

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

DOUGLAS P. SIMANSKI,

Defendant.

Civil Action No.

Jury Trial Demanded

COMPLAINT

Plaintiff Securities and Exchange Commission (“the Commission”) alleges the following:

SUMMARY

1. This matter involves a fraudulent securities offering conducted by Douglas P. Simanski (“Simanski”), a registered representative and investment adviser who defrauded investors in and around Altoona, Pennsylvania for more than a decade.
2. From 2002 through 2016, Simanski, while working for a registered investment adviser and broker-dealer (the “Registered Entity”), raised over \$3.9 million from approximately 27 investors by falsely representing he would invest their money in one of three ventures: (1) a “tax free investment” providing a fixed return for a specified number of years; (2) one of two coal mining companies in which Simanski claimed to have an ownership interest; or (3) a rental car company.
3. Simanski convinced some of his most trusting and vulnerable clients, many of them retired or elderly, to invest their money while knowing the investments were not legitimate, that he would make virtually no securities investments on their behalf, and would instead use their money for personal expenses or to repay other investors.

4. To conceal his fraudulent activities, Simanski placed investor funds in brokerage and bank accounts that Simanski opened in his wife's name and used investor money to repay prior investors.

5. Simanski's scheme collapsed in May 2016 when an investor he failed to repay filed a complaint with the Financial Industry Regulatory Authority, Inc. ("FINRA").

6. By engaging in the conduct described in this Complaint, Simanski violated, and unless restrained and enjoined will continue to violate, 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), 80b-6(2), 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

7. The Commission seeks (i) to enjoin Simanski from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, (ii) disgorgement of ill-gotten gains from the unlawful conduct set forth in this Complaint, together with prejudgment interest, (iii) the payment of a civil penalty, and (iv) such other relief as the Court may deem appropriate.

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)], Section 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d), (e)], and Sections 209(d) and 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(d), (e)] to enjoin such acts, practices, and courses of business, and to obtain disgorgement, prejudgment interest, civil money penalties, and such other and further relief as the Court may deem just and appropriate.

9. 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), (d), and 77v(a)], Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), (e), and 78aa], and Sections 209(d), 209(e), and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d), (e), and 80b-14].

10. Venue in this District is proper pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Section 27 of the Exchange Act [15 U.S.C. § 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14] because certain of the acts, transactions, events and omissions giving rise to the violations of the federal securities law alleged herein occurred within the Western District of Pennsylvania. Defendant Simanski also resides within the Western District of Pennsylvania.

DEFENDANT

11. **Douglas P. Simanski**, age 53, is a resident of Lilly, Cambria County, Pennsylvania. Simanski worked in the securities industry since 1995. From August 1999 to June 2016, Simanski was a registered representative in the Altoona, Pennsylvania branch of the Registered Entity. From May 2012 to June 2016, Simanski was an investment adviser representative with the Registered Entity.

FACTS

I. SIMANSKI FRAUDULENTLY INDUCED CUSTOMERS TO INVEST IN FICTITIOUS VENTURES AND MISAPPROPRIATED INVESTOR FUNDS

A. Background

12. Simanski had worked in the securities industry as a registered representative since 1995. In August 1999, he began working for the Registered Entity as a registered representative, servicing over 600 accounts from the Registered Entity's Altoona, Pennsylvania branch office.

13. In May 2012, Simanski also became associated with the Registered Entity as an investment adviser representative.

14. Most of Simanski's clients and customers resided in the Altoona area, and many of them were senior citizens.

15. Between 2002 and 2016, Simanski devised and executed three investment schemes to defraud unsuspecting investors, many of whom were his existing brokerage customers.

B. Simanski Defrauded Investors by Promising "Tax Free" Returns

16. Between 2002 and 2016, Simanski defrauded investors by promising them an investment that provided a high annual rate of return which was "tax free."

17. Simanski targeted unsuspecting customers who generally were unsophisticated investors, senior citizens, and longtime brokerage customers who relied on Simanski's representations regarding the investment.

18. Simanski was vague in describing what he would do with investors' money, aside from claiming that he would invest it in his trading account on their behalf and pay them a "tax free" return.

