

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**U.S. SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**CHRISTOPHER FULCO (a/k/a
CHRISTIAN ANTHONY, JOHNATHAN
STEWART, and MICHAEL BARRON), and**

JM CAPITAL HOLDINGS LLC,

Defendants,

and

JAMIE MILIONE,

Relief Defendant.

Civil Action No. 19-cv-5318

Jury Trial Demanded

COMPLAINT

Plaintiff U.S. Securities and Exchange Commission (the “Commission”), for its Complaint against Christopher Fulco (a/k/a Christian Anthony, Johnathan Stewart, and Michael Barron) (“Fulco”) and JM Capital Holdings LLC (“JM Capital”) (collectively, “Defendants”), and Relief Defendant Jamie Milione (“Milione” or “Relief Defendant”), alleges as follows:

SUMMARY OF ALLEGATIONS

1. From at least April 2016 through April 2019 (the “Relevant Time Period”), Defendants engaged in an offering fraud, stealing approximately \$1.6 million from at least ten investors, many of whom are elderly retirees.

2. Fulco, a former registered representative previously barred by the Financial Industry Regulatory Authority (“FINRA”), used aliases to conceal his true identity. Through JM Capital, Fulco cold-called investors and solicited investments for a private electric vehicle company, a medical device company, a fund he purported to manage, and a promissory note.

3. But Defendants never invested the money in the manner represented to investors. Instead, Fulco simply used the investor proceeds to fund his lifestyle, spending significant portions for gambling, vacations, mortgage payments, child support, luxury goods, cash withdrawals, and restaurant meals. Additionally, Fulco transferred at least \$94,130 of investor money to Milione.

VIOLATIONS AND RELIEF SOUGHT

4. By engaging in the conduct set forth in this Complaint, Defendants violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a), 77e(c), and 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].

5. The Commission seeks a judgment from the Court: (i) enjoining Defendants from engaging in future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)], 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]; (ii) ordering Defendants to disgorge their ill-gotten gains and to pay prejudgment interest thereon; (iii) imposing civil money penalties on Defendants 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)]; and (iv) ordering Relief Defendant to disgorge any ill-gotten gains plus prejudgment interest thereon.

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and (d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

7. This Court possesses 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)] and Sections 21(d) and 27(a) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa(a)].

8. Defendants, directly or indirectly, have made use of the means or instruments of transportation or communication in interstate commerce, or of the means or instrumentality of interstate commerce, or of the mails, in connection with their actions as alleged in this Complaint. For instance, Defendants solicited and received funds from investors located all over the United States and abroad by wire and through the mail, and Fulco communicated with investors by telephone and email.

9. Venue lies 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)] because Defendants reside in this District and engaged in certain of the acts alleged in this Complaint in this District, including Defendants' and Relief Defendant's receipt, transfer, and misuse of investor funds.

DEFENDANTS AND RELIEF DEFENDANT

10. **Fulco**, age 43, is a resident of Staten Island, New York. In 2014, FINRA barred Fulco from acting as a broker or otherwise associating with any broker-dealer firm for, among other things, engaging in private transactions away from the firm through which he was registered, testifying falsely in FINRA testimony, and encouraging a witness not to appear or to provide false testimony to FINRA staff. During the Relevant Time Period, Fulco concealed his identity from

investors and used various aliases, including identifying himself to investors as “Christian Anthony,” “Johnathan Stewart,” and “Michael Barron.”

11. **JM Capital** is a Delaware limited liability company owned by Fulco. Fulco operates JM Capital out of Staten Island, New York, and has also operated it out of Manhattan, New York. JM Capital has never been registered with the Commission in any capacity. JM Capital Advisors is a d/b/a of JM Capital. At all times during the Relevant Time Period, Fulco controlled JM Capital’s bank and brokerage accounts.

12. **Milione**, age 43, is a resident of Staten Island, New York and is the ex-fiancé of Fulco. Milione founded JM Capital in 2011, but transferred the business to Fulco shortly thereafter. On information and belief, Milione and Fulco currently reside in the same household.

OTHER RELEVANT ENTITIES

13. **Company A** is a private electric vehicle development and manufacturing company. Company A’s shares are not registered with the Commission.

14. **Company B** is a publicly traded company. Company B’s shares are registered with the Commission.

FACTUAL ALLEGATIONS

A. Defendants Misappropriated Investor Funds

15. During the Relevant Time Period, Fulco cold-called potential investors and solicited their investments in Company A, Company B, the JM Capital High Yield Fund (a purported investment fund), and a promissory note issued by JM Capital.

16. When soliciting investors, Defendants made a number of misrepresentations.

17. For instance, Fulco used a variety of aliases to hide from investors and potential investors his true identity, past misconduct, and the resulting FINRA bar. Most frequently, Fulco

told investors and potential investors that his name was either “Christian Anthony” or “Johnathan Stewart.” Fulco also, though less often, used the alias “Michael Barron.”

