

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JERRY LEE FARISH, and
NEW SUMMIT HOMES, INC.

Defendants.

C.A. No.: 4:19-cv-623

Jury Trial Demanded

COMPLAINT

Plaintiff Securities and Exchange Commission (“SEC”) files this Complaint against Defendants Jerry Lee Farish (“Farish”) and New Summit Homes, Inc. (“New Summit”) (collectively, “Defendants”) and alleges as follows:

SUMMARY OF THE ACTION

1. Farish is a long-time commercial airline pilot for an international airline based in North Texas. Between March 2016 and June 2017, Farish raised over \$1 million from fellow pilots and other investors in a fraudulent securities offering for New Summit, a home-building company he controlled.

2. Farish represented to the investors that New Summit would use their investment funds to build a high-end home on the “Little Bluestem” lot in Westlake, Texas, and that investors would receive their principal plus sizeable returns once the house was sold. Farish also told each of the investors that their investment would be secured by the second lien on the property, subordinate only to a first mortgage held by a financial institution.

3. In truth, Defendants sold the same investment to three different investors, purporting to provide all three investors with the same second lien position on the Little Bluestem property. Further, Defendants did not use investor funds to build the home as promised. Instead, Defendants commingled the investor funds in a New Summit bank account with funds from other sources, and then spent substantially all of the money on personal items and other expenses unrelated to the project, including entertainment and retail expenses, personal mortgage and rent payments, and lavish vacations.

4. Despite raising more than \$1 million for the Little Bluestem project, the lot and New Summit's bank account are empty. The investors received nothing from Defendants in return for their investments.

5. By reason of this misconduct, Defendants violated, and unless enjoined will continue to violate, the antifraud provisions of the federal securities laws, specifically Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q] and Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. The SEC brings this action seeking permanent injunctive relief, disgorgement of ill-gotten gains plus prejudgment interest, civil penalties, and all other equitable and ancillary relief the Court deems necessary.

JURISDICTION AND VENUE

6. 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(a) of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa(a)]. The investments offered, purchased, and sold as alleged herein were securities as defined under the Securities Act

and the Exchange Act. Defendants directly or indirectly made use of the means or instrumentalities of interstate commerce or the mails in connection with the transactions, acts, practices, and courses of business alleged herein.

7. Venue is proper in this district pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)]. Certain of the transactions, acts, practices, and courses of business constituting violations of the federal securities laws occurred within this district. Defendants offered and sold securities at issue in this district and the real property related to the investment is located in Westlake, Tarrant County, Texas, which is in this district. Further, Farish resides in this district and New Summit's principal place of business is in this district.

DEFENDANTS

8. Defendant Farish is an individual who resides in Tarrant County, Texas. During the relevant time period, Farish managed and controlled New Summit and was its *de facto* owner and Chief Executive Officer ("CEO"). During the SEC's investigation preceding the filing of this Complaint, Farish asserted his Fifth Amendment privilege against self-incrimination and refused to testify. On January 8, 2019, the U.S. Attorney's Office for the Northern District of Texas indicted Farish on one count of wire fraud relating to his conduct in connection with the Little Bluestem project.

9. Defendant New Summit is a Texas corporation with its principal place of business in Tarrant County, Texas. On January 25, 2019, the Texas Secretary of State forfeited New Summit's charter. On information and belief, New Summit has no current operations.

FACTUAL ALLEGATIONS

A. Background

10. Farish has been a licensed commercial airline pilot for a North Texas-based international airline for approximately thirty years. During his career as a pilot, Farish has also been involved in a number of real estate side businesses.

11. Farish started New Summit in late 2014. The Secretary of State filings for New Summit list Farish's three sons as the company's owners, officers, and directors. On information and belief, Farish excluded his name from the Secretary of State filings in an effort to separate New Summit from his legal problems related to a prior real-estate venture.

