

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.**

<b>SECURITIES AND EXCHANGE COMMISSION,</b>	)	
	)	
<b>Plaintiff,</b>	)	
<b>v.</b>	)	
	)	
<b>JEFFREY M. BERKOWITZ,</b>	)	
	)	
<b>Defendant.</b>	)	
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**COMPLAINT**

Plaintiff Securities and Exchange Commission alleges as follows:

**I. INTRODUCTION**

1. From no later than December 2012 through February 2013, Defendant Jeffrey M. Berkowitz, a stock promoter, engaged in a fraudulent market manipulation scheme involving the stock of Face Up Entertainment Group, Inc. (“FUEG”). The scheme involved Berkowitz’s illegal payment to another stock promoter, Lance T. Berger, and a purportedly corrupt broker, as an inducement to arrange email blasts and press releases and to engage in the fraudulent purchase of FUEG stock.

2. Berkowitz participated in this scheme in an effort to falsely generate the appearance of market interest in FUEG, induce public purchases of the stock, and artificially increase its trading price and volume.

3. Unbeknownst to Berkowitz, however, the corrupt broker was a witness cooperating with the FBI.

4. As a result of the conduct described in this Complaint, Berkowitz violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and

Exchange Act Rule 10b-5(a) and (c), 17 C.F.R. §§ 240.10b-5(a) and (c). Unless restrained and enjoined, Berkowitz is reasonably likely to continue to violate the federal securities laws.

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

## **II. DEFENDANT AND RELATED ENTITY**

6. At all times relevant to this action, Berkowitz was a stock promoter for FUEG. Berkowitz resides in Jupiter, Florida.

7. At all times relevant to this action, FUEG was a Florida corporation with principal offices located in Valley Stream, New York. The company purported to be in the business of operating an internet gaming website that charged a monthly membership fee. At all times relevant to this action, FUEG's stock was quoted on the OTC Link operated by OTC Markets Group, Inc. and the OTC Bulletin Board under the symbol "FUEG." In April 2013, however, the Commission entered an order suspending trading in the securities of FUEG for a ten-day period, pursuant to Section 12(k) of the Exchange Act. In May 2013, FUEG filed a Form 15 with the Commission to deregister its stock.

8. FUEG's stock is a "penny stock" as defined by the Exchange Act. At all times relevant to this action, the stock's shares traded at less than 43 cents per share. During the same time period, FUEG's 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 company's 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**

9. The Court has jurisdiction over this action pursuant to Sections 21(d) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d) and 78aa.

10. The Court has personal jurisdiction over Berkowitz, and venue is proper in the Southern District of Florida, because Berkowitz resides in the District and because a substantial part of Berkowitz's acts and transactions constituting violations of the Exchange Act occurred in the District. For example, Berkowitz met with the cooperating witness in Palm Beach County, Florida on December 7, 2012, to discuss the scheme. In addition, while in the District, Berkowitz participated in several telephone calls and exchanged emails with the cooperating witness concerning the fraudulent scheme.

11. Berkowitz, 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**

12. In December 2012, Berkowitz, a stock promoter for FUEG, along with Berger, his business associate, began discussions with the cooperating witness regarding possible fraudulent stock transactions involving several issuers, including FUEG.

13. Following a face-to-face meeting on December 7, 2012, the three continued to communicate through a series of telephone conversations and emails over the next two months. During these conversations, they agreed Berkowitz would make a \$10,000 inducement payment

to Berger and the cooperating witness to participate in the manipulation of FUEG stock. Berkowitz would pay the money directly to Berger who would then forward \$5,000 to the cooperating witness.

14. As part of the scheme, and in exchange for the inducement payment, the cooperating witness would purchase shares of FUEG stock on the open market in order to increase the stock's trading volume. Berger would arrange email blasts and provide "bid support" by lining up the cooperating witness, and possibly others, to engage in purchases of FUEG stock. Berger also agreed to provide the cooperating witness with advance notice of press releases Berger would arrange for FUEG to issue to coordinate with the fraudulent trading. The press releases would be timed so it would appear the buying activity was spurred by positive news about the company.

