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BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PHILIP G. BARRY, LEVERAGE GROUP, LEVERAGE
OPTION MANAGEMENT CO., INC., and NORTH
AMERICAN FINANCIAL SERVICES,

Defendants.

09

3860

09 Civ. No. ____ ()

COMPLAINT

BLOCK, J.

POHORELSKY, M.J.

Plaintiff Securities and Exchange Commission ("Commission") for its Complaint against Philip G. Barry ("Barry"), Leverage Group, Leverage Option Management Co., Inc., and North American Financial Services (collectively "Defendants"), alleges as follows:

SUMMARY OF ALLEGATIONS

1. This action concerns a multi-million dollar Ponzi scheme orchestrated by Barry and conducted through several entities that Barry controlled: Leverage Group; Leverage Option Management Co., Inc.; and North American Financial Services (collectively "Leverage"). From January 1978 through at least February 2009, Defendants conned hundreds of investors into investing over \$40 million in the Leverage investment funds by promising lofty, but false, investment returns with guaranteed safety of principal and making numerous other misrepresentations.

Instead of delivering on these promises, Barry misappropriated millions of dollars for his personal use, including funding his own speculative real estate ventures. Ultimately, Barry and Leverage misappropriated and dissipated millions of dollars of investor funds and concealed these losses from investors.

2. Barry, operating through Leverage, made a number of misrepresentations to induce investors to invest in or to maintain their investments with Leverage. For example, Barry falsely represented that he would use the investors' funds to trade in options or other securities. Barry claimed that he would employ a proven trading strategy to protect investors' principal and generate a guaranteed rate of return, which he arbitrarily determined to be 12.55 percent per year in recent years. Barry also claimed to some investors that their investments in Leverage would be protected from loss by private insurance and/or by the Securities Investors Protection Corporation ("SIPC"). Barry further told investors that, so long as investors provided a few weeks notice, they could liquidate their investment and withdraw their funds at any time.

3. Contrary to Barry's representations that he would trade securities for the benefit of Leverage investors, Barry did no securities trading at all for several years. Instead, Barry systematically misappropriated and misused millions of dollars of investor funds. Among other things, Barry secretly used investor funds to purchase real property, which he titled in his own name or the names of entities he owned or controlled and frequently used as collateral for loans. Barry also diverted some of the investor money to support his unrelated business, Barry Publications.

4. Defendants routinely fabricated quarterly account statements for investors that reported lofty investment performance. Barry disseminated these phony account statements as

recently as November 2008, in an effort to conceal from Leverage investors that Defendants had misappropriated their funds.

5. Barry, through Leverage, operated a Ponzi scheme to complete the illusion that he was delivering the investment returns he promised to Leverage investors. Defendants routinely paid phony investment returns not from investment profits, but from funds obtained from other Leverage investors or by secretly returning to the investors some of their own money.

6. As a result of Defendants' misconduct, investors have suffered losses of at least \$20 million.

VIOLATIONS

7. By virtue of their conduct, Barry and Leverage, directly or indirectly, singly or in concert, have engaged in acts, practices, and courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 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]; 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 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) and 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 Eastern 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 Eastern District of New York. For example, Barry is a resident of Brooklyn, New York and Leverage's office, where the Defendants perpetrated the fraud, is also located in that borough. In addition, many of the Leverage investors who were victimized by the fraud also live in Brooklyn, New York.

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. **Barry**, age 52, resides in Brooklyn, New York. Barry is the principal and sole employee of Leverage Group, Leverage Option Management Co., Inc., and North American Financial Services, as well as Philip Barry LLC, Leverage Management LLC, and Saint Josephs Development Corporation. Barry is also the principal of Barry Publications. Barry is not registered with the Commission in any capacity. From at least January 1978 to February 2009, Barry acted as an unregistered investment adviser and exercised sole trading authority and control over the Leverage investment funds.

14. **Leverage Group** is an unincorporated business located in Brooklyn, New York. Leverage Group is not registered with the Commission in any capacity. Barry sent fraudulent account statements to investors on Leverage Group letterhead and accepted investors' money on behalf of Leverage Group.

15. **Leverage Option Management Co., Inc.** is an inactive New York State corporation located in Brooklyn, New York. Leverage Option Management Co., Inc. is not currently registered with the Commission in any capacity. North American Financial Services d/b/a Leverage Option Management Co., Inc. was registered with the Commission as an investment adviser in 1979. The Commission cancelled that registration in 1987. Leverage Option Management Co., Inc. did business as North American Financial Services at all times relevant to this Complaint.

16. **North American Financial Services** is an unincorporated business located in Brooklyn, New York. North American Financial Services is not currently registered with the Commission in any capacity. North American Financial Services d/b/a Leverage Option Management Co., Inc. was registered with the Commission as an investment adviser in 1979. The

Commission cancelled that registration in 1987. Barry sent fraudulent quarterly account statements to investors on North American Financial Services letterhead and accepted investors' money on behalf of North American Financial Services.