12. Farish's sons, however, lacked any business education or experience and exercised little-to-no independent judgment or decision-making at New Summit. Farish was New Summit's *de facto* owner and CEO, and he controlled every aspect of the company, including how it spent money. Farish held himself out as New Summit's CEO, and Farish was also the one who solicited investors and communicated directly with investors about their investments.

13. New Summit operated in two ways: first, building homes directly for the individuals who planned to live in them; and, second, securing investors to provide capital for New Summit to build and then sell new homes for a profit. In fact, New Summit did build and sell a number of homes over the approximately two years it was in operation, particularly for people in the first group who planned to live in them. Farish, however, used New Summit as a vehicle to defraud investors and misappropriate funds from investors in the second group who invested in New Summit projects for a profit.

14. To raise funds from these investors, Farish targeted fellow airline pilots with large balances in their 401(k) accounts, extolling the benefits of creating a self-directed IRA to invest in New Summit projects. According to New Summit's investor marketing materials, New Summit wanted investors to enjoy great returns investing in the building of new homes without the hassles of the construction process. New Summit told investors their investments would be backed and guaranteed by New Summit.

15. New Summit offered at least three investment opportunities: a Home Investment Opportunity, a Realty Investment Opportunity, and a Note Investment Opportunity. The three investment opportunities were described in a written investment brochure. Farish had authority over the contents of the written investment brochure.

16. The written investment brochure stated that, in the Home Investment Opportunity, the investor funded the development of a "spec" home in exchange for a pre-determined return when the home was sold. The property was kept in the investor's name as security for the investment.

17. The written investment brochure stated that, in the Realty Investment Opportunity, the investor contributed funds to New Summit's affiliated marketing company in exchange for the greater of a predetermined rate of return or a set percentage of the gross commissions earned from the sale of New Summit homes.

18. The written investment brochure stated that, in the Note Investment Opportunity, the investor helped fund a construction project by bridging the gap between the amount the bank would lend and the full amount required for construction of a home in exchange for a pre-determined return when the home was ultimately sold. The brochure also stated that New Summit provided the investor with the second-lien on the property as security for the investment.

The written investment brochure touted the Note Investment Opportunity as an investment offering great security with a good return that is excellent for self-directed retirement accounts.

B. The Little Bluestem Offering

19. The Little Bluestem offering was a Note Investment Opportunity. New Summit identified a plot to build a high-end home on Little Bluestem Court in the gated Vaquero community in Westlake, Texas. In March 2016, the Little Bluestem lot was purchased on New Summit's behalf. New Summit then offered a note investment to investors to fill the gap between the amount the bank would approve for a construction loan and the additional amount New Summit claimed it would need to build the home on the Little Bluestem property.

20. Beginning in March 2016, Farish marketed the Little Bluestem note investment to multiple potential investors in different states, including two fellow airline pilots. Farish handled every stage of the investor solicitations, and was the sole point of communication between investors and New Summit. Farish drove potential investors to the Little Bluestem lot, described how New Summit would use the investment to construct the home, and promised investors that if they purchased the note investment they would hold the second lien on the property. Farish pitched the Little Bluestem investment as a safe way to generate even higher retirement income than investors could earn in the stock market.

21. Ultimately, and contrary to his representations, Farish obtained three separate investors to fill the same purported funding gap on Little Bluestem.

22. On or about May 23, 2016, Farish secured a \$460,000 investment from a fellow commercial airline pilot residing in Paradise, Arizona ("Investor 1"), who wired his investment funds to a New Summit bank account. At the time, Farish made multiple representations to Investor 1 to induce him to invest. Farish told Investor 1 that he would receive an investment

return of \$200,000 after the home was sold, and he provided Investor 1 a written promissory note stating this promised return. Farish told Investor 1 that his investment funds would be used for the Little Bluestem property, and he provided Investor 1 a written breakdown representing that his funds would be used to cover the shortage between the bank loan and the cost of the building project. Farish told Investor 1 that he would have the second lien on the Little Bluestem property, and he provided Investor 1 a Second Mortgage Deed of Trust, which was supposed to document Investor 1's second lien. Farish promised Investor 1 that he would record the Second Mortgage Deed of Trust, but he did not.

