

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.:

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

SAMUEL B. VITALE and JOYCE D. VITALE,

Defendants.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission alleges as follows:

I. INTRODUCTION

1. The Commission brings this action to restrain and enjoin Defendants Samuel B. Vitale and Joyce D. Vitale from violating the federal securities laws. This action involves the fraudulent purchase of stock in several public offerings of banks that were converting from mutual to stock ownership. From approximately January 2005 until March 2007, the Defendants spearheaded a sophisticated scheme to defraud the banks and their depositors by secretly using relatives as nominees to acquire stock in those conversions in contravention of the offering terms and applicable banking regulations. Over the course of the fraudulent scheme, the Defendants reaped ill-gotten profits from secondary market sales of the illegally obtained stock. The Defendants used four relatives and several business entities they controlled as nominees to fraudulently acquire the bank shares prior to the public offerings.

2. The Defendants' scheme was designed to circumvent federal and state banking regulations that require banks to give their own depositors first priority to purchase stock ahead

of other interested investors when converting from mutual to stock ownership. These priority subscription rights allow depositors to purchase up to a certain number of shares at a relatively low subscription price. If an offering is oversubscribed, then the available shares are allocated among depositors according to various criteria. Because the stock can usually be sold in the secondary market at a premium to the subscription price, these offerings typically attract significant investor interest.

3. To ensure that only depositors benefit from their priority stock subscription rights, federal and state banking regulations prohibit depositors from transferring ownership of their subscription rights or from entering into any agreement regarding the sale or transfer of shares purchased in the offering. These restrictions are set forth in the offering prospectus, and depositors are required to sign a subscription agreement certifying that they are purchasing the stock for their own account and have no agreement or understanding regarding the sale or transfer of any shares they receive. Banking regulations, as well as the offering terms set forth in the prospectus, also restrict the amount of shares that any one individual may acquire in an offering.

4. To benefit from the priority subscription rights while evading the maximum purchase restrictions, the Defendants and the nominees opened accounts at mutual savings banks throughout the country in anticipation that they would convert to stock ownership. When any of the banks undertook a conversion, the Defendants secretly purchased the bank stock through their nominees, controlled the sale of these shares, and retained most of the trading profits. The Defendants also directed the nominees to submit stock order forms in which they falsely certified they were purchasing the stock for their own account and had no agreement to transfer shares or the proceeds of their sale to anyone else. In reality, the nominees had an agreement to transfer

shares and proceeds to the Defendants. In total, the Defendants' scheme generated \$659,512 in unlawful profits.

5. The Defendants' scheme harmed the banks' legitimate depositors. Had the banks known about the unlawful transfer of subscription rights, they would have been able to take remedial steps to protect the rights of bona fide depositors. The seven offerings at issue were oversubscribed, and the Defendants' scheme therefore limited the amount of stock available to other depositors, some of whom received less stock than they requested or were completely shut out.

6. By virtue of the foregoing conduct, the Defendants, directly or indirectly, singly or in concert, violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78j(b), and Exchange Act Rule 10b-5, 17 C.F.R § 240.10b-5. Unless each Defendant is permanently restrained and enjoined, they are reasonably likely to continue to violate the federal securities laws.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to Sections 21(d) of the Exchange Act, 15 U.S.C. §§ 78u(d).

8. Personal jurisdiction and venue are proper in the Southern District of Florida because many of the Defendants' acts and transactions giving rise to the violations alleged in this Complaint occurred in the Southern District of Florida. In addition, the Defendants currently reside in the Southern District of Florida.

9. In connection with the conduct alleged in this Complaint, the Defendants, directly or indirectly, singly or in concert with others, made use of the means or instrumentalities of

interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails.

III. THE DEFENDANTS

10. Samuel B. Vitale, resides in Palm Beach County, Florida, and is married to Defendant Joyce D. Vitale. Mr. Vitale is a self employed businessman who has been a regular participant in bank mutual to stock conversions. Mr. Vitale is a relative of Nominees 1-4.

11. Joyce D. Vitale also resides in Palm Beach County, Florida. Mrs. Vitale is a relative of Nominees 1-4.

IV. THE DEFENDANTS' FRAUDULENT CONDUCT

A. The Conversion Process

12. Savings banks are typically organized as either mutual associations ("mutual banks") owned by the depositors, or capital stock companies that shareholders own. When the conversion of a mutual bank to stock ownership is approved, the bank grants subscription rights to the stock offering in tiers to defined groups of individuals with different levels of priority. In descending order of priority, the typical tiers are: (i) depositors who held accounts for at least a year prior to the announcement of the offering; (ii) bank employee benefit plans; (iii) borrowers and depositors who held accounts for less than a year before the announcement of the offering; and (iv) if shares remain available, members of the local community or, in a syndicated offering, other public investors. Federal and state banking laws prohibit depositors from transferring these subscription rights or entering into any arrangements for the transfer of shares before they are issued.

