

JUN 02 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES N. HATTEN, CLERK
By: *JNH* Deputy Clerk

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff, : Civil Action No.

v. :

1:11-CV-1803

MICHAEL L. ROTHENBERG, and
FOUR FIVE, LLC

Defendants. :

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff, Securities and Exchange Commission (the "Commission"), files its complaint and alleges that:

OVERVIEW

1. This matter involves a "Prime Bank" scheme perpetrated by Defendant Michael L. Rothenberg ("Rothenberg") acting through Four Five, LLC ("Four Five"), an entity controlled by Rothenberg.
2. Between at least February 2010 and March 2010, Rothenberg orchestrated a "Prime Bank" scheme that raised more than \$1.7 million from at least two investors located in Colorado and New Jersey.

3. Acting through Four Five, Rothenberg made misrepresentations and omissions of material fact to induce the investors to participate in a secret and allegedly risk-free trading platform or trading facility. This trading platform or trading facility purportedly involved transactions among international banks that would generate substantial return on a recurring basis. Specifically, Rothenberg represented that the trading platform would produce returns in excess of 300% every fourteen days.

4. Rothenberg and Four Five also represented to investors, both orally and in writing, that the majority of their funds would remain at all times in Rothenberg's attorney trust account, and that all funds invested, along with the profits, would be returned to the investors at the conclusion of the trades.

5. Rothenberg further represented to the investors that the investment was risk-free because their funds would remain in his attorney trust account.

6. Contrary to Defendants' representations, a risk-free trading process providing the returns promised by Defendants does not exist. Moreover, contrary to Rothenberg's representations that investor funds would remain in his attorney trust account, Rothenberg began disbursing investor funds within days of receipt of those funds. Between March 2010 and October 2010, at least \$210,000 in investor

funds were transferred to a bank account designated for contributions to Rothenberg's judicial election campaign. Rothenberg used another \$190,000 of investor funds for personal expenses.

7. Although Rothenberg ultimately returned approximately \$910,000 to investors, Defendants have misappropriated at least \$800,000 of investor funds.

VIOLATIONS

8. Defendants have engaged and, unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77 q(a)] and 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].

JURISDICTION AND VENUE

9. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] to enjoin Defendants from engaging in the transactions, acts, practices, and courses of business alleged in this

complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties and for other equitable relief.

10. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

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

12. Certain of the transactions, acts, practices, and courses of business constituting violations of the Securities Act and the Exchange Act occurred in the Northern District of Georgia. Defendant Rothenberg resides in the Northern District of Georgia.

13. Defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business alleged in this complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

THE DEFENDANTS

14. Michael L. Rothenberg, 32 and a resident of Atlanta, Georgia, is an attorney admitted to practice in Georgia and New York. Between August 2007 and August 2008, Rothenberg was a Judge *Pro Hac Vice* on the DeKalb County Recorders Court, and in November 2010, Rothenberg was an unsuccessful candidate for a seat as a judge on the DeKalb County Superior Court. Rothenberg created Four Five, LLC on December 15, 2009. At all relevant times, Rothenberg represented to investors that he was Four Five's Chairman and sole member.

15. Four Five, LLC, is a Delaware limited liability company organized by Rothenberg on December 15, 2009.

THE FRAUDULENT SCHEME

16. Between at least February 2010 and March 2010, Rothenberg, acting individually or through Four Five, used misrepresentations and omissions of material fact to induce two investors to invest \$1.7 million in a "Prime Bank" scheme.

17. Rothenberg told investors he could provide them access to short-term, high-yield investment opportunities with international banks. Rothenberg identified these investment opportunities as a trading platform or trading facility.

18. Rothenberg further represented that these opportunities involved trades among banks and that the trades, in turn, involved notes and “tranching.”

According to Rothenberg, this type of trading was how banks created money and was the reason for the high rate of return being offered.

19. Rothenberg told investors he was a lawyer and a judge and assured investors that that the investment was risk-free because any money invested would remain in Rothenberg’s attorney trust account. Rothenberg also told investors that all they needed to do to participate in the trading platform was to provide him with the money to be invested. According to Rothenberg, once he had possession of the funds, the trades could be completed simply by Rothenberg providing proof of the funds being in his account.

20. Rothenberg emphasized to the investors that they would have to apply through him to participate in the trading platform and would be allowed to participate only after receiving approval from the overseas traders, who wished to remain anonymous.

A. The First Trading Program

21. In late February 2010, Rothenberg offered at least two investors an opportunity to participate in a trading program that was purportedly related to

relief efforts in Haiti. According to Rothenberg, the trading program required an investment of \$180,000 and would generate returns in excess of 300% in a short timeframe.

22. Based on Rothenberg's representations that the trading program would yield high returns with no risk, the two investors each wired \$180,000 to an account in the name of Four Five.

23. One investor also entered into a "representation agreement" in which Four Five agreed to represent the investor's company in order to solicit and arrange for investments in the trading program. In exchange for this representation, the investor's company agreed to pay Four Five a fee of 10% of any return on the investment. Rothenberg signed this agreement as Chairman of Four Five.

