

# COPY

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

: Civil Action File No.

v.

: **06 CV 1078**

**DENNIS A. MARTIN,**

**Defendant.**

:

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

The plaintiff Securities and Exchange Commission (the "Commission") files this complaint and alleges the following:

**SUMMARY**

1. This matter involves the misappropriation of at least \$837,000, and apparently more than \$2.5 million, of customer funds by Dennis A. Martin, a registered representative of a broker registered with the Commission. Martin accomplished this fraud by obtaining authorization under false pretenses to sell

securities from customers' accounts and to invest the proceeds in different investments. Martin, however, never purchased the authorized investments on behalf of his clients and instead misappropriated the proceeds.

2. At various times from February 2005 through the present, Martin recommended to at least five, and to as many as 29 customers, that they sell variable annuity contracts that they owned and within a short time purchase new variable annuity contracts with higher principal amounts, which would increase the minimum guaranteed death benefit. Martin also recommended that his customers invest the proceeds from the sale of their variable annuity contracts in a money market fund or in a closed-end fund for a short time prior to purchasing the new variable annuity contracts.

3. After his customers authorized the transactions as represented, Martin submitted forged documents to the variable annuity companies surrendering the contracts and directing those companies to mail the proceeds directly to him, unbeknownst to his customers. Martin then forged his customers' names on the checks and deposited them into a bank account in the name of First Financial Group, a fictitious name under which Martin does business. Martin provided at least four of his customers with false statements and confirmations reflecting that

he had invested the proceeds in a closed-end fund. Martin did not invest any money in the closed-end fund.

4. Additionally, Martin instructed one customer, who wished to purchase a certificate of deposit, to make a \$100,000 check payable directly to First Financial Group, Martin's d/b/a, rather than to Linsco/Private Ledger Corp. ("LPL"), the broker-dealer with which Martin was associated during the relevant time. On March 1, 2006, Martin deposited this check into his First Financial Group bank account. Martin never purchased the certificate of deposit.

5. Through his conduct, Martin has violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78j(b)] and Rule 10b-5 [17 C.F.R. §§ 240.10b-5] promulgated thereunder.

#### **JURISDICTION AND VENUE**

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

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2); Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)]; and Section 27 of the

Exchange Act [15 U.S.C. § 78aa]. Some of sales of the investments occurred in this district. Martin's residence and place of business is in this district.

8. Martin has made use of the mails, the means and instruments of transportation and communication in interstate commerce, and the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

#### **DEFENDANT**

9. **Dennis A. Martin**, 36, is a resident of Marietta, Georgia.

10. From April 2004 through April 20, 2006, Martin was a registered representative doing business as "First Financial Group," an unincorporated entity. During this time, Martin was associated as an independent contractor with LPL, a registered broker-dealer. As such, Martin maintained an independent office, of which he was the sole employee. On April 20, 2006, LPL terminated Martin for cause related to the facts described in this complaint.

#### **FACTS**

11. Beginning at least as early as in February 2005 and through at least March 2006, Martin recommended to at least five and to as many as 29 customers that they sell securities, generally variable annuities, and/or that they purchase securities. Based on Martin's statements, the customers authorized the transactions

as represented. However, Martin did not invest the proceeds as authorized. Forged documents were submitted to the variable annuity companies surrendering the contracts and directing those companies to mail the proceeds directly to him, unbeknownst to his customers. The customers' names were forged on the checks and the checks were deposited into a bank account in the name of First Financial Group, a fictitious name under which Martin does business.

12. Additionally, Martin obtained at least one check from a customer for the purpose of purchasing securities. Martin did not purchase the security and instead misappropriated those funds. Martin has obtained at least \$837,000 and apparently more than \$2.5 million, through his scheme.

### Some Examples

13. On March 20, 2006, Martin recommended that a customer, Martin's former father-in-law, surrender a variable annuity contract that the customer owned through Pacific Life Insurance Company ("Pacific Life") and purchase a new variable annuity contract with a higher principal amount, which would increase the minimum guaranteed death benefit. The higher principal amount on the new contract would consist of the principal amount on the original contract plus the earnings the original contract had generated. At that time, the customer's original

contract had increased in value from the principal amount of \$150,000 to approximately \$198,787.

