

DAVID ROSENFELD
ASSOCIATE REGIONAL DIRECTOR

Judge Panlev

Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
3 World Financial Center, Suite 400
New York, New York 10281-1022
(212) 336-0153

09 CIV 5799

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

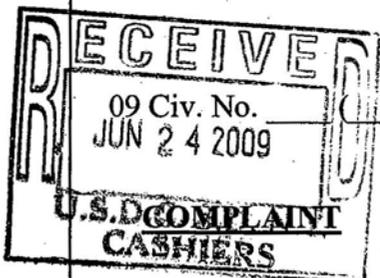
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

REGAN & COMPANY and MICHAEL C. REGAN,

Defendants.



Plaintiff Securities and Exchange Commission (“Commission”) for its Complaint against Michael C. Regan (“Regan”) and Regan & Company (“Regan & Co.”) (collectively “Defendants”) alleges as follows:

SUMMARY OF ALLEGATIONS

1. This action concerns a multi-million dollar Ponzi scheme orchestrated by Regan and Regan & Co., an unregistered entity that Regan controlled. From at least January 2001 through April 2008, the Defendants obtained at least \$15.9 million from dozens of investors by promising lofty, but false, investment returns, among other things. Instead of investing the money as promised, Regan stole millions of dollars for his own use, ultimately causing investors to lose at least \$6.69 million as a result of his misappropriation and trading losses, which Regan concealed from investors.

2. Regan, operating through his alter-ego entity Regan & Co., offered and sold to investors securities in his now defunct investment fund, named the River Stream Fund (“River Stream” or “Fund”), an unregistered entity Regan established in approximately 1998.

3. Regan induced investors to invest in River Stream by representing falsely that he would invest their funds in the stock market for their benefit. Regan also claimed falsely that he earned an MBA from a major New York university, and that his securities trading expertise and successful investment track record could generate annual investment returns averaging twenty percent, with minimal risk to the investors’ principal contributions.

4. Contrary to Regan’s representations that he would trade securities for the benefit of River Stream investors, Regan did no securities trading at all for several years and he suffered substantial losses on those investments that he did make.

5. Regan repeatedly prepared and issued fictitious account statements and other communications to River Stream investors showing artificially inflated account balances and investment returns. Regan disseminated the phony account statements and other communications as recently as April 2008 in his effort to conceal from River Stream investors that he misappropriated their funds and incurred substantial trading losses when he did trade.

6. Regan operated a Ponzi scheme to complete the illusion that he was delivering the investment returns he promised to River Stream investors. Regan routinely paid phony investment returns, not from investment profits, but from funds he obtained from other River Stream investors, or by secretly returning some of the investor’s own funds.

VIOLATIONS

7. By virtue of their conduct, Regan and Regan & Co., directly or indirectly, singly or in concert, have engaged in acts, practices, and courses of business that constitute violations of Section 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77q(a)(1), 77q(a)(2), and 77q(a)(3)], 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].

8. Unless permanently restrained and enjoined, Defendants will again engage in the acts, practices, transactions and courses of business set forth in this Complaint and in acts, practices, transactions and courses of business of similar type and object.

JURISDICTION AND VENUE

9. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)] and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], seeking a final judgment: (i) restraining and permanently enjoining Defendants from violating certain specified provisions of the federal securities laws; (ii) requiring the Defendants to disgorge the ill-gotten gains they received as a result of their violations and to pay prejudgment interest thereon; and (iii) imposing civil monetary 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. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

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

11. Venue is proper in the Southern District of New York 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]. Certain of the transactions, acts, practices and courses of business alleged in this Complaint occurred in the Southern District of New York. For example, several of the River Stream investors live in Manhattan. These investors sent Regan money to invest and received fraudulent account statements from Regan via the mails.

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

DEFENDANTS

13. **Michael C. Regan**, age 65, resides in Wayland, Massachusetts. From at least 1998 to 2008, Regan, was the “portfolio manager” and unregistered investment adviser to River Stream, an investment fund that Regan founded in 1998 which was never registered with the Commission. Regan acted as the “general partner” of River Stream. At all times relevant to this Complaint, Regan was the president of Regan & Co. and he exercised sole trading authority and control over River Stream. Regan has never been registered with the Commission in any capacity.

14. **Regan & Co.** is an unincorporated d/b/a name used by Regan in connection with River Stream. Regan was the president and sole employee of Regan & Co. Regan & Co. is now defunct and has never been registered with the Commission in any capacity.

