

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

PREMIERE POWER, LLC; JOHN JANKOVIC;
AND JERRY JANKOVIC,

Defendants.

Civil Action No.

COMPLAINT

15 CV 1248

Plaintiff Securities and Exchange Commission (the "Commission" or "SEC")

alleges:

NATURE OF THE ACTION

1. The SEC brings this action to redress a fraud that diverted more than half of the money invested in Premiere Power, LLC to defend an unrelated lawsuit that no investor was ever told about. In 2006, investors sued Defendant Jerry Jankovic and an associate for fraud and for misappropriating funds in connection with a failed energy company Jerry Jankovic had started. Several years after this lawsuit was filed, Jerry Jankovic and his son, Defendant John Jankovic, formed Premiere, another purported energy company. The Defendants then agreed to divert about half of the funds raised from investors in Premiere to cover the costs of the pending lawsuit. Beginning in 2009, the Defendants misappropriated \$1 million out of a total of \$1.95 million raised for Premiere. In addition, John Jankovic made misrepresentations to investors about Premiere's affiliates, board members, auditor, and Jerry Jankovic's "proven track record" of creating "successful" energy companies.

2. By engaging in the conduct alleged herein, Defendants committed federal securities fraud.

U.S. DISTRICT COURT
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JURISDICTION AND VENUE

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

4. The Defendants, directly or indirectly, made use of the means and instrumentalities of interstate commerce or of the mails in connection with the acts, practices and courses of business alleged herein, certain of which occurred in the Southern District of New York. Venue is proper in this District pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

DEFENDANTS

5. **Premiere Power, LLC** is a Delaware limited liability company with its principal place of business in Las Vegas, Nevada. Jerry Jankovic and John Jankovic formed Premiere in 2009.

6. **Jerry Jankovic**, age 73, is a resident of Tulsa, Oklahoma. At all relevant times, he served as Chairman of Premiere's Board and voting majority member and since 2011 has also been its Chief Executive Officer.

7. **John Jankovic**, age 39, is a resident of Irvine, California. He served as Premiere's Chief Executive Officer and a Board member from the company's formation until the summer of 2011.

RELATED PERSON AND ENTITIES

8. **Sandra Dyché**, age 62, is a resident of New York, New York. She served as a Premiere Board member and also raised funds for Premiere. Dyché has entered into a settlement with the SEC related to the conduct discussed herein.

9. **21st Century Morongo Energy, LLC** is a Nevada limited liability company with its principal place of business in Las Vegas, Nevada. Morongo was purportedly in the business of developing an energy plant and casino on Morongo tribal land in California. It never generated any revenue and no longer operates.

FACTS

A. Jerry Jankovic's History of Misappropriating Investor Funds

10. In December 2006, two investors, Byung Chul An and Hyang Ok An (the "Ans"), sued Jerry Jankovic and Sandra Dyche, among others, in connection with their investment in 21st Century Morongo Energy, LLC ("Morongo"). Jerry Jankovic and Dyche had formed Morongo, which claimed to be an energy company, in 2001. Among other things, the Ans alleged that Jerry Jankovic and Dyche fraudulently induced them to purchase Morongo shares by representing that their investment would be used to build a power plant and casino on Native American land. Neither project ever broke ground.

11. In a striking parallel to what Jerry and John Jankovic did later with Premiere, the Ans claimed that Jerry Jankovic and Dyche diverted about half of their \$1.2 million investment away from Morongo to Jerry Jankovic personally, who used the funds to settle yet another lawsuit — this one by a plaintiff who filed a fraud claim against Jerry Jankovic in 2001 in connection with an investment in a third company that was also supposedly pursuing power generation projects.

12. A New York court entered a default judgment against Jerry Jankovic for the Morongo-related allegations in August 2007. However, Dyche fought the charges. In 2012, a jury found for the Morongo investors, awarding them \$1.2 million in rescission and \$1.2 million in punitive damages.

B. The Jankovics Form Premiere Power

13. In July 2009, while the Morongo litigation was proceeding, Jerry and John Jankovic formed Premiere, ostensibly to pursue energy-related opportunities, such as building power plants on Native American land. At all relevant times, Jerry Jankovic controlled Premiere: he was Premiere's Chairman of the Board and voting majority member. John Jankovic was Premiere's Chief Executive Officer and a member of its Board. Dyche also was a member of Premiere's Board.

14. In offering documents, Premiere claimed to investors that it had negotiated an agreement with the Osage Nation in Oklahoma to build a power plant on Osage territory. However, Premiere failed to obtain the bank financing required for the project, which, like the Morongo venture, never broke ground. John Jankovic testified that Premiere failed to obtain financing because it failed to raise the \$2 million from investors that the financing process would have cost. Premiere never earned any revenue and ran out of cash in 2011.