14. The customer's name was signed without authorization by the customer on a Pacific Life withdrawal request form directing Pacific Life to mail the proceeds from the sale of the customer's contract directly to Martin. The customer's name was forged on a check made payable to the customer from Pacific Life in the amount of \$198,077.57 and the check was deposited into a bank account in the name of "First Financial."

15. On March 29 and again on April 3, 2006, the customer asked Martin via e-mail where his money was located. Martin replied that he had invested the customer's money in a "conduit IRA account" but refused to state where the account was located.

16. On April 20, 2006, after learning that LPL was investigating the matter, Martin admitted to the customer that he had "screwed up" and had pledged the customer's money as collateral on a mortgage. Martin told the customer that he could repay the money within two to three weeks, but asked the customer to tell LPL that the money had already been repaid.

17. In February 2005, Martin recommended that two other customers K. and M. Brewer ("the Brewers") surrender 80 percent of the variable annuity

contracts that they owned through AXA Equitable Life Insurance Company (“AXA Equitable”) and within a few weeks purchase new variable annuity contracts with higher principal amounts, which would increase the minimum guaranteed death benefit. Martin represented that the higher principal amounts on the new contracts would purportedly consist of the principal amount on the original contracts plus the earnings the original contract had generated. The Brewers agreed to the transaction as described by Martin.

18. In February 2005, the Brewers surrendered a total of approximately \$495,361. The Brewers, however, never signed the withdrawal request form authorizing the surrender and never received a check for the proceeds.

19. On May 3, 2005, after several inquiries from the Brewers, Martin told them that he had invested the proceeds from the surrender of their contracts in a fixed income closed-end fund, which did not mature until September 2005.

20. The Brewers later received statements directly from Martin that disclosed the investment as First Trust Corporate Closed-End Fund, which in fact is a high yield corporate bond unit investment trust. Martin did not actually invest money in this fund on behalf of the Brewers.

21. At some time prior to October 25, 2005, Martin withdrew the remaining approximately \$91,698 from the Brewers' accounts without their authorization.

22. In early 2006, Martin told the Brewers that instead of purchasing new contracts when the closed-end fund matured in September 2005, he had rolled over their investment into a second closed-end fund that matured on February 22, 2006.

23. The Brewers did not authorize Martin to roll over their money into the second closed-end fund and, in fact, Martin never purchased the closed-end fund on behalf of the Brewers.

24. In July and again in August 2005, Martin recommended to two other customers Kt. and B. Brewer ("Kt and B Brewer") that they surrender the variable annuity contracts that they owned through AXA Equitable and over a period of six months purchase new variable annuity contracts with higher principal amounts, which would increase the minimum guaranteed death benefit.

25. Martin represented that the higher principal amount on the new contracts would consist of the principal amount on the original contracts plus the earnings the original contract had generated.

26. Martin recommended that Kt and B Brewer invest the proceeds from the sale of the contracts in a "conduit IRA" before purchasing new contracts.

Martin told Kt and B Brewer that a conduit IRA was a “temporary hold IRA,” through which he would invest on their behalf in a closed-end fund at an interest rate of seven percent.

27. Kt and B Brewer agreed to follow Martin’s recommendation, provided that they would not incur any penalties. Martin told Kt and B Brewer that First Financial would refund any penalties they incurred.

28. A total of approximately \$75,327 was surrendered from Kt and B Brewer’s annuities. Kt and B Brewer, however, never signed the withdrawal request form authorizing the surrender and never received a check for the proceeds.

29. Based on Martin’s recommendation, in August 2005, Kt Brewer liquidated his LPL brokerage account and provided the proceeds of approximately \$68,946 to Martin to invest in the closed-end fund on his behalf.

30. Kt and B Brewer received statements from AXA Equitable and LPL reflecting the withdrawals, however, they did not receive any documentation from September 2005 through December 2005 showing the deposit of their money in the closed-end fund.

31. In January 2006, Martin finally provided false documents to Kt and B Brewer showing the deposit of their money in the closed-end fund. In fact, Martin

did not actually invest money in the fund on behalf of Kt and B Brewer. Martin misappropriated the funds.