19. Simanski provided investors a single-page agreement entitled "Tax Free Investment," which set forth the amount of the initial investment, term, and interest rate to be repaid.

20. Simanski did not provide potential investors with any written materials aside from the one-page agreement, and the purported "tax free" investment was not made through the Registered Entity.

21. To conceal his fraud, Simanski opened a checking account and a personal brokerage account in his wife's name. Simanski omitted this account from his annual list of accounts and outside activities provided to the Registered Entity's compliance department.

22. Simanski instructed investors to write checks made payable to Simanski's wife or the personal brokerage account, and pooled investor funds into the personal brokerage account knowing that no real investments would be made.

23. Instead of investing the money as promised, Simanski either transferred money to his personal bank account to pay personal expenses or made payments of interest and principal to prior investors to create the appearance that the investments were successful so he could continue to bring in new investors ("Ponzi-like payments").

24. The periodic returns paid to investors were taxable, just like any other regular interest income earned on a promissory note.

25. Throughout the time he was raising money for this purported "tax free" investment Simanski traded in only a few securities in the personal brokerage account, and held those investments for a short period of time.

26. None of these trades were in tax-exempt securities or made in tax-advantaged accounts, and Simanski did not pay any taxes on behalf of his investors.

27. As a long-time registered representative, Simanski knew that the few trades he made in the personal brokerage account were not tax free or tax exempt.

C. Simanski Defrauded Customers by Soliciting Investment in Coal Mines

28. From 2011 through 2015, Simanski solicited investments in one of two purported mining companies in which Simanski claimed to have an interest, Black Diamond Mining, Inc. and Molesavitch Coal Company (collectively, the "Mining Companies").

29. Simanski provided investors with a one-page investment note that Simanski titled either a “bond” or simply an “investment.” The notes had terms ranging from three to five years and promised investors annual rates of return of between 5% and 6%. Simanski provided no other documentation to his customers concerning the investment.

30. In the notes, Simanski falsely represented to investors that he had an existing business interest in the Mining Companies, and personally guaranteed repayment of the notes.

31. To conceal his fraud, Simanski instructed investors to make their checks payable directly to the personal brokerage account for deposit into his wife’s account.

32. Simanski pooled investor funds into the personal brokerage account knowing that no real investments in the Mining Companies would be made.

33. In fact, none of the investor funds were transferred to Mining Companies, and no investor funds were spent on any expenses connected to mining.

34. Rather than invest the funds as promised, Simanski stole this money and used it to pay prior investors and his personal expenses.

D. Simanski Defrauded Customers by Soliciting Investments in a Fictitious Car Rental Company

35. Between at least October 2014 and May 2016, Simanski defrauded customers into investing in a fictitious car rental company that Simanski varyingly called either “Payless Rental Car” or “Payless Rent A Car” (“Payless”).

36. Simanski generally targeted his existing clients for the Payless investment, which promised a higher profit than conventional investment products at the Registered Entity.

37. Simanski provided investors a one-page investment note that Simanski had created and inconsistently titled “Payless Bond Investment,” “Tax Free Investment,” or “Five Year Fixed Investment.” Although the title varied, the notes all promised investors a 5% annual

return on their purported five-year investment.

38. Simanski falsely stated in the notes that he had an existing business interest in Payless, and that he and Payless “fully backed” or “fully guarantee[d]” the investment.

39. Simanski falsely represented to his clients that their investment in Payless would be used to operate the car rental business to generate the promised returns. In fact, no investor money was ever transferred to Payless.

40. To conceal his fraud, Simanski instructed investors make their checks payable directly to Simanski or to the personal brokerage account for deposit into his wife’s account.

41. Simanski pooled investor funds into the personal brokerage account knowing that no real investments in Payless would be made.

42. Instead of investing the money as promised, Simanski used the money for his personal expenses and to make payments to other investors.

43. In June 2016, Simanski acknowledged to the Registered Entity that the alleged deal with Payless had fallen through and that he had “reallocated” the investor funds.

