

ORIGINAL
FILED

2009 DEC 22 AM 11:31

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CLERK, US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY MJC
DEPUTY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TRITON FINANCIAL, LLC,
TRITON ACQUISITION, LP,
d/b/a TRITON INSURANCE, LP,
and KURT B. BARTON

Defendants.

Civil Action No. **A09CA924 JN**

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges:

INTRODUCTION

1. This is an offering fraud case. From at least July 2008 through December 2009, Triton Financial, LLC ("Triton") and its principal, Kurt B. Barton ("Barton"), fraudulently offered and sold "investor units" in Triton Acquisition, LP, d/b/a Triton Insurance, LP ("Triton Insurance"). In soliciting investors, Triton, Triton Insurance, and Barton (collectively, "Defendants"): (i) misrepresented to investors how the offering proceeds would be used; and (ii) misrepresented Triton Insurance's business operations.

2. By the conduct detailed in this Complaint, Defendants violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and of Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

3. The Commission, in the interest of protecting the public from further such fraudulent activities and harm, brings this action seeking the appointment of a receiver and an asset freeze, preliminary and permanent injunctive relief, disgorgement of Defendants ill-gotten gains, plus prejudgment interest, and civil monetary penalties.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this action under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78(aa)].

5. Defendants, directly or indirectly, made use of the means or instruments of transportation and communication, and the means or instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein.

6. Venue is proper under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78(aa)] because certain of the transactions, acts, practices, and courses of business alleged herein took place in the Western District of Texas

DEFENDANTS

7. **Triton Financial, LLC** is a Texas limited liability company headquartered in Austin, Texas, that has been registered with the state of Texas as an investment adviser since June 2006. Triton is the 100% owner of three entities that serve as general partners for various Triton-sponsored limited partnerships and limited liability companies.

8. **Triton Acquisition, LP, d/b/a Triton Insurance, LP**, is a Texas limited partnership formed in July 2008. TVest Group LLC, a wholly-owned Triton subsidiary, is the general partner of Triton Insurance.

9. **Kurt B. Barton**, 41, of Austin, is Triton's chairman and CEO, and the managing

member of TVest Group, LLC, which is the general partner of, among other entities, Triton Insurance and Triton Aggregated, LP, d/b/a/ Triton Holdings, LP (“Triton Holdings”). Barton is the managing member of the general partners for Triton-sponsored partnerships and limited liability companies. Barton was registered as an investment adviser representative in approximately 1999.

STATEMENT OF FACTS

I. Background

10. Since at least 2004, Triton has sponsored more than 40 limited partnerships and limited liability companies, raising over \$50 million for these ventures.

11. Triton made most of its offerings through personal contacts. Triton used stockbrokers and salesmen, including prominent former National Football League (“NFL”) players, to promote its investment offerings to potential investors.

12. Barton actively solicited investors in Triton’s offerings, and offerings by Triton affiliates, including Triton Insurance.

II. The Triton Insurance Offering

13. From late July 2008 through October 2009, Triton’s primary fund-raising vehicle was the Triton Insurance offering.

14. Defendants offered Triton Insurance by word-of-mouth and the personal contacts of Barton and other Triton employees, as well as through salesmen.

15. The Triton Insurance offering raised \$8.4 million from approximately 90 investors.

a. The Offering Materials

16. The primary offering document used to solicit investors was the Triton Insurance,

LP Confidential Investment Memorandum (“CIM”). The CIM outlined a \$12 million offering of 240 investor units at \$50,000 per unit. Although the CIM did not specify the nature of the investor units, Triton Insurance is a limited partnership. Thus, the investor units were limited partnership interests. Barton prepared, reviewed, and approved the CIM.

17. The CIM specified that Triton Insurance was formed to acquire 7% cumulative convertible stock in Triton Holdings. It further stated that the purpose of Triton Holdings was to acquire and turn around underperforming insurance companies. The CIM identified National States Insurance Company (“NSIC”) as the first acquisition and extensively discussed NSIC, its business, Triton’s plans to improve NSIC’s performance, and the risks associated with the insurance business. On its cover, the CIM specified that, of the \$12 million raised, \$8 million would be used to acquire NSIC stock, \$3.5 million for reserves, and \$500,000 for legal, accounting, due diligence, tax and other expenses. The Use of Proceeds section similarly specified that \$8 million of the offering proceeds would be used to purchase NSIC stock.

b. Investor Funds Not Used to Purchase NSIC

18. Early in the Triton Insurance offering, Barton and Triton salesmen told prospective investors that Triton Insurance would use the money raised to purchase NSIC through Triton Holdings. Barton and Triton salesmen also provided investors with copies of the CIM containing the same representations. Triton salesmen promised at least some investors 7% annual returns, paid quarterly. Based on those representations, Barton and Triton raised over \$6 million for Triton Insurance.

