

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**TH WEALTH MANAGEMENT, LLC.
AND BRIAN KEAT HOBBS,**

Defendants.

§
§
§
§
§
§
§
§
§
§
§

Case No.:

COMPLAINT

Plaintiff Securities and Exchange Commission (“SEC”) files this Complaint against Defendants TH Wealth Management, LLC (“TH Wealth”), a Texas-registered investment adviser, and its sole owner and principal Brian Keat Hobbs (“Hobbs”), and alleges as follows:

**I.
SUMMARY**

1. From at least December 2016 through March 2019, Hobbs used TH Wealth’s omnibus, or block, trading account to perpetrate a fraudulent “cherry-picking” scheme to benefit themselves, and to defraud four of their advisory clients, in breach of their fiduciary duties as investment advisors to their clients.

2. Hobbs – who was the only person at TH Wealth with the authority to determine trades and allocations – perpetrated this scheme by disproportionately allocating profitable option trades to his personal accounts, and disproportionately allocating unprofitable trades to his and TH Wealth’s four advisory clients.

3. The likelihood that this disproportionate allocation of profitable and losing option

trades resulted from random chance – as opposed to knowing and intentional conduct – is, at best, less than one in a million.

4. Through this scheme, TH Wealth and Hobbs received – and defrauded their clients of – more than \$275,000 in trading profits.

5. In addition to this fraudulent conduct, TH Wealth and Hobbs also made materially false and misleading statements to their clients and prospective clients in the firm’s Form ADV Part 2A filings, which misrepresented how TH Wealth was trading securities for its clients. The firm’s brochures and other disclosures claimed the trades were being fairly and equitably allocated among the client accounts. In light of TH Wealth’s and Hobbs’s cherry-picking scheme, that claim was false.

6. By engaging in their cherry-picking scheme, and through their misrepresentations to their advisory clients, TH Wealth and Hobbs violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder, Sections 17(a) of the Securities Act of 1933 (“Securities Act”), and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”).

7. To prevent their future violations of the securities laws, to disgorge their ill-gotten gains for the benefit of their defrauded clients, and to punish their violations of the securities laws, the SEC seeks permanent injunctions, disgorgement with prejudgment interest, and civil penalties against each of the defendants.

II. JURISDICTION AND VENUE

8. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a), Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27(a) of the Exchange Act, 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa(a), and Sections 209(d), 209 (e)(1) and 214 of the Advisers Act, 15 U.S.C. §§ 80b-9(d), 80b-9(3)(1) & 90b-

14.

9. Defendants have, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged in this complaint.

10. Venue is proper in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), Section 27(a) of the Exchange Act, 15 U.S.C. § 78aa(a), and Section 214 of the Advisers Act, 15 U.S.C. § 80b-14, because certain of the transactions, acts, practices and courses of conduct constituting violations of the federal securities laws occurred within this district. In addition, venue is proper in this district because Hobbs resides in this judicial district, and TH Wealth has its principal place of business in this judicial district.

III. DEFENDANTS

11. TH Wealth Management, LLC, is a Texas limited liability company with its principal place of business in Dallas, Texas. TH Wealth is an investment adviser registered with the State of Texas. According to its most recent Form ADV amendment, TH Wealth has 93 client accounts and \$25 million in assets under management. TH Wealth has never been registered with the Commission in any capacity.

12. Brian Keat Hobbs, age 47, is a resident of Dallas, Texas. Hobbs created TH Wealth in 2005 and, since 2013, Hobbs has been the sole owner, officer, and control person of TH Wealth.

IV. FACTS

A. Background

13. At all relevant times, both TH Wealth and Hobbs were investment advisers, as defined by Section 202(a)(1) of the Advisers Act.

14. At all relevant times, TH Wealth and Hobbs provided investment advice to clients in

exchange for advisory fees based on a percentage of assets under management.

15. Additionally, TH Wealth has been registered with the State of Texas as an investment adviser.

16. At all relevant times, Hobbs was the sole owner, officer and control person of TH Wealth, was the only person at TH Wealth who provided investment advice to clients and was solely responsible for TH Wealth's trades and allocations of the options trading at issue.

17. As investment advisers, TH Wealth and Hobbs owed a fiduciary duty to their advisory clients to act for their clients' benefit, including an affirmative duty of utmost good faith and full disclosure of all material facts, as well as a duty to avoid misleading their advisory clients.