23. Eight months later, the Little Bluestem lot remained undeveloped, and Defendants had spent almost all of Investor 1's \$460,000 investment on personal items or expenses unrelated to the project.

24. On or about January 19, 2017, Farish secured a \$200,000 investment for the same Little Bluestem project from a married couple residing in North Carolina and the wife's elderly mother who lives near Dallas (collectively, "Investor 2"). Farish picked up the \$200,000 check payable to New Summit during his visit with the elderly mother, which he deposited in a New Summit bank account. Farish made multiple representations to Investor 2 to induce them to invest. Farish told Investor 2 that they would receive an investment return of \$50,000 when the home was built and sold, and he provided Investor 2 a written promissory note stating the promised return, which Farish signed as "CEO New Summit Homes." Farish told Investor 2 that their investment was going to be used for the development of Little Bluestem and that it was a brand new project. Farish represented to Investor 2 that they would have the second lien on the property to secure their investment, and he provided Investor 2 a Second Mortgage Deed of Trust nearly identical to the one he presented to Investor 1 to document the purported second lien.

This “second” Second Mortgage Deed of Trust was recorded, but only after Investor 2’s insistence, and Farish did not tell Investor 2 about the existence of Investor 1 or the pre-existing unrecorded second lien.

25. Six months later, Little Bluestem remained undeveloped despite the fact that Defendants had raised \$660,000 from Investor 1 and Investor 2 for the project. Defendants continued to spend the investment proceeds on personal items and other expenses unrelated to the Little Bluestem project.

26. On or about June 27, 2017, Farish secured a third investor for the Little Bluestem project. Farish obtained \$350,000 from another commercial airline pilot residing in Highland Village, Texas (“Investor 3”), who wired his investment funds to a New Summit bank account. At the time, Farish made similar false statements to Investor 3 as he did to the previous two investors. Farish provided Investor 3 with yet another promissory note to fill the same funding gap that he again signed as “CEO New Summit Homes,” guaranteeing a \$65,000 investment return upon the sale of the home. Farish told Investor 3 that his investment was funding the construction of the Little Bluestem property, which Farish claimed would be breaking ground in the next week. Farish told Investor 3 that he would have the second lien on the property, and Farish provided Investor 3 yet another Second Mortgage Deed of Trust nearly identical to the ones provided to Investors 1 and 2. Farish did not record the “third” Second Mortgage Deed of Trust, which he promised Investor 3 he would do, nor did he tell Investor 3 about the previous investors or their pre-existing second-lien interests.

27. Each of the notes offered and sold were investment contracts and thus securities. The notes were entirely passive investments, and the investors had no role or say in the operations or management of New Summit or the underlying real-estate project. The investor

paid money to New Summit to purchase a note with a fixed investment return, and the investor expected to receive profits from the investment based solely upon the efforts and expertise of Farish and New Summit, including in the development and sale of the real-estate project. The investors' primary interest and motivation for investing in the Little Bluestem project was the profit the notes were promised and expected to generate.

C. Defendants Misused and Misappropriated the Investor Funds

28. New Summit ultimately obtained over \$1 million in investor funds from the three investors for the construction of a home at Little Bluestem. Yet, the property and lot remains empty and undeveloped.

29. Farish and New Summit commingled the investors' funds and the company's other funds in the same account. Defendants then used substantially all of the commingled investor funds for personal items and other expenses unrelated to the Little Bluestem project.

30. The funds in the commingled account were spent, by way of example, on personal monthly mortgage and rent payments, personal retail, restaurant, and entertainment expenses (*e.g.*, iTunes, Guitar Center, clothing subscriptions), lavish family vacations (*e.g.*, Disney cruise), personal home remodeling costs, and a retainer for a criminal defense lawyer for one of Farish's sons arising from an incident in Waco, Texas involving two rival motorcycle gangs.

