

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASS.

_____)
SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.)
)
RICHARD ELKINSON,)
)
Defendant.)
_____)

Case No.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Securities and Exchange Commission (“the Commission”) alleges the following against defendant Richard Elkinson and hereby demands a jury trial:

PRELIMINARY STATEMENT

1. This case involves a classic Ponzi scheme. Since at least 1997, Elkinson has defrauded approximately 130 investors of as much as \$28 million. Elkinson told investors that he was in the business of brokering contracts on behalf of a Japanese firm that manufactured uniforms (such as police uniforms and prison uniforms) to be sold to large purchasers such as state and local governments (and even the U.S. Olympics Committee). He told investors that their money would be used to help finance specific uniform contracts. The investors received promissory notes signed by Elkinson, with terms that generally required payment within 300 to 330 days and with an interest rate that ranged from 9% to 13%. Upon maturity, investors could receive payment of principal and interest, or they could roll the principal and accrued interest

into another note for another contract. Unfortunately, it was all make-believe. Elkinson had no relationship with a Japanese uniform manufacturer, and there were no contracts to purchase uniforms. While some investors did receive payments of principal and interest, those payments were made using funds obtained from other investors, and Elkinson was able to keep the scheme going as long as most of the investors kept rolling over their investments. In reality, Elkinson kept most of the investors' money, which he used for, among other things, numerous gambling excursions in Las Vegas.

2. Through the activities alleged in this Complaint, Elkinson engaged in: (1) fraud in the offer or sale of securities, in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act"); (2) fraudulent or deceptive conduct in connection with the purchase or sale of securities, in violation of Section 10(b) of the Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder; and (3) the offer and sale of unregistered securities, in violation of Sections 5(a) and (c) of the Securities Act.

3. Accordingly, the Commission seeks: (1) entry of a permanent injunction prohibiting Elkinson from further violations of the relevant provisions of the federal securities laws; (2) disgorgement of Elkinson's ill-gotten gains, plus pre-judgment interest; and (3) the imposition of a civil monetary penalty due to the egregious nature of Elkinson's violations. In addition, because of the risk that Elkinson will continue violating the federal securities laws and the danger that any remaining investor funds will be dissipated or concealed before entry of a final judgment, the Commission seeks preliminary equitable relief to: (1) prohibit Elkinson from continuing to violate the relevant provisions of the federal securities laws; (2) freeze Elkinson's assets and otherwise maintain the status quo; (3) require Elkinson to submit an accounting of

investor funds and other assets in his possession; (4) prevent Elkinson from destroying relevant documents; and (5) authorize the Commission to undertake expedited discovery.

JURISDICTION

4. The Commission seeks a permanent injunction and disgorgement pursuant to Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Section 21(d)(1) of the Exchange Act [15 U.S.C. §78u(d)(1)]. The Commission seeks the imposition of a civil monetary penalty 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)].

5. This Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§77t(d), 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(d), 78u(e), 78aa]. Venue is proper in this District because Elkinson lives in Massachusetts.

6. In connection with the conduct described in this Complaint, Elkinson directly or indirectly made use of the mails or the means or instruments of transportation or communication in interstate commerce.

7. Elkinson's conduct involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss, or significant risk of substantial loss, to other persons.

DEFENDANT

8. **Elkinson**, age 76, lives in Framingham, Massachusetts. He has sometimes conducted business under the name "Northeast Sales Co.", but no such entity was ever incorporated in the Commonwealth of Massachusetts..

STATEMENT OF FACTS

9. Beginning as early as 1997, Elkinson told investors that he was in the business of brokering contracts for the purchase of uniforms (such as police uniforms and prison uniforms) for sale to large purchasers such as state and local governments. (In 2006, Elkinson claimed that he had a contract to supply uniforms to the U.S. Olympics Committee.) The uniforms were supposedly manufactured by a Japanese company. Elkinson told investors that he entered into contracts directly with the purchaser, and that he had to pay 50% of the total contract amount as a down payment or deposit to the Japanese manufacturer. Upon delivery of the uniforms, Elkinson supposedly received full payment from the purchaser, forwarded a portion of the funds to the Japanese manufacturer, and retained the balance. Elkinson claimed that banks were unwilling to lend funds based upon unexecuted contracts, and so he needed to borrow a portion of the funds required for the 50% down payment on each contract.

10. Elkinson provided each investor with a personal promissory note with terms that generally required repayment within a period of 300 to 330 days. The stated interest rate ranged from 9% to 13%. Elkinson told investors that, upon maturity, they could receive their principal and/or interest, or they could roll over the principal and accrued interest into a new note.

11. Elkinson was assisted by various persons in his efforts to raise money from investors. From 1997 to 2005, an individual named Richard Silverman acted as a promoter for

Elkinson. In 2005, a businessman named Jeffrey Ross and a retired attorney named Jay Fialkow, acting through their firm RossFialkow Capital Partners, LLP (“RFCP”), became actively involved in recruiting investors. Silverman, Ross and Fialkow (all of whom had personally invested with Elkinson) received a commission based on the amount of money they raised for Elkinson.