C. The Jankovics and Dyche Divert Investor Funds from Premiere

15. Among other offering documents, Premiere used a Preliminary Information Memorandum ("PIM") and an accompanying Term Sheet to solicit investments. The PIM discusses two power plants that Premiere planned to develop in Oklahoma. The Term Sheet includes the following representation regarding the use of offering proceeds: "the capital raised . . . will directly support due diligence fees, legal and contract fees, engineering and regulatory documents, nation credit ratings and any other expenses incurred to complete the financing of the [power plants]." None of the offering documents disclose that investments in Premiere may be used for anything other than Premiere business. John Jankovic prepared the offering documents, which Jerry Jankovic reviewed.

16. Even before raising any money, Jerry and John Jankovic agreed, contrary to the representations in the PIM and Term Sheet, that any investment in Premiere would be “split,” with 52 percent going to Premiere and 48 percent being “transferred” for use in connection with the Morongo lawsuit. The intent of the split was for Dyche to provide the diverted funds to the Ans, who had sued her and Jerry Jankovic over Morongo’s failure.

17. In early December 2009, Dyche met with prospective investor Moon Joo Yu and provided her the Premiere offering materials. Dyche told Yu that her funds would be used for Premiere. She did not disclose the plan to divert funds away from the company. On December 9, 2009, Yu executed a subscription agreement for a \$1.5 million investment in Premiere. That day, Yu provided Dyche with \$500,000 for Premiere. In two transfers, on December 14 and 15, Yu wired an additional \$500,000 to Premiere’s account.

18. Yu subsequently met John Jankovic in New York, New York on December 22, 2009, where he made a personal presentation to Yu and other potential Premiere investors. During this meeting, John Jankovic used a PowerPoint presentation that tracked the language in the offering materials. John Jankovic explained that the funds raised would be used for Premiere. Neither John Jankovic nor Dyche disclosed the plan to divert funds away from Premiere. At the meeting John Jankovic provided all of the attendees copies of Premiere’s offering documents.

19. On December 23, 2009, Yu provided Dyche an additional \$500,000, bringing Yu’s total investment in Premiere to \$1.5 million. Consistent with the plan to split the proceeds, Dyche kept \$1 million of Yu’s funds to use in the Morongo suit, and transferred only \$500,000 to Premiere. Jerry Jankovic and John Jankovic knew and approved of Dyche diverting investor funds for use in the Morongo litigation.

20. Also on December 23, 2009, another attendee at the December 22, 2009 meeting, Hyun Ja Kim, invested \$300,000 in Premiere. These funds were provided to Premiere. As with Yu, no disclosures were made to Hyun Ja Kim that Premiere's principals were diverting funds away from the company.

21. In January 2010, John Jankovic issued to Yu a Premiere stock certificate and welcome letter that made it appear that her entire \$1.5 million had been invested in Premiere. These documents were consistent with Yu's executed subscription agreement, which John Jankovic received on December 13, 2009, and which reflected a \$1.5 million Premiere investment.

22. In March 2010, another investor, Hee Rak Kim, invested \$150,000 in Premiere. No disclosures were made to Hee Rak Kim that Premiere's principals were diverting funds away from the company.

D. Other Material Misrepresentations and Omissions

23. In addition to deceiving investors about how their money would be used, John Jankovic made material misrepresentations that made investments in the company appear to be less risky. John Jankovic made these misrepresentations in Premiere's offering materials and directly to investors at the December 22, 2009 meeting in New York.

24. John Jankovic told investors in the Term Sheet and during the meeting in New York that Premiere "currently uses Deloitte and Duff & Phelps for independent [valuation] opinions" in connection with the company's commitment to help investors wishing to sell their ownership interest. Deloitte Touche Tohmatsu Limited is one of the four largest professional services firms in the world. Duff & Phelps is an internationally-known valuation firm. And in

the PIM and during the New York meeting, John Jankovic described Deloitte and Duff & Phelps as Premiere “affiliates” that provide support to Premiere’s “Corporate Holdings.”

25. John Jankovic further represented to potential investors that accountant Clayton Woodrum “will manage the Premiere Power account for outsourced accounting and bookkeeping purposes with standard annual audits and periodic quarterly audits.”

26. John Jankovic knew or was reckless in not knowing these representations regarding Deloitte, Duff & Phelps, and Woodrum were false. None of these parties ever agreed to provide services to or be “affiliated” with Premiere.

27. John Jankovic also told investors in the PIM and during the New York meeting that Wes Watkins, a former member of the United States House of Representatives from Oklahoma, was a Premiere board member and shareholder. The offering materials state that Watkins’s experience with “business and rural development in the state of Oklahoma will be instrumental in leading the Board of Directors and the Company through regulatory requirements and community relations.”

28. These representations were also false. John Jankovic knew or was reckless in not knowing in December 2009 that Watkins was not a board member or shareholder of Premiere. Watkins never agreed to be on Premiere’s Board or to have his name or biography used in its offering materials.

29. These misrepresentations and omissions were material because a reasonable investor contemplating whether to invest in a small power generation company would consider it important that the venture “used” and was “affiliated with” reputable names like Deloitte and Duff & Phelps, and had a former Congressman as a board member and shareholder. A

reasonable investor would also consider it important that the company was falsely stating that it had hired an accountant to audit its books, when it had not.