FACTS

15. Since at least January 2001, Defendants have engaged in a fraudulent Ponzi scheme, raising at least \$15.9 million from dozens of investors nationwide through the offer and sale of securities in River Stream. Regan promised investors that their money would be pooled into a “fund” which he would invest on their behalf in securities using a trading strategy which he claimed was based upon “short-term price trends.” Regan told investors, or otherwise led them to believe, that his purported trading expertise and successful track record in the stock market would yield annual investment returns of approximately twenty percent, with minimal risk of loss of principal.

16. Regan acted as the general partner of River Stream and he offered and sold limited partnership interests to investors in exchange for their investments in the Fund. Regan required prospective investors in River Stream to enter into an Investment Agreement. The River Stream Investment Agreement provided Regan with, among other things, the discretionary authority to select and make securities investments on behalf of the investors. Regan was also responsible for administrative functions related to River Stream, including control over River Stream’s bank and brokerage accounts.

17. The River Stream Investment Agreement also provided that Regan was entitled to be paid an annual performance fee equal to twenty percent of realized net profits, but only if River Stream earned an annual return of twelve percent or more, net of the performance fee.

18. Regan established bank accounts in River Stream's name at commercial banks and he had sole signatory authority to deposit and withdraw funds from these accounts. Regan established brokerage accounts during the relevant period in River Stream's name at three different broker-dealers in order to trade securities on behalf of River Stream investors.

19. Investors who wished to invest submitted checks, made out to River Stream, to Regan which he subsequently deposited into the Fund's bank accounts. Regan commingled all investor funds into one pool of money and purported to allocate gains and losses proportionally among River Stream investors.

20. In order to trade securities for the benefit of River Stream investors, Regan used his discretionary authority to transfer funds from a River Stream bank account to a River Stream brokerage account and he often directed the purchase or sale of securities through a representative at the broker-dealer.

21. Regan repeatedly represented to River Stream investors that he was generating consistently positive earnings and double-digit annual returns as a result of his successful trading with the River Stream funds. These representations were false. Regan's investment program was nothing more than a Ponzi scheme, with Regan paying "profits" from the investor's own principal or from money invested by others.

22. Regan represented falsely to investors that his trading strategy was conservative and low-risk. Regan emphasized to River Steam investors that he employed "stop loss" and "limit" orders to minimize any risk of loss of principal. He also claimed that he liquidated securities positions at the end of each trading day, holding only cash in the brokerage accounts overnight, as part of his strategy to minimize the risk of loss. Regan claimed that his approach to trading resulted in a fully successful track record and touted that he never lost money as a result

of securities trading. Regan told at least one investor that because of his trading strategy, River Stream would always be profitable at the end of each trading day and thus there was no risk. All of these representations were false.

23. Contrary to Regan's false assurances and representations concerning his investment prowess, Regan did not invest the River Stream investors' funds as promised and had a dismal investment record when he actually did engage in trading. For example, between January 2001 and June 2005, Regan transferred no investor funds from the River Stream bank account to the River Stream brokerage account for trading purposes, despite receiving over \$5 million from investors during that period. Moreover, from approximately July 2003 through June 2005, Regan did no trading at all.

24. Overall, Regan invested only \$7.38 million of River Steam funds, less than fifty percent of the over \$15.9 million that River Steam investors entrusted to him during the relevant period. Regan lost the majority of the money that he did invest for the River Stream investors as a result of securities trades that he directed.

25. Between January 2001 and April 2008, Regan paid in excess of \$9.2 million to some River Stream investors, creating the illusion that Regan was successful and that the investments were profitable. These payments came not from River Stream's investment earnings, but rather from principal or from money invested by other investors. Most investors, however, received either no payments or payments amounting to less than their River Stream investments.

26. In addition to the trading losses that he concealed and the payments to some investors, Regan misappropriated at least \$2.4 million from River Stream investors and used the investors' funds for his personal expenses, including support payments to various family

members. On several occasions Regan wrote checks from investor funds that were already on deposit in River Stream's bank account to his personal bank account to pay his personal expenses. On other occasions, Regan obtained funds from River Stream investors, deposited the checks into a River Stream bank account, and almost immediately stole the money from the River Stream bank account by writing checks to himself. For example, on February 21, 2001, and again on April 23, 2001, Regan deposited \$25,000 checks from a River Stream investor and wrote himself checks in the same amount that day. And on November 25 and 26, 2002, Regan deposited checks from two River Stream investors totaling \$60,000 and wrote himself a \$60,000 check on November 26th.