32. On January 24, 2006, Martin recommended that Kt and B Brewer purchase a Lehman Brothers certificate of deposit with a 20 year maturity. Martin told them that there would not be any penalties for early withdrawal because First Financial was offering a “penalty waiver” as a special offer to attract new clients.

33. Based on Martin’s recommendation and instruction, on or about February 27, 2006, Kt Brewer made a check payable to First Financial in the amount of \$100,000 for Martin to invest in the certificate of deposit. Martin did not purchase the certificate of deposit as represented.

34. Instead, Martin misappropriated the funds. The check was deposited into a bank account in the name of First Financial.

### **COUNT ONE- FRAUD**

#### **Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]**

35. Paragraphs 1 through 34 are hereby realleged and are incorporated herein by reference.

36. At various times between February 2005 and the present, Martin, in connection with the offer or sale of securities described herein, by the use of the

means and instruments of interstate commerce and by use of the mails, directly and indirectly:

- (a) employed devices, schemes, or artifices to defraud;
- (b) obtained money or property by means of untrue statements of material facts or omissions of material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

or

- (c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchasers of securities, all as more particularly described in the paragraphs above.

37. By reason of the foregoing, Martin, directly and indirectly, violated and unless restrained and enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

#### **COUNT TWO- FRAUD**

##### **Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (a)(3)]**

38. Paragraphs 1 through 34 are hereby realleged and are incorporated herein by reference.

39. At various times from at least February 2005 through the present, Defendant Martin, in the offer or sale of securities, directly or indirectly, obtained money or property by means of untrue statements of material facts or omissions of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading and/or engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon the purchasers of securities, all as more particularly described above.

40. While engaging in the courses of conduct described above, Defendant Martin, directly or indirectly, made use of the mails, or means or instruments of transportation or communication in interstate commerce, or means or instrumentalities of interstate commerce.

41. By reason of the foregoing, Defendant Martin violated and, unless restrained and enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and (3)].

**COUNT THREE-FRAUD**

**Violations of 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]**

42. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 34 above.

43. At various times from at least February 2005 through the present, Defendant Martin, in connection with the purchase and sale of securities described herein, by the use of the means or instrumentalities of interstate commerce or by use of the mails, or of any facility of any national securities exchange, directly and indirectly:

- (a) employed devices, schemes, and artifices to defraud;
- (b) made untrue statements of material facts and 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, and courses of business which would and did operate as a fraud and deceit upon other persons, as more particularly described above.

44. Defendant Martin knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Martin acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

45. By reason of the foregoing, defendant Martin directly and indirectly 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 [17 C.F.R. § 240.10b-5] thereunder.

**PRAYER FOR RELIEF**

WHEREFORE, the Commission, respectfully prays that the Court:

I.

Make findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure, finding that Defendant Martin committed the violations alleged herein.

II.

Issue a temporary restraining order, preliminary and permanent injunctions enjoining defendant, his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the order by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] 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].

III.

Issue an order requiring an accounting by Martin of the proceeds he collected through the scheme alleged in the complaint and ordering the disgorgement of all ill-gotten gains from the illegal conduct with prejudgment interest.

IV.

Issue an order 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)] imposing civil penalties against the defendant.

V.

Grant such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors. Further, the Securities and Exchange Commission respectfully prays that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that are entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

DATED: May 4, 2006

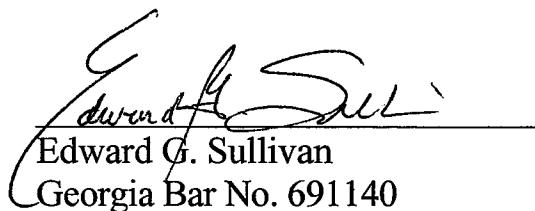
RESPECTFULLY SUBMITTED,

William P. Hicks

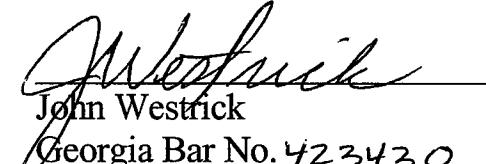
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