18. TH Wealth had advisory agreements with each of its clients, in which the client agreed to pay TH Wealth an advisory fee ranging from 1% to 2.25% of assets in the account.

19. During the relevant period, TH Wealth held all of its clients' accounts and Hobbs's personal accounts at TD Ameritrade ("TDA").

B. The Cherry-Picking Scheme

20. TH Wealth's and Hobbs's cherry-picking scheme involved trading options on securities in three of Hobbs's personal accounts (the "Hobbs Accounts") and in the accounts of four of his clients (the "Client Accounts").

21. TH Wealth and Hobbs breached their fiduciary duties to their four advisory clients in whose accounts they traded options by engaging in a cherry-picking scheme involving options trades that began no later than December 2016 and continued through March 2019.

22. In trading options for his own accounts and the four Client Accounts, Hobbs could have placed the trade either as a "direct trade" or an "allocated trade."

23. A direct trade was one in which Hobbs placed the initial option purchase directly in the Client Accounts and/or the Hobbs Accounts.

24. An allocated trade was one in which Hobbs placed the initial option purchase in TH Wealth's omnibus trading account at TDA and later that day allocated the purchased options to the Client Accounts and/or the Hobbs Accounts.

25. In general, an omnibus trading account allows an investment adviser to buy and sell securities on behalf of multiple clients simultaneously, without identifying to the broker in advance the specific accounts for which a trade is intended.

26. As part of his cherry picking scheme, Hobbs placed and allocated the option trades through TH Wealth's omnibus trading account rather than directly in the Client Accounts.

27. Hobbs generally placed the option trades early in the trading day but did not communicate the allocation to TDA until much later in the day—near or after the market close.

28. If the option price went up between the time of the trade and the later allocation, Hobbs generally allocated most of the trade to one of the Hobbs Accounts and a smaller portion of the trade to one or more of the Client Accounts. If, however, the option price went down between the time of the trade and the later allocation, Hobbs generally allocated all or most of the trade to one or more of the Client Accounts and none or a smaller portion of the trade to one of the Hobbs Accounts.

29. As reflected in the chart below, TH Wealth's trade blotter demonstrates that, at the time of allocation, the Hobbs Accounts had a higher percentage of profitable trades and overall enjoyed substantial profits and positive returns, while the Client Accounts had a much lower percentage of profitable trades and overall suffered substantial losses and negative trading returns.

///

///

///

///

Accounts	Total Approximate Dollar Amount of Allocated Option Trades	Approximate Profit/(Loss)	Approximate Return
Hobbs Accounts	\$768,000	\$271,000	35%
Client Accounts	\$1,435,000	-\$287,0	-20%

30. TH Wealth's and Hobbs's cherry-picking scheme is further demonstrated by the respective profits and losses to the Hobbs Accounts and the Client Account from the 50 best and 50 worst trades, as reflected in TH Wealth's trade blotter at the time of allocation. TH Wealth's trade blotter demonstrates that Hobbs's 50 best trades had returns that ranged from 107% to 2,122%, while the 50 worst trades had returns that ranged from -75% to -99%. TH Wealth's trade blotter demonstrates that Hobbs allocated the trades so that the Hobbs Accounts received most of the profits from the 50 best trades and the Client Accounts received most of the losses from the 50 worst trades, as shown on the chart below.

Accounts	Approximate Profits from 50 Best Trades	Approximate Losses from 50 Worst Trades
Hobbs Accounts	\$228,000	-\$22,000
Client Accounts	\$80,000	-\$96,000

31. The likelihood that Hobbs's disproportionate allocation of profitable trades to his own accounts, and allocation of unprofitable trades to the Client Accounts resulted from random chance, as opposed to knowing and intentional conduct, is, at best, less than one in a million.

32. At a minimum, TH Wealth's trade blotter demonstrates that Hobbs failed to act reasonably when determining how to allocate trades.

33. In March 2019, TDA suspected TH Wealth of cherry-picking and immediately closed TH Wealth's omnibus trading account and, effective June 2019, terminated its relationship with TH Wealth.

34. By the time TDA closed TH Wealth's omnibus trading account, three of the Clients

Accounts had lost all or almost all of their value as a result of losses from Hobbs's options trading.