15. On February 5, 2013, Berger told the cooperating witness Berkowitz had sent Berger the \$10,000 payment. Berger agreed to deposit the cooperating witness's share of the money directly into the cooperating witness's bank account. During this conversation, Berger also told the cooperating witness he had received an advance press release and FUEG was going to be announcing "beta testing" with Facebook. Berger said the press release would be issued at 9:50 a.m on February 7, 2013.

16. The following day, on February 6, 2013, Berger deposited \$5,000 into the cooperating witness's bank account at a bank in the District. That same day, during a telephone call with the cooperating witness, Berger confirmed he had an advance copy of the press release FUEG would be issuing the following day and that he was in the process of revising the header for the release. Berger also told the cooperating witness to start buying FUEG stock as soon as the release came out. Shortly after this conversation, the cooperating witness called Berkowitz to

ensure Berkowitz concurred with Berger's instructions. Berkowitz told the cooperating witness he agreed with whatever Berger instructed the cooperating witness to do.

17. Later that same day, Berger called the cooperating witness to tell him the scheme would be pushed back one day from February 7, 2013 to February 8, 2013, and the press release would be issued on February 8 at 9:55 a.m.

18. On February 8, 2013, at 9:55 a.m. – the exact time Berger had confirmed to the cooperating witness two days earlier – FUEG released a press release announcing it had begun “[c]losed Beta testing of its Facebook integrated gaming software.”

19. That same day, the FBI, posing as the cooperating witness, purchased a total of 35,000 shares of FUEG in the open market, in three separate transactions, at prices ranging from \$.20 to \$.215 per share, for a total cost of approximately \$7,350. The cooperating witness told Berger he had purchased the shares as agreed.

20. Although the parties previously had discussed the possibility of a second round of manipulative buying, ultimately there were no further transactions.

## **COUNT I**

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

21. The Commission realleges and incorporates paragraphs 1 through 20 of its Complaint.

22. From no later than December 2012 through February 2013, Berkowitz, directly and indirectly, by use of the means or instrumentalities of interstate commerce, or of the mails, in connection with the purchase or sale of securities, knowingly, willfully or recklessly:

- (a) employed devices, schemes or artifices to defraud; or

(b) engaged in acts, practices, or courses of business which operated or would have operated as a fraud or deceit upon any person.

23. By reason of the foregoing, Berkowitz, directly and 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 Exchange Act Rule 10b-5(a) and (c), 17 C.F.R. §§ 240.10b-5(a) and (c).

**RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests that the Court:

**I.**

**Declaratory Relief**

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

**II.**

**Permanent Injunctive Relief**

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

**III.**

**Disgorgement**

Issue an Order directing Berkowitz 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 Berkowitz to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

**V.**

**Penny Stock Bar**

Issue an Order barring Berkowitz from participating in any offering of penny stock, pursuant to Section 21(d)(6) of the Exchange Act, 15 U.S.C. § 78u(d)(6).

**VI.**

**Further Relief**

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

**VII.**

**Retention of Jurisdiction**

Further, the Commission respectfully requests 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.

Dated: May 22, 2014

Respectfully submitted,

By:

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Patrick R. Costello  
Senior Trial Counsel  
Florida Bar No. 75034  
Direct Dial: (305) 982-6380  
E-mail: [CostelloP@sec.gov](mailto:CostelloP@sec.gov)  
*Lead Attorney*

Amy L. Weber  
Senior Counsel  
Florida Bar No. 662151  
Direct Dial: (305) 416-6296  
Email: [WeberA@sec.gov](mailto:WeberA@sec.gov)

**ATTORNEYS FOR PLAINTIFF**  
**SECURITIES AND EXCHANGE COMMISSION**  
801 Brickell Avenue, Suite 1800  
Miami, Florida 33131  
Telephone: (305) 982-6300  
Facsimile: (305) 536-4154