commerce, or of the mails, in connection with the purchase or sale of securities, knowingly, willfully or recklessly, employed devices, schemes, or artifices to defraud.

29. By reason of the foregoing, Balbirer, directly or indirectly, violated and, unless enjoined, is reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(a), 17 C.F.R. § 240.10b-5(a).

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Declaratory Relief

Declare, determine, and find that Balbirer has committed the violations of the federal securities laws alleged in this Complaint.

II.

Permanent Injunctive Relief

Issue a Permanent Injunction restraining and enjoining Balbirer, his agents, servants, employees, attorneys, and all persons in active concert or participation with him, and each of them, from violating Section 17(a)(1) of the Securities Act and Section 10(b) and Rule 10b-5(a) of the Exchange Act, as indicated above.

III.

Disgorgement

Issue an Order directing Balbirer to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts or courses of conduct alleged in this Complaint.

IV.

Penalties

Issue an Order directing Balbirer to pay a civil money penalty pursuant to 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).

V.

Penny Stock Bar

Issue an Order barring Balbirer from participating in any offering of a penny stock, pursuant to Section 20(g) of the Securities Act, 15 U.S.C. § 77t(g), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d).

VI.

Further Relief

Grant such other and further relief as may be necessary and appropriate.

VII.

Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

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By:



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