18. Fulco also created fictitious documents to induce investors to transfer money to JM Capital.

19. At least 10 investors provided approximately \$1.6 million to JM Capital, all of which was misappropriated by Fulco. Based on Fulco’s misrepresentations on behalf of JM Capital, each of these investors believed their funds would be used to purchase securities.

20. But Defendants did not invest any investor money as they had represented they would. Instead, Fulco stole investors’ money and spent it on himself. Investor money was withdrawn from JM Capital’s bank accounts in cash, spent at casinos or on vacations, used to purchase luxury goods, and used for other personal expenses.

21. Fulco also transferred at least \$68,130 from JM Capital’s bank accounts to Milione via check transfers between bank accounts, quick pay electronic transfers, wire transfers, and payments through Square.

22. Defendants also transferred at least \$155,000 of investors’ funds to a brokerage account in the name of JM Capital, rather than brokerage accounts in the name of each respective investor. These funds generally were not put towards the investors’ expected investments. Instead, Defendants used some funds to purchase speculative investments outside of those discussed with investors. Indeed, Defendants invested less than \$250 of those funds in Company B, none of which was held in the name of the solicited investors. Defendants held these shares in Company B for approximately two days and sold them at a loss. Defendants transferred the remainder of the funds held in JM Capital’s brokerage account back to JM Capital’s bank accounts or to Milione. At least \$26,000 was transferred to Milione from the JM Capital brokerage account.

B. Defendants Perpetrated a Fraudulent Offering Related to Company A and Company B

23. When contacting investors and potential investors, Fulco offered to make investments in private companies that he claimed were about to commence an initial public offering (“IPO”), namely Company A and Company B. Fulco told potential investors that, upon the IPO, the value of the investors’ securities would increase substantially.

24. In inducing investors to transfer money to JM Capital for purported investments, Fulco engaged in wholesale deception. Fulco used a variety of aliases to conceal his true identity and negative regulatory history from investors. He also created fictitious stock purchase agreements and escrow agreements. In the escrow agreements, JM Capital represented that investor proceeds would be held in bank escrow accounts until the securities were delivered to the investor. In some of the agreements, JM Capital represented that it was the owner of the securities or was acting as the seller’s representative.

25. All of these representations were false. The bank accounts listed in the agreements were JM Capital accounts controlled by Fulco. JM Capital did not own shares of Company A or Company B referenced in the agreements, nor did it act as a seller’s representative. Additionally, at the time of these representations, Company B was already a public company.

26. Contrary to Defendants’ representations, during the Relevant Time Period, JM Capital never delivered any shares to investors.

27. Based on Defendants misrepresentations, at least nine investors transferred at least \$1,478,573 to JM Capital for the purchase of shares or other securities in Company A and Company B. Fulco, however, stole all this money.

C. Defendants Perpetrated a Fraud Involving the So-called “JM Capital High Yield Fund”

28. On at least one occasion, Fulco—again using an alias—solicited investment in JM Capital High Yield Fund, a fictitious investment fund. During 2016 and 2017, Fulco told at least one investor, a then-90-year old military veteran, that the purported fund was operated by JM Capital, invested in stocks that paid dividends, and would yield 20% returns by the time it matured in approximately 18 months. But no such fund ever existed. The investor wired JM Capital a total of \$94,000. And Fulco misappropriated every dollar.

29. To effect some of this misappropriation, Fulco assisted the investor in opening a brokerage account in the investor’s name. The investor transferred securities he already held to the account. Fulco then liquidated most of the securities in the account, and with Fulco’s assistance the investor wired \$50,000 in proceeds from the sale to a JM Capital bank account. Fulco represented to the investor that the sale proceeds would be invested in the JM Capital High Yield Fund, but Fulco simply stole most of the cash in the account. Contrary to his representations to the investor, Fulco invested the small remaining cash balance in the investor’s brokerage account in short-term, speculative call options, which expired valueless only three weeks later.

30. No registration statement had been filed or was in effect as to the JM Capital High Yield Fund.

D. Defendants Perpetrated a Fraud Involving the JM Capital Note

31. In October 2017, an investor loaned JM Capital \$33,000. Initially described as a short-term investment in a restaurant, Defendants documented the eventual loan as a promissory note issued by JM Capital, which bore interest and a total sum due in 60 days of \$44,880. As with other solicitations, Fulco used an alias. He also represented that JM Capital would guarantee the investment. Fulco repaid the investor approximately \$22,800, but never repaid the remaining

principal or any interest. Fulco used funds provided by other investors to repay the \$22,800 on the promissory note. Those investors had provided Defendants with the funds believing that their money would be used to purchase shares of Company A and Company B.