FACTS

17. Since January 1978, Defendants engaged in a fraudulent Ponzi scheme, raising over \$40 million from approximately 800 investors who invested in the investment funds that Defendants operated. Investors included retirees and senior citizens, at least one charitable trust and a religious organization.

The Leverage Investment Funds

18. Barry represented to investors that they were purchasing, in a private offering, an interest in the "Leverage Growth Fund," "Leverage Option Fund" or the "Leverage Tax-Exempt Account," making the investors members, or "shareholders," in the Leverage investment funds which Barry analogized to a "mutual fund." Barry represented to investors that he would invest their money in options or other securities. Barry claimed to use an investment strategy that allowed Leverage to maximize profit, producing a high annual rate of return, while minimizing potential risk and protecting the principal investment. Barry also advised some investors regarding the purchase of specific stocks or interests in precious metals. Once invested, Barry and Leverage pooled all investor money into collective bank and brokerage accounts from which they purported to allocate gains and losses proportionally.

19. Barry and Leverage advised the Leverage investors on how to invest their money, and received compensation in return for providing investment advisory services. Barry explained and discussed his purported investment strategy with investors and Barry and Leverage issued to investors numerous periodic account statements that claimed to accurately represent the

value of their investments. Barry maintained exclusive control over investor funds, including money in brokerage accounts and bank accounts, and made all investment decisions. He told some investors that he would charge a management fee equal to two percent of the assets under management.

False Statements to Investors

20. To induce or retain the investments, Barry and Leverage routinely misrepresented in oral and written communications to investors the safety, investment strategy, and performance of the Leverage investment funds, among other things. Barry represented to investors that the Leverage funds were a risk-free investment that had never experienced a loss of principal. Barry further claimed that the Leverage funds were protected by SIPC and by private insurance in excess of \$1 million. SIPC is a federally-created program that protects investors from certain types of losses, up to specified limits, resulting from broker-dealer failures. Leverage was never registered as a broker-dealer, was not covered by SIPC, and Leverage did not always use investor funds to trade in securities through accounts maintained at registered broker-dealers. Barry knew or recklessly disregarded that his representations to investors pertaining to the safety and security of their Leverage investments were false and material.

21. Barry guaranteed investors a specific annual rate of return, which ranged from 21 percent in 1979 to 12.55 percent in 2008. These rates of return bore no relationship to the actual performance of the investments purportedly made on behalf of the Leverage investors and were determined arbitrarily by Barry. Barry also told investors that, so long as they provided a few weeks of notice, they could at any time liquidate their interest in the Leverage funds and withdraw their funds without incurring penalties or fees. Barry knew or recklessly disregarded that

his representations to investors concerning the performance and liquidity of the Leverage investments were false and material.

22. Barry and Leverage provided investors with fabricated account statements, which Barry generated and sent, via mail, to investors each quarter. The fabricated statements showed investors that their investments had achieved the returns that Barry had promised them and that their accounts had a steady principal balance. In actuality, Barry and Leverage concocted the account balances that they communicated to investors by simply increasing the purported balance for the prior period by the promised rate of return. Barry knew or recklessly disregarded that these representations to investors concerning the account balances in individual investor accounts were false and material.

23. In addition, as recently as 2007 Barry represented falsely to investors that North American Financial Services, a d/b/a for Leverage Option Management Co., Inc., was registered as an investment adviser with the Commission. In reality, neither Barry nor any of his Leverage entities is registered currently or has been registered with the Commission in any capacity since at least 1987.

Misappropriation of Investors' Money

24. Contrary to Barry's representations that he was earning high returns while trading securities on behalf of investors, Barry operated a Ponzi scheme through which he misappropriated and diverted investor funds for his own benefit. Barry misappropriated millions of investor dollars to acquire interests in at least 60 different real estate ventures, including an office building in Brooklyn, New York and property located in Sullivan and St. Lawrence Counties, New York. Barry titled those acquisitions of real property in his own name and/or in those of his other entities: Philip Barry LLC; Leverage Management LLC; and Saint Josephs Development

Corporation. Barry pledged some of the real property he purchased with the misappropriated investor funds as collateral to obtain loans and mortgages. Barry did not obtain investor authorization to purchase or pledge the real properties that he or his entities obtained with investor funds. Barry also did not disclose to investors that he had titled the properties in his name and/or the names of his other entities. In addition, after making the unauthorized purchases of real property with the investors' funds, Barry continued to misappropriate investor funds to pay for related mortgages, taxes, improvements, and legal expenses, among other unauthorized expenditures.

25. Barry also transferred investor money into a bank account in the name of Barry Publications, a mail order business through which Barry sold pornographic materials. Barry used Leverage investor funds to purchase inventory for Barry Publications, and to pay telephone, postage, and certain other overhead expenses incurred by Barry Publications.