31. The New Summit bank account now has a near-zero balance. Substantially all of the investor funds raised for Little Bluestem have been misused or misappropriated.

32. Farish also took steps to lull the investors to facilitate Defendants' misuse and misappropriation of investor funds. For example, after Investor 2 requested an update on the status of his investment, Farish sent him an email on February 25, 2017, stating that "we are in the process of grading the land" and then another email on March 26, 2017, stating that "we are

moving dirt now and ...we are now preparing the plot to begin the foundation.” These statements were false. Farish made these statements, on information and belief, so that the investors would believe their investment was on track and their investment funds were being used for the project. Further, Farish did not disclose that there had not been and would be no development on the lot or that investor funds were being used for other purposes.

D. Defendants Defrauded The Investors

33. In offering and selling the Little Bluestem investment notes, Defendants made misstatements to investors, failed to disclose material facts that rendered statements made misleading, and engaged in deceptive acts that operated as a fraud on the investors.

34. Farish, on behalf of New Summit, misrepresented to the investors verbally and in writing that their investment funds would be used to build a high-end home on the Little Bluestem property. Farish made representations to investors about how New Summit would use their investment funds, but failed to disclose that Defendants intended to use their funds on personal expenses and other items unrelated to the Little Bluestem project.

35. These statements and omissions about the use of investor funds were false and misleading, because Defendants used substantially all of the investor funds on personal expenses and other items unrelated to the Little Bluestem project. Farish knew these misstatements and omissions about the use of funds were false and misleading, because he had knowledge of and authority over the company’s spending, and because he personally misused and misappropriated, and directed others to misuse and misappropriate, investor funds.

36. Farish, on behalf of New Summit, misrepresented to the investors verbally and in writing that they would receive the second lien on the Little Bluestem property. Farish made

statements to investors about the security of their investment and their second lien, but failed to disclose the existence of the other investors or the duplicate liens.

37. These statements and omissions about the security of the investment and the second lien were false and misleading, because Defendants obtained three different investors for the same property and promised three separate investors the same second lien. Farish knew these statements and omissions were false and misleading, because he offered and sold the duplicate interest to the three investors with the same purported second lien, and he had authority over the contents of the deceptive second lien documents used in furtherance of the scheme, which, upon information and belief, Farish drafted.

38. Farish, on behalf of New Summit, told investors verbally and in writing that the investors would receive sizeable returns on their investments. Farish failed to disclose to Investor 2 that there was an earlier investor or to Investor 3 that there were earlier investors already invested in the project, or that there had been no development on the project despite the earlier investments. These omissions were false and misleading, because, as Farish knew, the lack of progress increased the risk that the home would not be built and, even if it were built and sold, the multiple investors increased the risk that any profit on the sale would not be sufficient to provide investors with the promised returns.

39. Farish, in furtherance of the scheme, and to facilitate the misuse and misappropriation of investor funds, misrepresented the status of the Little Bluestem project to the investors, falsely leading them to believe work was being or about to be performed on the property when it was not. Farish knew his statements and omissions were false and misleading, including because Farish controlled New Summit's business, had knowledge of its finances, and visited the Little Bluestem lot regularly.

40. Farish also falsely represented to the investors that he was the CEO of New Summit, and failed to disclose that he had no actual title at New Summit, or that, upon information and belief, he was trying to separate New Summit from his legal troubles related to a previous real-estate venture. These misstatements and omissions were false and misleading, because, as Farish knew, they falsely led investors to believe that Farish was an officer of the company and they concealed his prior issues with investors.

41. Farish also deceptively used the credit and assistance of a friend and fellow airline pilot in furtherance of the scheme. Because Farish lacked the credit to obtain the first mortgage for the Little Bluestem property, Farish paid the pilot a \$20,000 fee to use his credit to obtain the first mortgage and hold it for New Summit. The pilot also signed or co-signed several of the investment documents on behalf of New Summit, including two of the promissory notes, even though, like Farish, he had no actual position at New Summit.