32. No registration statement had been filed or was in effect as to the JM Capital Note.

E. Defendants Concealed Their Fraud in Order to Raise Additional Capital

33. After misappropriating investor funds, Fulco continued to deceive investors to obtain additional funds from them, which he again stole. Depending on the investor, Fulco continued to deceive investors by fabricating account statements, lying about the success of the prior investments or the ability to reinvest at lower prices, lying about why the securities Defendants sold investors had not been delivered, and lying about additional fees and costs that needed to be paid in order to custody or transfer the entirely fictional investments.

34. For example, Fulco told certain investors that their securities would be sold to a third party, but that he needed the investors to prepay his “commissions” and “concession fees” and cover payments to various service providers. In response to this lie, some investors sent even more money to JM Capital.

35. When one investor expressed to Fulco his family’s concerns over the continued solicitation of funds for additional fees and requested reassurance, Fulco created a new alias—“Michael Barron”—and posed as JM Capital’s Chief Compliance Officer. Using this new false identity, Fulco told the investor that JM Capital was in compliance with local, state, and federal securities laws and that JM Capital was audited yearly by the “banking division” and the Commission. These misstatements gave comfort to the investor who provided at least an additional \$10,300 to JM Capital on behalf of himself and his son, who was also a JM Capital investor.

F. Milione Received Ill-gotten Gains from Defendants

36. Milione received ill-gotten funds transferred to her or for her benefit by Fulco. In particular, Milione received at least \$94,130 from Fulco.

37. Milione has no legitimate claim to the ill-gotten funds she directly or indirectly received from Fulco. She has been unjustly enriched by her receipt of these investor funds.

38. Accordingly, Milione should be required to disgorge all of the amounts she directly or indirectly received from Fulco.

FIRST CLAIM FOR RELIEF

**Violations of Section 10(b) and Rule 10b-5 of the Exchange Act
(Defendants Christopher Fulco and JM Capital Holdings LLC)**

39. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 35 of this Complaint as if fully set forth herein.

40. By engaging in the acts and conduct alleged in this Complaint, during the Relevant Time Period, Defendants directly or indirectly, singly or in concert, by the use of the means and instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities, with scienter have: (a) employed devices, schemes, or artifices to defraud, (b) made untrue statements of 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 (c) engaged in acts, practices, and courses of business which operated or would operate as a fraud or deceit upon other persons.

41. By reason of the foregoing, Defendants have 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 [17 C.F.R. § 240.10b-5], promulgated thereunder.

SECOND CLAIM FOR RELIEF

Violations of Sections 5(a) and 5(c) of the Securities Act
(Defendants Christopher Fulco and JM Capital Holdings LLC)

42. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 35 of this Complaint as if fully set forth herein.

43. By engaging in the acts and conduct alleged in this Complaint, during the Relevant Time Period, Defendants, directly or indirectly, singly or in concert, made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer or sell securities through the use or medium of a prospectus or otherwise, or carried or caused to be carried through the mails or in interstate commerce, by means or instruments of transportation, securities for the purpose or sale or for delivery after sale, when no registration statement had been filed or was in effect as to such securities, and when no exemption from registration was applicable. The shares of Company A, the JM Capital High Yield Fund, and the JM Capital Note that defendants offered and sold as alleged herein constitute “securities” as defined in the Securities Act and the Exchange Act.

44. By reason of the foregoing, Defendants have violated, and, unless restrained and enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and (c)].

THIRD CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act
(Defendants Christopher Fulco and JM Capital Holdings LLC)

45. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 35 of this Complaint as if fully set forth herein.

46. By engaging in the acts and conduct alleged in this Complaint, during the Relevant Time Period, Defendants, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in the offer or sale of securities, with scienter have: (a) employed devices, schemes, and artifices to defraud; (b) obtained money or property by means of untrue statements of a material fact or omissions to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices, and courses of business which operated or would have operated as a fraud or deceit upon purchasers.

47. 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(a)].

FOURTH CLAIM FOR RELIEF

Unjust Enrichment Liability (Relief Defendant Jamie Milione)

48. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 38 of this Complaint as if fully set forth herein.

49. Relief Defendant Milione has obtained funds as part, and in furtherance of, the securities violations alleged above, and under circumstances in which it is not just, equitable, or conscionable for her to retain the funds. As a consequence, Relief Defendant Milione has been unjustly enriched.

PRAYER FOR RELIEF

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

I.

Permanently restraining and enjoining Defendants, their agents, servants, employees and 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 committing future violations of each of the securities laws and rules promulgated thereunder as alleged herein.

II.

Directing each of the Defendants and the Relief Defendant to disgorge all ill-gotten gains, and ordering each of them to pay prejudgment interest thereon.

III.

Ordering each of the Defendants to pay civil money penalties 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)].

IV.

Granting such other and further relief as the Court may find appropriate or necessary for the benefit of investors.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands that this case be tried to a jury.

Dated:

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