C. TH Wealth's and Hobbs's False and Misleading Statement to Clients

35. A Form ADV is a document filed with the SEC by investment advisers. The filing consists of two parts: Part 1 contains "check-the-box" information about the firm; and Part 2 is a brochure, in narrative form, which describes key information about the firm, including the types of services the firm provides. An investment adviser's Form ADV must be updated annually and made available to firm clients.

36. At all relevant times, TH Wealth was required to deliver its Form ADV, Part 2A brochure to clients at the time it entered into an advisory contract with them, and to provide clients annually with TH Wealth's current brochure or a summary of any material changes to its existing brochure.

37. During the relevant period, in Form ADV, Part 2A filings provided to clients, TH Wealth and Hobbs represented:

Aggregation of Purchase or Sale

We perform investment management services for various clients. There are occasions on which portfolio transactions may be executed as part of concurrent authorizations to purchase or sell the same security for numerous accounts served by our firm, which involve accounts with similar investment objectives.... When such concurrent authorizations occur, the objective is to allocate the executions in a manner which is deemed equitable to the accounts involved. In any given situation, we attempt to allocate trade executions in the most equitable manner possible, taking into consideration client objectives, current asset allocation and availability of funds using price averaging, proration and consistently non-arbitrary methods of allocation.

Code of Ethics, Participation or Interest in Client Transactions and Personal

Trading

Related persons of our firm may buy or sell securities and other investments that are also recommended to clients. In order to minimize this conflict of interest, our related persons will place client interests ahead of their own interests ... If related persons' accounts are included in a block trade, our related persons' accounts will be traded in the same manner every time.

Our firm and supervised persons must conduct business in an honest, ethical, and fair manner and avoid all circumstances that might negatively affect or appear to affect our duty of complete loyalty to all clients.

38. Hobbs reviewed and approved, and had ultimate authority over the contents and language of the Form ADV, Part 2 before filing them and providing them to his and TH Wealth's clients.

39. Hobbs also signed the Form ADV filings that represented that all information and statements made in the Form ADV, including any other information submitted (*i.e.*, the Form ADV, Part 2A filings), were true and correct.

40. These representations in the Form ADV, Part 2A filings were materially false and misleading.

41. The statements that TH Wealth would allocate trades in the most equitable manner were false.

42. The statements that the Hobbs Accounts in block trades would be traded in the same manner as other client accounts every time were false.

43. The statements that TH Wealth and Hobbs would avoid all circumstances that might negatively affect their clients were false.

44. In fact, Hobbs's and TH Wealth's cherry-picking scheme negatively affected the

clients and did not result in equitable allocation of trades, nor were the Hobbs Accounts being traded in the same manner every time.

45. TH Wealth's and Hobbs's advisory clients would have considered it important to know, in deciding to use and continue to use TH Wealth and Hobbs as their investment advisors, that the statements contained in TH Wealth's Form ADV's that: (a) it would allocate trades in the most equitable manner; (b) the Hobbs Accounts in the block trades would be traded in the same manner as other client accounts every time; and (c) TH Wealth and Hobbs would avoid all circumstances that might negatively affect their clients and would otherwise abide by their fiduciary duties, were all false and misleading.

D. TH Wealth's and Hobbs's Scierter And Negligence

46. Hobbs knowingly or recklessly engaged in a fraudulent scheme to cherry-pick securities trades for the benefit of the Hobbs Accounts and to the detriment of the Client Accounts.

47. Hobbs, at a minimum, acted unreasonably when carrying out his cherry-picking scheme.

48. Hobbs also knew, or was reckless or negligent in not knowing, that TH Wealth's Forms ADV were false and misleading when they claimed that the trading of securities would be allocated fairly and equitably among client accounts.

49. Because Hobbs is the sole owner, officer and control person of TH Wealth, Hobbs's knowledge, recklessness and/or negligence in carrying out the cherry-picking scheme and making false representations in TH Wealth's Form ADV are imputed to TH Wealth.

///

///

///

///

FIRST CLAIM FOR RELIEF

**Fraud in Connection with the Purchase or Sale of Securities
Violations of Section 10(b) of the Exchange Act and Rule 10b-5
(Against All Defendants)**

50. The SEC realleges and incorporates by reference paragraphs 1 through 49 above.

51. As alleged above, TH Wealth and Hobbs, with scienter, engaged in a scheme defraud, made material false statements, and engaged in acts, practices or courses of business that operated as a fraud upon clients, in connection with the purchase and sale of securities, by cherry-picking favorable option trades for the Hobbs Account and by allocating less favorable trades to the Client Accounts.