13. Mutual bank conversions have proven to be lucrative investment opportunities, as the stocks often trade in the immediate aftermarket at prices that represent a substantial premium

over the offering price. As a result, depositors often wind up subscribing, in the aggregate, for more shares than the bank intends to issue. When a conversion offering is oversubscribed, some eligible depositors wind up receiving only a fraction of the shares they requested, and some depositors may receive none at all. The seven offerings at issue were oversubscribed, and investors were therefore injured as a result of the Defendants' conduct.

B. The Genesis and Mechanics Of The Defendants' Scheme

14. To take advantage of the profitability of bank mutual to stock conversion offerings, the Defendants conceived a scheme to use nominee accounts to purchase more shares of stock than authorized in seven separate mutual to stock bank conversion offerings.

15. These seven fraudulent conversion transactions were:

Banking Institution (Symbol)	Date
Kearny Financial Corp. (KARNY)	1/2005
Investors Bancorp, Inc. (ISBC)	9/2005
Wauwatosa Holdings, Inc. (WAUW)	9/2005
Northeast Community Bancorp, Inc. (NECB)	6/2006
Oritani Financial Corp. (ORIT)	12/2006
Hampden Bancorp, Inc. (HBNK)	12/2006
TFS Financial Corporation (TFSL)	3/2007

16. In each transaction, the bank embarked on a conversion and the Defendants and their nominees submitted stock order forms and subscription agreements, often seeking the maximum amount of shares offered to each depositor. In each instance, the nominees certified that, as required by law and the terms of the offering prospectus, they were purchasing the shares for their own account, and had not entered into any prior arrangements for the transfer of the shares or the proceeds of any subsequent sale.

17. Each of these statements was false. The Defendants and nominees purchased the stock with the understanding that the Defendants would retain either most of the stock the

Defendants funded, or the sale proceeds therefrom. The Defendants secretly controlled the bank accounts, the subscription rights, and the stock issued to the nominees.

18. In some cases, the converting bank also required depositors to disclose whether they were acting in concert with other subscribers or to certify that they were not doing so. In those instances, the Defendants' own stock order forms and subscription agreements were also false and misleading, as they did not disclose their arrangements with their nominees

C. Example of the Defendants' Scheme: The TFS Conversion

19. The Defendants' conduct in the following bank conversion illustrates how the scheme worked, and the role the Defendants knowingly played in each of the seven transactions at issue in this case.

20. TFS Financial Corporation is headquartered in Cleveland, Ohio. TFS' common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the NASDAQ Stock Market, LLC under the symbol TFSL. TFS filed its securities registration statement with the Commission on December 13, 2006, as part of its conversion from mutual to stock ownership. TFS completed its initial public offering on April 20, 2007.

21. The Defendants and their nominees had established bank accounts at TFS prior to the bank's announcement of its anticipated mutual to stock conversion.

22. As set forth in the prospectus, TFS required each depositor seeking to purchase stock to certify under penalty of perjury on the stock order form that there was no agreement or understanding regarding the sale or transfer of such shares or the depositor's right to subscribe for shares. TFS also required each depositor to indicate whether the depositor or any associates of persons acting in concert with the depositor had submitted other orders for TFS shares. Individual depositors could subscribe for a maximum of 50,000 shares at \$10 per share, and

groups, including family members or persons acting in concert could purchase a maximum of 75,000 shares.

23. The Defendants orchestrated a scheme where they purchased shares from TFS using nominees, but failed to disclose on the stock subscription order forms that they and their nominees were either associates or acting in concert with one another.

24. On March 23, 2007, the Defendants made the following transfers from their joint bank account at an unrelated bank: (i) \$490,000 to a joint account Mr. Vitale and Nominee 1 controlled; (ii) \$500,000 to a joint account controlled by Mr. Vitale and Nominee 2, (iii) \$480,000 to a joint account controlled by Mr. Vitale and Nominee 3, and (iv) \$215,000 to a joint account controlled by Mr. Vitale and Nominee 4.

25. On the same day, Nominee 1, Nominee 2, Nominee 3, and Nominee 4 each purchased 50,000 shares of TFS stock for \$500,000 each in the TFS mutual to stock conversion offering. In each instance, the nominees issued checks to purchase the TFS stock on joint checking accounts shared with Mr. Vitale. Each of these checks only had the nominee's name printed in the top, left-hand corner, and contained no other markings indicating Mr. Vitale was a joint account holder on any of the accounts.