42. Defendants obtained money from investors by means of the misrepresentations and omissions alleged above, much if not all of which, Farish spent, or directed others to spend, for Defendants' benefit. Farish made the misrepresentations and omissions knowingly or with severe recklessness, and his knowledge and state of mind is imputed to New Summit, an entity he controlled.

43. The misstatements and omissions were material. A reasonable investor would have considered the misstatements and omissions about the use of their investment funds, their security interest, the existence of other investors, the work performed on the project (or lack thereof), and Farish's position at New Summit important in deciding whether to invest. The investors would not have invested if they had known of the other investors with duplicate second

liens or that their investment funds would not be used to build a home on the Little Bluestem property.

44. During the relevant period, Farish used New Summit as means of perpetrating the securities fraud, and he and New Summit had a close relationship and closely collaborated in connection with the violations of the securities laws alleged herein. Farish was the *de facto* CEO and *de facto* owner of New Summit, and he controlled all aspects of the company and its finances, including the solicitation of investors and spending of investor funds.

45. New Summit did not adequately observe corporate formalities, including by failing to keep adequate books and records, failing to designate Farish as an officer and director of the company, and commingling funds and not separating the Farish family's personal funds from corporate funds. Defendants spent the commingled funds as one economic unit.

46. On January 8, 2019, the U.S. Attorney's Office for the Northern District of Texas indicted Farish on one count of wire fraud relating to his conduct in connection with the Little Bluestem project.

FIRST CLAIM FOR RELIEF

Violations of the Antifraud Provisions of the Securities Act Section 17(a) of the Securities Act (against all Defendants)

47. The SEC reallages and incorporates by reference each and every allegation contained in the paragraphs above

48. By engaging in the conduct described herein, Defendants, directly or indirectly, singly or in concert with others, in the offer or sale of securities, by use of the means and instrumentalities of interstate commerce and/or by use of the mails have: (a) employed devices, schemes, and artifices to defraud; and/or (b) obtained money or property by means of untrue

statements of a material fact 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; and/or (c) engaged in transactions, practices, and courses of business which operate or would operate as a fraud and deceit upon the purchasers.

49. With regard to Defendants' violations of Section 17(a)(1) of the Securities Act, Defendants acted with scienter and engaged in the referenced acts knowingly and/or with severe recklessness. With regard to Defendants' violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, Defendants acted at least negligently.

50. By reason of the foregoing, Defendants have violated and, unless enjoined, will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q].

SECOND CLAIM FOR RELIEF

Violations of the Antifraud Provisions of the Exchange Act Section 10(b) of the Exchange Act and Rule 10b-5 thereunder (against all Defendants)

51. The SEC reallages and incorporates by reference each and every allegation contained in the paragraphs above.

52. By engaging in the conduct described herein, Defendants, directly or indirectly, singly or in concert, by the use of the means or instrumentalities of interstate commerce and/or or by use of the mails, in connection with the purchase or sale of securities: (a) employed devices, schemes, and artifices to defraud; and/or (b) made untrue statements of a material fact 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; and/or (c) engaged in acts, practices, and courses of business which operate or would operate as a fraud and deceit upon purchasers, prospective purchasers, and any other persons.

53. Defendants acted with scienter and engaged in the referenced acts knowingly and/or with severe recklessness.

54. By reason of the foregoing, Defendants 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].

JURY TRIAL DEMAND

The SEC demands a trial by jury on all issues that may be so tried.

RELIEF REQUESTED

Therefore, the SEC respectfully requests that this Court:

- (a) Permanently enjoin Defendants from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. § 77q] and 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];
- (b) Order Defendants to disgorge, jointly and severally, all ill-gotten gains and/or unjust enrichment realized by them, plus prejudgment interest thereon;
- (c) Order Defendants to each pay a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and/or Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

(d) Grant such further relief as this Court may deem just and proper.

Dated: August 8, 2019

Respectfully submitted,

/s/ Keefe M. Bernstein

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