26. Further, and again without disclosing to Leverage investors or obtaining their authorization, Barry misappropriated investor money to pay for his living expenses, including expenses billed to him by telephone service providers, home improvement stores, restaurants and gas stations. Barry also looted the Leverage bank accounts and made numerous unauthorized cash withdrawals from those accounts to support his lifestyle.

Perpetuation of the Fraud and Investor Loss

27. Contrary to his representations to investors, as of approximately 1999, Barry was no longer investing any investor money in options and was using incoming investor money to repay existing investors seeking to withdraw money from their accounts in a blatant Ponzi scheme. By the early 1980s, the Leverage funds were insolvent and did not have enough money to return to investors the total amount Barry reflected on investors' account statements.

28. Nevertheless, while soliciting new or repeat investments, Barry continued to tout his investment success and misrepresent to investors the amount of assets under management in the Leverage investment funds, his success as an investment manager, the individual account balances, and how he planned to or used their funds.

29. Barry convinced one elderly investor who was convalescing in a nursing home not to withdraw her money from Leverage, as she sought to do. Shortly before her death, Barry knowingly made false representations to that investor claiming that she had approximately \$700,000 in her Leverage account. Barry has refused to return that money to that investor's heirs despite demands from the heirs to close the account.

30. Barry solicited investments for the purpose of satisfying withdrawal requests from investors and he frequently delayed payments to investors until he obtained sufficient new investments from current or new investors.

31. Barry also represented on some account statements that he prepared and issued to certain investors that he had purchased specific securities or precious metals. Those investors had requested that Barry recommend and purchase specific securities for them. Barry did not always purchase those securities on behalf of the investors even though the account statements he prepared and issued to investors falsely indicated that he had done so.

32. Investors relied on the Defendants' misrepresentations concerning the performance, safety, liquidity, and investment strategy of the Leverage investment funds, among other things, when deciding to initiate an investment, to invest additional money, or to encourage others to invest in Leverage.

33. In 2005, for example, Barry solicited and obtained an investment of \$500,000 from a couple who invested in the Leverage investment funds on behalf of themselves and a

charitable trust. Barry induced that investment by misrepresenting that he managed a multi-million dollar portfolio and guaranteeing these investors a 12.55 percent annual return and the safety of their principal. Barry falsely claimed that he achieved such a high investment return with very little risk because he invested exclusively in options. Despite representing to these investors that he would honor their withdrawal requests, Barry misappropriated approximately \$474,000 and refused to honor demands for the return of the money.

34. Barry also solicited investments in 1989 from a religious organization with many elderly members. Barry prepared and issued a fabricated account statement in March 2008 showing a balance of over \$25,000 in the organization's account, which Barry has not returned despite demands to do so.

35. Since 2000, Barry and Leverage issued numerous bad checks to investors seeking to withdraw their investments. In recent years, for example, Barry and Leverage issued approximately 200 checks to investors that went unpaid due to insufficient funds in the Leverage bank accounts. Barry repeatedly explained to investors that he was not able to return their money because he was still attempting to liquidate investments from Leverage's brokerage account. These investments did not exist and Barry and Leverage knew or recklessly disregarded that these representations were false and material.

36. As recently as June 2008, Barry and Leverage continued to solicit and receive money from investors.

37. As recently as November 2008, Barry falsely told investors that their money was secure and promised to satisfy their withdrawal demands at a future date.

38. As recently as November 2008, Barry and Leverage provided investors with phony quarterly account statements. Those statements misrepresented that the funds' invest-

ments were achieving the returns that Barry had promised and had a steady principal balance. Barry calculated the account balance for each investor not by referencing the actual performance of any related investments. Usually, he calculated the balance simply by applying the promised rate of return to the fabricated balance that Barry had reported to the relevant investor in the preceding period.

39. Barry has not fulfilled many investors' withdrawal requests, and investors in the Leverage investment funds have lost at least \$20 million as a result of Defendants' misconduct. Many of the real properties that Barry purchased with misappropriated investor funds are currently encumbered by unpaid tax obligations, mortgages, and some are in foreclosure.

FIRST CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act

40. The Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 39.

41. Barry and Leverage, 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.

42. By reason of the foregoing, Barry and Leverage, 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**

43. The Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 39.

44. Barry and Leverage, in connection with the purchase or sale of securities, by the 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.

45. The misstatements and omissions of fact detailed in paragraphs 1 through 39 were material.

46. By reason of the foregoing, Barry and Leverage, 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

47. The Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 39.

48. At all relevant times, Barry and Leverage acted as investment advisers, as defined by Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)], to the Leverage investment funds and also to certain investors in those funds.

49. 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.

50. By reason of the foregoing, Barry and Leverage, 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 Sections 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
September 8, 2009

By 
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