26. The nominees each filled out and submitted stock subscription order forms for 50,000 shares of TFS stock and signed the acknowledgement falsely representing they were purchasing the TFS stock for their own account and had no agreement to transfer any of the stock or subscription rights or proceeds from the sale of TFS stock to anyone.

27. The nominees each wrote checks on their joint accounts with Mr. Vitale to fund their purchase of 50,000 shares of TFS stock. Each nominee received 50,000 shares of TFS

stock and subsequently transferred nearly all of the TFS shares the Defendants funded, or the sales proceeds therefrom, back to the Defendants' brokerage or bank accounts.

28. Through the use of these nominees, the Defendants reaped \$466,185 in ill-gotten gains from their participation in the TFS mutual to stock conversion offering.

D. The Defendants' Ill-Gotten Gains

29. The Defendants used their nominees to illegally obtain subscription rights and profit at the expense of innocent depositors in the seven oversubscribed mutual bank conversions identified in paragraph 15. In each instance, the Defendants had their nominees subscribe for a number of shares, often the maximum individual allotment, and funded the nominees' stock purchases.

30. To conceal the arrangement, the nominees often purchased the shares using checks written only in their names, and did not indicate that Mr. Vitale was a joint account holder on the bank account on which the checks were drawn. Once the shares were issued to the nominees, the Defendants transferred the shares they funded, or the sales proceeds therefrom, to themselves.

31. The Defendants profited from the fraud. They made \$659,512 in ill-gotten gains from the seven oversubscribed conversions.

V. CLAIM FOR RELIEF

COUNT I

Violations of Section 10(b) and Rule 10b-5 of the Exchange Act

32. The Commission repeats and realleges paragraphs 1 through 31 of its Complaint.

33. From January 2005 until March 2007, Defendants Samuel Vitale and Joyce Vitale directly and indirectly, by use of the means and instrumentality of interstate commerce, and of

the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly: (a) employed devices, schemes or 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 the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices and courses of business which operated as a fraud upon the purchasers of such securities.

34. By reason of the foregoing, Samuel Vitale and Joyce Vitale directly or indirectly violated and, unless enjoined, are reasonably likely to 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.

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Permanent Injunctive Relief

Enter a Final Judgment of Permanent Injunction, restraining and enjoining Samuel Vitale and Joyce Vitale, their agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating Section 10(b) and Rule 10b-5 of the Exchange Act, as indicated above.

II.

Disgorgement

Issue an Order directing Samuel Vitale and Joyce Vitale to disgorge, jointly and severally, \$659,512, representing the ill-gotten gains they received from the violations alleged herein, and to pay prejudgment interest in the amount of \$97,667

III.

Penalties

Issue an Order directing Samuel Vitale and Joyce Vitale to pay a civil money penalty of \$150,000 each, pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

IV.

Further Relief

Grant such other and further relief as may be necessary and appropriate.

V.

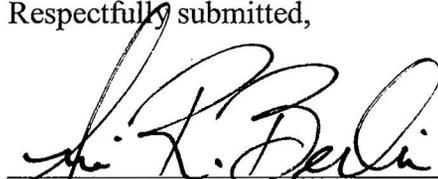
Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Dated: February 9, 2010

Respectfully submitted,

By:



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*JS 44 (Rev. 2/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

SECURITIES AND EXCHANGE COMMISSION

(b) County of Residence of First Listed Plaintiff _____

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Amie Riggle Berlin, Senior Trial Counsel, Securities and Exchange Comm.; 801 Brickell Avenue, Suite 1800, Miami, FL 33131 Telephone: (305)982-6322

DEFENDANTS

SAMUEL B. VITALE and JOYCE D. VITALE,

County of Residence of First Listed Defendant Miami-Dade County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (if known) Norman A. Moscovitz, Esq.; 1111 Brickell Avenue, Suite 2050, Miami, FL 33131
Curtis B. Miner, Esq.; 255 Aragon Ave. Coral Gables, FL 33134

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities Employment	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities Other	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights			
	PRISONER PETITIONS			
	<input type="checkbox"/> 510 Motions to Vacate Sentence			
	Habeas Corpus:			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Re-filed- (see VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

(See instructions second page):

a) Re-filed Case YES NO b) Related Cases YES NO
JUDGE _____ DOCKET NUMBER _____

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. 78j(b), 78u(d)

Violations of Federal Securities Laws

LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

Amie Riggle Berlin

2/9/10

FOR OFFICE USE ONLY

AMOUNT _____ RECEIPT # _____ IFP _____