E. Simanski Admits to Operating a Fraudulent Investment Scheme

44. In March 2016, an investor contacted FINRA about possible fraudulent conduct by Simanski.

45. On May 10, 2016, FINRA issued a letter requesting information from Simanski about his clients. Simanski did not respond to the FINRA letter. FINRA subsequently barred Simanski from the industry for not producing the requested materials.

46. After receiving the FINRA letter, Simanski revealed to the head of the Registered Entity’s Altoona office that he had been operating a fraudulent investment scheme for a number of years.

47. Simanski subsequently admitted to a representative of the Registered Entity that he had operated an investment scheme in which he took funds from a number of his clients with the promise of a 5% or 6% return in two or three years, and that he gave certain of the investors a document that he described as a “fake CD” that acknowledged the amount he received and his promise to repay the funds with interest.

48. Simanski also admitted to a representative of the Registered Entity that the Payless deal had fallen through and that the funds were “reallocated.”

49. The Registered Entity terminated Simanski, publicly disclosing allegations that he had “sold fictitious investments and converted the funds for his personal use and benefit.”

F. The Extent of Simanski’s Fraud

50. From 2002 through May 2016, Simanski fraudulently raised approximately \$3.9 million from 27 investors, and repaid those investors a total of approximately \$1.3 million in principal and interest.

51. When he was terminated by the Registered Entity in May 2016, 26 investors were still invested with Simanski with losses of approximately \$2.6 million.

52. Fifteen of 27 investors made principal investments to Simanski of \$1,516,000 within the last five years. The total amount of their investments that are outstanding is approximately \$1,083,300.

II. SIMANSKI VIOLATED THE SECURITIES LAWS THROUGH THE MATERIAL MISSTATEMENTS HE MADE TO DEFRAUD INVESTORS

53. The investments described above that Simanski sold to customers are securities within the meaning of both the Securities Act and the Exchange Act.

54. Simanski’s investors provided an investment of money—approximately 27 investors gave him at least \$3.9 million.

55. Simanski pooled investors' money into bank and brokerage accounts in his wife's name and represented that he would use those funds to either engage in tax free trading or operate the mining or car rental businesses in order to generate the promised returns.

56. Investors made their investment with a reasonable expectation of profits to be derived solely from Simanski's supposed ability to generate profits without any participation by any of its investors.

57. Simanski sold the notes to individual investors, not to commercial investors, and promised a higher profit than conventional investment accounts at the Registered Entity.

58. The notes were labeled investments, and investors considered them to be such. There is no other regulatory scheme that would reduce the risk associated the notes.

59. Simanski engaged in the conduct described herein by use of the means or instruments of transportation or communication in interstate commerce, the instrumentalities of interstate commerce, and/or by use of the mails.

60. Simanski made material untrue statements and omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

61. Simanski told prospective investors that their money was being invested in tax-free investments, the operations of the Mining Companies, or Payless. In reality, none of Simanski's scant activities in the personal brokerage account generated a tax-free return, and Simanski never invested in the Mining Companies or Payless.

62. Simanski failed to disclose to investors that he would use money from new investors to pay for his personal expenses and to make Ponzi-like payments to other investors.

63. All of Simanski's misrepresentations and omissions, individually and in the aggregate, are material, and were made to investors or prospective investors in connection with the offer, purchase, or sale of securities.

64. A reasonable investor would consider the misrepresented facts and omitted information—including, among other items, misrepresentations and omissions regarding the lack of actual investments by Simanski, the use of investors' money for Simanski's personal expenses, and using new investments to repay prior investors—important in deciding whether or not to purchase the securities.

65. In connection with the conduct described herein, Simanski acted knowingly, recklessly, or negligently. Among other things, Simanski knew, was reckless, or should have known that he was making material misrepresentations and omitting to state material facts necessary to make certain statements not misleading under the circumstances in connection with the offer and sale of the investments described above.

66. Simanski was the maker of the false and misleading statements. Among other things, Simanski spoke to investors and created the notes provided to investors.