12. Elkinson periodically provided Silverman, Ross, Fialkow, and other investors with documents purporting to confirm the legitimacy of his scheme. For example, he provided a copy of a letter dated November 16, 1998 from the president of “Peerless Uniform Mfg. Co., A Division of Imperial Trading Co.” in Chatsworth, California. The letter stated that the firm’s exclusive agent was Elkinson and his firm Northeast Sales. The letter was fictitious. There is a Peerless Uniform Company at that address, but it has never had a relationship with Elkinson.

13. Elkinson also provided documents purporting to be copies of his contracts with various state governments. These contracts were fictitious. The states in question have never had a contractual relationship with Elkinson.

14. Most of the investors rolled over their principal and accrued interest into new promissory notes from Elkinson. Because promoters such as Silverman, Ross and Fialkow kept recruiting new investors, Elkinson was able to pay off the few investors who wanted their principal and/or interest by diverting funds obtained from other investors.

15. In about April or May 2009, Elkinson reported that there would be a delay in payment on the outstanding notes because of fiscal problems for several state governments. He claimed, however, that he expected payment soon and that he would offer investors an additional 1% per month to compensate for the delay.

16. Elkinson failed to make required payments during the summer and fall of 2009. He offered a variety of explanations, including a claim that his wife was ill and required medical treatment in Texas, and a claim that one purchaser had paid the Japanese manufacturer directly, forcing Elkinson to wait to get the funds back from the manufacturer. Again, however, Elkinson promised that the money would arrive soon.

17. In October 2009, Elkinson sent a letter to the investors claiming that he was involved in negotiations with the Japanese manufacturer and an outside investor. According to Elkinson, the manufacturer would receive \$30 million on November 30, 2009, which would permit the repayment of all outstanding notes in full, plus an additional 1% interest per month that a note was overdue. Elkinson's letter also asked the investors to provide Ross and Fialkow with information about the total amount due on their unpaid notes.

18. More than 130 investors responded to Elkinson's letter, and they claimed to be owed more than \$31.5 million in principal and accrued interest. Because the notes promised to pay interest ranging from 9% to 13%, it appears that Elkinson may have obtained as much as \$28 million from these investors.

19. As set forth above, this was a classic Ponzi scheme. Elkinson had no relationship with a Japanese uniform manufacturer and entered into no contracts for the purchase of uniforms. Elkinson kept most of the investors' money, which he used for, among other things, numerous gambling excursions in Las Vegas.

FIRST CLAIM FOR RELIEF
(Violation of Section 17(a) of the Securities Act)

20. The Commission repeats and incorporates by reference the allegations in paragraphs 1-19 above as if set forth fully herein.

21. Elkinson, directly and indirectly, acting intentionally, knowingly or recklessly, in the offer or sale of securities by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails: (a) has employed or is employing devices, schemes or artifices to defraud; (b) has obtained or is obtaining money or property by means of untrue statements of material fact or omissions to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) has engaged or is engaging in transactions, practices or courses of business which operate as a fraud or deceit upon purchasers of the securities.

22. As a result, Elkinson has violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

SECOND CLAIM FOR RELIEF
(Violation of Section 10(b) of the Exchange Act and Rule 10b-5)

23. The Commission repeats and incorporates by reference the allegations in paragraphs 1-22 above as if set forth fully herein.

24. Elkinson, directly or indirectly, acting intentionally, knowingly or recklessly, by the use of means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) has employed or is employing devices, schemes or artifices to defraud; (b) has made or is making untrue statements of material fact or has omitted or is

omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) has engaged or is engaging in acts, practices or courses of business which operate as a fraud or deceit upon certain persons.

25. As a result, Elkinson has 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].

THIRD CLAIM FOR RELIEF
(Violations of Section 5(a) and 5(c) of the Securities Act)

26. The Commission repeats and incorporates by reference the allegations in paragraphs 1-25 above as if set forth fully herein.

27. The promissory notes executed by Elkinson are “securities” within the meaning of Section 2(1) of the Securities Act [15 U.S.C. §77b(1)] and Section 3(a)(10) of the Exchange Act [15 U.S.C. §78c(a)(10)]. No registration statement was filed with respect to these securities, and no exemption from registration was available.

28. Elkinson, directly or indirectly: (a) has made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement has been in effect and for which no exemption from registration has been available; and/or (b) has made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement has been filed and for which no exemption from registration has been available.

29. As a result, Elkinson has violated and, unless enjoined, will continue to violate Sections 5(a) and (c) of the Securities Act [15 U.S.C. §§77e(a), (c)].

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

A. Enter a preliminary injunction, order freezing assets, and order for other equitable relief in the form submitted with the Commission's *ex parte* motion for such relief, and, upon further motion, enter a comparable preliminary injunction, order freezing assets, and order for other equitable relief;

B. Enter a permanent injunction restraining Elkinson and each of his agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of:

1. Sections 5(a) and (c) of the Securities Act [15 U.S.C. §§77e(a), (c)];
2. Section 17(a) of the Securities Act [15 U.S.C. §77q(a)]; and
3. 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];

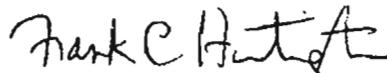
C. Require Elkinson to disgorge his ill-gotten gains and losses avoided, plus pre-judgment interest, with said monies to be distributed in accordance with a plan of distribution to be ordered by the Court;

D. Order Elkinson to pay an appropriate civil monetary penalty 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)];

E. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

F. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,



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