19. Defendants did not use the funds raised to purchase NSIC. Unknown to investors, Barton had put the NSIC acquisition on indefinite hold around October 2008. Nevertheless, Defendants did not return the funds raised to investors or hold them for future acquisitions.

Instead, Barton and Triton Insurance misapplied the funds to pay the expenses and obligations of Triton and its affiliates.

c. Triton Holdings Acquires Leasing Company

20. In late January and early February 2009, contrary to the purported purpose of the Triton Insurance offering, Triton Holdings acquired Axis Capital (“Axis”), a Nebraska-based equipment leasing company. Because Defendants diverted the original Triton Insurance offering proceeds, Defendants raised additional funds for the Axis acquisition.

21. From January 29, 2009, through February 4, 2009, Barton raised \$4 million for a payment to Axis, including approximately \$1.5 million in transfers from Triton and Triton Athletic Center LP, about \$2 million in loans (in the form of promissory notes) from third parties, and almost \$490,000 from Triton Insurance investors.

22. Barton directly or indirectly solicited individuals and entities to finance Triton Insurance’s acquisition of Axis.

d. Defendants Continued Soliciting Investors with False Offering Materials

23. After the Axis acquisition, Defendants continued to sell Triton Insurance investor units, raising over \$2 million, using the original CIM. The CIM nowhere disclosed the Axis purchase, but instead described only the NSIC acquisition. Investors also were not told that Triton continued to divert offering proceeds.

III. Defendants Forged and Altered Documents to Perpetrate Fraud and Mislead Securities Regulators

24. In March 2009, Sports Illustrated featured Triton in an unflattering article. The article highlighted an October 2008 e-mail from a former NFL player to numerous NFL alumni “updating” them on Triton’s activities and touting Triton’s returns on its investments.

25. After the article's publication, the Texas State Securities Board ("TSSB") began examining Triton's business affairs and requesting documents and information from Triton.

26. In response to requests for documents and information, Defendants provided the TSSB with altered and fabricated documents, such as an investor lists. Defendants produced these phony documents to conceal the true number of investors and the true amount of funds raised.

27. Moreover, Defendants provided the TSSB with promissory notes issued by a Triton affiliate. The promissory notes were altered to remove references to purported collateral (real property) given to the note holders. When questioned by the Commission staff about this document tampering, Barton refused to answer the questions.

FIRST CLAIM

Fraud in the Offer or Sale of Securities Violations of Section 17(a) of the Securities Act

28. Plaintiff Commission repeats and incorporates paragraphs 1 through 27 of this Complaint by reference as if set forth *verbatim*.

29. Defendants, directly or indirectly, singly or in concert with others, in the offer or sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes, and artifices to defraud; (b) obtained money or property by means of untrue statements of a 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 transactions, practices, and courses of business which operate or would operate as a fraud and deceit upon the purchasers.

30. As a part of and in furtherance of their scheme, Defendants, directly and indirectly, prepared, disseminated, or used contracts, written offering documents, promotional

materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which 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.

31. For these reasons, Defendants have violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM

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

32. Plaintiff Commission repeats and incorporates paragraphs 1 through 27 of this Complaint by reference as if set forth *verbatim*.

33. Defendants, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of a 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 operate or would operate as a fraud and deceit upon purchasers, prospective purchasers, and any other persons.

34. As a part of and in furtherance of their scheme, Defendants, directly and indirectly, prepared, disseminated, or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which 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.

35. Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

36. For these reasons, Defendants 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 thereunder [17 C.F.R. § 240.10b-5].

RELIEF REQUESTED

Plaintiff Commission respectfully requests that the Court:

I.

Permanently enjoin: (i) Defendants from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 of the Exchange Act [17 C.F.R. § 240.10b-5]; and (ii) Defendants from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

II.

Order Defendants to disgorge an amount equal to the funds and benefits they obtained illegally, or to which they are otherwise not entitled, as a result of the violations alleged, plus prejudgment interest on that amount.

III.

Order Defendants to pay civil monetary penalties in an amount determined appropriate by the Court pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] for the violations alleged herein.

IV.

Order such further relief as this Court may deem just and proper.

Dated: December 22, 2009

Respectfully submitted,



TOBY M. GALLOWAY
Texas Bar No. 00790733
ROBERT LONG
Arizona Bar No. 019180
DELMER DEE RAIBOURNE III
Texas Bar No. 24009495

U.S. Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, TX 76102-6882
(817) 978-6447 (tmg)
(817) 978-4927 (fax)