67. Simanski used devises, schemes, and artifices to defraud investors, and engaged in acts, transactions, practices, or courses of business that operated as a fraud or deceit upon the investors. Among other things, Simanski used investors' funds as his own, misled investors as to the nature of their investments, and took careful steps to hide his scheme by opening accounts in his wife's name.

68. Simanski was a registered investment adviser and several of the victims were his clients with the Registered Entity. He pooled investor funds for his "tax free" investment, with the authority to trade and make all investment decisions concerning the pooled funds.

69. Simanski advised individual clients to purchase the securities he was offering, and he received compensation through misappropriation of investor's funds for his personal use.

70. As an investment adviser, Simanski owed a fiduciary duty to his clients to act in utmost good faith. Consistent with this standard, Simanski owed a duty to use investor's funds in the manner he promised.

71. Simanski misled investors about the nature of their investments and also the use of the money they invested.

72. Simanski breached this duty by using their assets for his personal use and to repay investors in Ponzi-like fashion. He pooled investor funds into an account and instead of generating returns from trading activity as promised to investors, he misappropriated the pooled funds.

FIRST CLAIM FOR RELIEF
(Violations of Section 17(a) of the Securities Act)

73. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 72, inclusive, as if they were fully set forth herein.

74. By engaging in the conduct described above, Defendant Simanski knowingly or recklessly, in the offer or sale of securities, directly or indirectly, by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails:

- a. employed devices, schemes, or artifices to defraud;
- b. 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
- c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

75. By engaging in the foregoing conduct, Defendant Simanski violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF
(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder)

76. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 72, inclusive, as if they were fully set forth herein.

77. By engaging in the conduct described above, Defendant Simanski knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by use of the means or instrumentalities of interstate commerce or of the mails or of any facility of a national securities exchange:

- a. employed devices, schemes, or artifices to defraud;
- b. made untrue statements of material fact, or 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, or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

78. By engaging in the foregoing conduct, Defendant Simanski 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].

THIRD CLAIM FOR RELIEF
(Violations of Section 206(1) and 206(2) of the Advisers Act)

79. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 72, inclusive, as if they were fully set forth herein.

80. By engaging in the conduct described above, Defendant Simanski, while acting as an investment adviser, by the use of the means and instrumentalities of interstate commerce and of the mails, directly or indirectly, knowingly or recklessly has employed devices, schemes, and artifices to defraud his clients and prospective clients; and has engaged in transactions, practices, and courses of business which operate as a fraud or deceit upon his clients and prospective clients.

81. By engaging in the foregoing conduct, Defendant Simanski violated, and unless restrained will continue to violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

FOURTH CLAIM FOR RELIEF
(Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 Thereunder)

82. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 72, inclusive, as if they were fully set forth herein.

83. Defendant Simanski, by engaging in the conduct described above, directly or indirectly, by the use of means or instrumentalities of interstate commerce or use of the mails, while acting as an investment adviser, engaged in acts, practices or courses of business that were fraudulent, deceptive and manipulative.

84. Defendant Simanski, while acting as an investment adviser to pooled investment vehicles: (a) made untrue statements of material facts or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, to investors or prospective investors in the pooled investment vehicle; or (b) engaged in acts, practices, or courses of business that were fraudulent, deceptive, or manipulative with respect to investors or prospective investors in the pooled investment vehicle.

85. By reason of the foregoing, Defendant Simanski violated, and unless enjoined and restrained will continue to violate, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

PRAYER FOR RELIEF

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

I.

Permanently restraining and enjoining Defendant Simanski from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];

II.

Permanently restraining and enjoining Defendant Simanski from violating 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.

Permanently restraining and enjoining Defendant Simanski from violating Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)] and Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. 275.206(4)-8];

IV.

Ordering Defendant Simanski to disgorge any and all ill-gotten gains, together with prejudgment interest, derived from the activities set forth in this Complaint; and

V.

Ordering Defendant Simanski to pay civil penalties 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. § 78(u)(d)(3)], and/or Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)]; and

VI.

Granting such other and further relief as this Court may determine to be just and necessary.

Respectfully submitted,

s/ Karen M. Klotz
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