27. Regan had no claim whatsoever to this money. The funds Regan misappropriated from River Stream investors were not compensation that Regan earned for investing funds on behalf of River Stream investors because between 2001 through 2008 Regan never met or exceeded the twelve percent annual gain criteria that would have entitled him to claim the twenty percent annual performance fee, as provided in the River Stream Investment Agreement. Despite never having met the threshold gains which would have entitled him to charge investment advisory fees, Regan misappropriated at least \$2.4 million for himself.

28. Regan never disclosed to River Stream investors that he had misappropriated or otherwise lost their money as a result of his unprofitable trading or theft.

29. Until April 2008, in biweekly account statements and other communications with investors, Regan misrepresented to investors that he was actively engaged in securities trading and was earning consistent, positive returns for River Stream.

30. Until April 2008, Regan prepared and issued account statements to River Stream investors in which he falsely showed positive returns for every single biweekly account period,

artificially inflated equity investments, and fabricated consistently positive double-digit annual returns. Regan's goal in calculating and preparing account statements was to show an annual rate of return of approximately twenty percent, regardless of River Stream's actual performance.

31. Until April 2008, Regan also prepared and sent annual tax forms to investors showing similarly false positive investment returns.

32. In April 2008, by which time Regan had almost completely looted, lost, or otherwise dissipated all of River Stream's assets, Regan misrepresented to investors that the Fund was worth over \$18 million.

33. River Stream investors lost at least \$6.69 million during the relevant period as a result of Defendants' misconduct.

FIRST CLAIM FOR RELIEF

Violations of Sections 17(a) of the Securities Act

34. The Commission re-alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 33.

35. Regan and Regan & Co., in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly, singly or in concert, knowingly or recklessly have:

- (a) employed or are employing devices, schemes or artifices to defraud;
- (b) obtained money or property by means of untrue statements of material fact or by omitting to state 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 acts, transactions, practices and courses of business which operated or would have operated as a fraud or deceit upon purchasers of securities.

36. By reason of the foregoing, Regan and Regan & Co., directly or indirectly, violated, and unless enjoined will again 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**

37. The Commission re-alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 36.

38. Regan and Regan & Co., in connection with the purchase or sale of securities, by use of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, directly or indirectly, singly or in concert, knowingly or recklessly have:

- (a) employed or are employing devices, schemes or artifices to defraud;
- (b) made untrue statements of material facts or have omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) engaged in acts, transactions, practices and courses of business which operated or would have operated as a fraud or deceit upon any person.

39. The misstatements and omissions of fact detailed in Paragraphs 1 through 38 were material.

40. By reason of the foregoing, Regan and Regan & Co., directly or indirectly, violated, and unless enjoined will again 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 Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 Thereunder

41. The Commission re-alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 40.

42. At all relevant times, Regan and Regan & Co. acted as investment advisers, as defined by Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)], to River Stream.

43. Defendants, by engaging in the acts and conduct alleged above, directly or indirectly, through use of the means or instruments of transportation or communication in interstate commerce, or by the use of the mails, and while engaged in the business of advising others for compensation as to the advisability of investing in, purchasing, or selling securities:

(a) with scienter, have employed devices, schemes, or artifices to defraud clients or prospective clients;

(b) have engaged in transactions, practices, and courses of business which operated or would have operated as a fraud or deceit upon clients or prospective clients;

(c) have engaged in acts, practices, and courses of business which were fraudulent, deceptive, or manipulative; or

(d) have made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in a pooled investment vehicle.

44. By reason of the foregoing, Regan and Regan & Co., directly or indirectly, violated, and unless enjoined will again violate, Sections 206(1), 206(2), and 206(4) of the

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].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court issue a Final Judgment:

I.

Permanently restraining and enjoining Defendants, and 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, 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), 206(2), and 206(4) of the 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];

II.

Ordering Defendants jointly and severally liable for disgorgement of any and all ill-gotten gains they received as a result of their violations of the federal securities laws, plus prejudgment interest thereon;

III.

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

IV.

Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 24, 2009

By 

David Rosenfeld
Associate Regional Director
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
3 World Financial Center, Suite 400
New York, New York 10281
(212) 336-0153

Of Counsel:
Ken C. Joseph
Lee S. Bickley
Catherine Lifeso