30. Orally and in the PIM, John Jankovic further promoted Premiere by boasting of Jerry Jankovic's "proven track record over more than 40 years of founding and managing successful businesses in the utility, real estate and related industries." John Jankovic knew, however, that the offering materials did not disclose the ongoing litigation involving the Morongo investors over that company's failure. His failure to disclose that issue rendered the statements about Jerry Jankovic's background misleading. This was material because a reasonable investor would consider it important in assessing Jerry Jankovic's supposedly long track record of leading successful companies that Morongo had failed, and that Jerry Jankovic had been sued by its investors for fraud over that failure.

FIRST CLAIM FOR RELIEF

Violations of Section 17(a)(1), (2), and (3) of the Securities Act (Premiere and John Jankovic)

31. The Commission realleges and reincorporates paragraphs 1 through 30 as if fully set forth herein.

32. By reason of the conduct alleged above, Premiere and John Jankovic, directly or indirectly, by the use of the means and instruments of transportation or communication in interstate commerce or by the use of the mails, and in connection with the offer or sale of securities, (a) knowingly or recklessly employed devices, schemes or artifices to defraud; (b) knowingly, recklessly, or negligently obtained money or property by means of one or more untrue statements of material fact or one or more omissions of material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading; or (c)

knowingly, recklessly, or negligently engaged in one or more transactions, acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers.

33. By reason of the conduct alleged above, Premiere and John Jankovic each violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF

Violations of Sections 17(a)(1) and (3) of the Securities Act (Jerry Jankovic)

34. The Commission realleges and reincorporates paragraphs 1 through 33 as if fully set forth herein.

35. By reason of the conduct alleged above, Jerry Jankovic, directly or indirectly, by the use of the means and instruments of transportation or communication in interstate commerce or by the use of the mails, and in connection with the offer or sale of securities, has (a) knowingly or recklessly employed devices, schemes or artifices to defraud; or (b) knowingly, recklessly, or negligently engaged in one or more transactions, acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers.

36. By reason of the conduct alleged above, Jerry Jankovic violated Section 17(a)(1) and 17 (a)(3) of the Securities Act [15 U.S.C. § 77q(a)(1) and (3)].

THIRD CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5(a), (b), and (c) (Premiere and John Jankovic)

37. The Commission realleges and reincorporates paragraphs 1 through 36 as if fully set forth herein.

38. By reason of the conduct alleged above, Premiere and John Jankovic, directly and indirectly, knowingly or recklessly, by the use of any means or instrumentality of interstate

commerce or of the mails, and in connection with the purchase or sale of securities, have (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omissions of material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

39. By reason of the conduct described above, Premiere and John Jankovic each violated Section 10(b) of the Exchange Act [15 U.S.C § 78j(b)], and Rule 10b-5(a), (b), and (c) promulgated thereunder [17 C.F.R. § 240.10b-5(a), (b), and (c)].

FOURTH CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) (Jerry Jankovic)

40. The Commission realleges and reincorporates paragraphs 1 through 39 as if fully set forth herein.

41. By reason of the conduct described above, Jerry Jankovic, directly and indirectly, knowingly or recklessly, by the use of any means or instrumentality of interstate commerce or of the mails, and in connection with the purchase or sale of securities, has (a) employed devices, schemes or artifices to defraud and/or (b) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person.

42. By reason of the conduct described above, Jerry Jankovic violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5(a) and (c) promulgated thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

FIFTH CLAIM FOR RELIEF

**Control Person Liability under Section 20(a) of the Exchange Act for Violations of
Section 10(b) of the Exchange Act and Rule 10b-5
(Jerry Jankovic)**

43. The Commission realleges and reincorporates paragraphs 1 through 42 as if fully set forth herein.

44. Jerry Jankovic is, or was, directly or indirectly, a control person of Premiere for purposes of Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)].

45. As a control person of Premiere, Jerry Jankovic is jointly and severally liable with and to the same extent as the controlled entity for its violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a judgment:

(a) Finding that Defendants each violated the securities laws and rules promulgated thereunder as alleged against them herein;

(b) Permanently enjoining and restraining Defendants and their agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5] and Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], as alleged against them herein;

(c) Permanently enjoining and restraining Defendants from directly or indirectly soliciting or accepting funds from any person or entity in an unregistered offering of securities;

(d) Permanently enjoining and restraining Defendants and their agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5] and Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], as alleged against them herein;

(e) Ordering Defendants, and each of them, to disgorge ill-gotten gains obtained through the unlawful conduct described above, plus prejudgment interest;

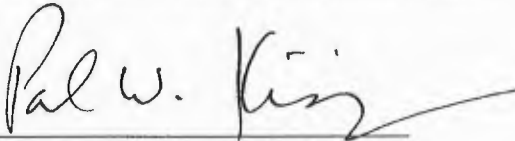
(f) Ordering Defendants, and each of them, to pay an appropriate civil money penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

(g) Retaining jurisdiction of this action 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; and

(h) Granting such other and further relief as the Court may deem appropriate.

Dated: February 20, 2015

SECURITIES AND EXCHANGE COMMISSION

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