52. By engaging in the conduct described above, defendants TH Wealth and Hobbs, and each of them, directly or indirectly, in connection with the purchase or sale of a security, and by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact and omitted to state material facts 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 other persons.

53. By engaging in the conduct described above, TH Wealth and Hobbs violated, and unless restrained and 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(a) & 240.10b-5(c).

SECOND CLAIM FOR RELIEF

**Fraud in the Offer or Sale of Securities
Violations of Sections 17(a) of the Securities Act
(Against All Defendants)**

54. The SEC realleges and incorporates by reference paragraphs 1 through 49 above.

55. As alleged above, TH Wealth and Hobbs engaged in a scheme to defraud clients, obtained money by means of untrue statements, and engaged in a course of business that operated as a fraud upon a purchaser, by cherry-picking favorable trades for the Hobbs Accounts and allocating less favorable trades to the Clients Accounts.

56. By engaging in the conduct described above, TH Wealth and Hobbs, and each of them, directly or indirectly, in the offer or sale of securities, and by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails directly or indirectly employed devices, schemes, or artifices to defraud, obtained money by means of untrue statements of material fact or omissions to state a material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in transactions, practices, and courses of business which operated as a fraud or deceit upon on a purchaser.

57. TH Wealth and Hobbs with scienter, employed devices, schemes and artifices to defraud, and with scienter or negligence obtained money by means of untrue statements and omissions and engaged in transactions, practices, and courses of business which operated as a fraud or deceit upon on a purchaser.

58. By engaging in the conduct described above TH Wealth and Hobbs violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. §§ 77q(a).

THIRD CLAIM FOR RELIEF

Fraud by an Investment Adviser Violations of Sections 206(1) and 206(2) of the Advisers Act (Against All Defendants)

59. The SEC realleges and incorporates by reference paragraphs 1 through 49 above.

60. As alleged above, TH Wealth and Hobbs each had an adviser-client relationship

with, and therefore owed a fiduciary duty to, each of TH Wealth's clients.

61. TH Wealth and Hobbs both breached their fiduciary duty by carrying out the cherry-picking scheme and by falsely representing in TH Wealth's brochures that TH Wealth would equitably and fairly allocate transactions among its clients, that blocks trades be traded in the same manner as other client accounts every time, and that TH Wealth and Hobbs would avoid all circumstances that might negatively affect their clients.

62. At all relevant times, Hobbs acted knowingly, recklessly and/or negligently when carrying out this fraud, and his state of mind and/or negligence is imputed to TH Wealth, which he controlled.

63. By engaging in the conduct described above, TH Wealth and Hobbs, and each of them, directly or indirectly, by use of the mails or means of instrumentalities of interstate commerce: (a) with scienter, employed devices, schemes or artifices to defraud clients or prospective clients, and (b) with scienter or, at a minimum negligently, engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon clients or prospective clients.

64. By engaging in the conduct described above, TH Wealth and Hobbs, and each of them, violated, and unless restrained and enjoined will continue to violate, Sections 206(1) and (2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2).

PRAYER FOR RELIEF

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

I.

Permanently enjoining TH Wealth, and its officers, agents, servants, employees and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the judgment by personal service or otherwise, and each of them, from violating Section

17(a) of the Securities Act [15 U.S.C. §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], and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§80b-6(1) & 80b-6(2)].

II.

Permanently enjoining Hobbs, and his agents, servants, employees and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the judgment by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act [15 U.S.C. §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], and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§80b-6(1) & 80b-6(2)]

III.

Order TH Wealth and Hobbs to jointly and severally disgorge all funds received from their illegal conduct, together with prejudgment interest thereon.

IV.

Order TH Wealth and Hobbs to pay civil penalties under 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. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

V.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order 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.

///

///

VI.

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

Dated: December 18, 2020

Respectfully submitted,

/s/ Nikolay V. Vydashenko

Nikolay V. Vydashenko

Texas Bar No. 24057029

United States Securities and Exchange Commission

Fort Worth Regional Office

801 Cherry Street, Suite 1900

Fort Worth, Texas 76102

(817) 900-2638

(817) 978-4927 (facsimile)

vydashenkon@sec.gov

Attorney for Plaintiff

Securities and Exchange Commission