24. On Friday, February 26, 2010, Rothenberg informed the investors that the Haitian trading program had closed before Rothenberg could complete the necessary paperwork and that neither investor would be able to participate in it. Rothenberg told the investors that Monday would bring a new trading program.

B. The Second Trading Program

25. On Monday, March 1, 2010, Rothenberg represented to the investors that he had reviewed the available trading programs and that the most promising trading

program required an investment of \$1.35 million. Rothenberg represented to one investor that the trade would yield returns of approximately 300% within fourteen days, and that the investor could participate in the trade six times in a row.

According to Rothenberg, the investors could earn hundreds of millions of dollars within a period of only a few weeks.

26. Rothenberg said that the trade was only open to those investors who would use the funds for humanitarian purposes, and only Rothenberg had access to the trade.

27. Rothenberg also represented that \$1 million of the investment would never leave his attorney trust account. Rothenberg stated that the remaining \$350,000 of the investment would be transferred to the trader's account for the duration of the trade. According to Rothenberg, the \$350,000 would be returned to the investor at the completion of the trade.

28. Rothenberg and Four Five would be paid a total commission of approximately 10% of the earnings from the trade, or approximately \$400,000 from each investment.

29. Only one investor chose to proceed with the program, and on March 3, 2010, that investor wired \$1 million to an account that Rothenberg represented was his

attorney trust account, and separately wired \$350,000 to another account that was controlled by Rothenberg.

30. Shortly after receiving the funds, Rothenberg sent the investor an email stating that “an administrative hold has already been placed on the funds through [the bank] which means they are safe and locked down at the bank and will not move anywhere.”

31. On March 8, 2010, Rothenberg sent the investor an email purportedly forwarding information Rothenberg had received from the trader. The email stated that the marketplace was highly regulated and strictly confidential; that the traders never needed to be in control of the investor funds; and that investor funds were never at risk.

32. Over the next seven months, the investor requested return of a portion of his investment in order to fund his company’s operations, and Rothenberg ultimately returned \$550,000 of the investor’s funds. The investor also repeatedly requested information about the status of the trade. In response to those inquiries, Rothenberg represented that the trade had not yet occurred because, among other reasons, the investor had lost his place in line for the trade, the European banking

holidays had delayed the trade and the Obama administration had interfered with the trade. The trade never took place.

C. Misrepresentations and Omissions of Material Fact

33. Rothenberg and Four Five falsely stated to investors that their funds would be invested in a profitable, risk-free transaction involving trading platforms or trading facilities. These types of programs do not exist.

34. Neither Rothenberg nor Four Five had any reasonable basis for representing that investors would receive returns in excess of 300% in a risk-free transaction. At a minimum, Rothenberg and Four Five were severely reckless in making such representations without having any reasonable basis to do so.

35. Contrary to Rothenberg's representations that investor money would be placed in his attorney trust account and remain there, Rothenberg directed investors to wire funds to an account in the name of Four Five—not an attorney trust account.

36. Almost immediately after the investor wired the \$1 million investment to Four Five, Rothenberg transferred \$169,000 from that account, including \$60,000 that was used to fund Rothenberg's judicial election campaign.

37. Rothenberg made additional transfers from this account to his campaign account in the amounts of \$25,000 on August 23, 2010; \$50,000 on September 27, 2010; and \$75,000 on October 20, 2010. Rothenberg also used \$190,000 of investor funds to pay his personal expenses.

38. The investments offered and sold by Rothenberg and Four Five are securities. Rothenberg represented that the returns would come solely from his efforts and the efforts of others. Furthermore, whether an investor would obtain the represented returns was dependent on Rothenberg's ability to identify a trader who could execute the purported trades.

COUNT I—FRAUD

Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]

39. Paragraphs 1 through 38 are hereby re-alleged and are incorporated herein by reference.

40. From at least February 2010 through March 2010, Defendants, in the offer and sale of the securities described herein, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails,

directly and indirectly, employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above.

41. Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

42. While engaging in the course of conduct described above, Defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

43. By reason of the foregoing, Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II—FRAUD

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

44. Paragraphs 1 through 38 are hereby realleged and are incorporated herein by reference.

45. From at least February 2010 through March 2010, Defendants, in the offer and sale of the securities described herein, by use of means and instruments of

transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

a. obtained money and property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

b. engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

46. By reason of the foregoing, Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT III—FRAUD

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]and Rules 10b-5 thereunder [17 C.F.R. §§ 240.10b-5]

47. Paragraphs 1 through 38 are hereby re-alleged and are incorporated herein by reference.

48. From at least February 2010 through March 2010, Defendants, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- a. employed devices, schemes, and 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 light of the circumstances under which they were made, not misleading; and
- c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

49. Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

50. By reason of the foregoing, Defendants, directly and indirectly, have 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].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully prays for:

I.

Findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that Defendants committed the violations alleged herein.

II.

A permanent injunction enjoining Defendants, their agents, servants, employees, and attorneys from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. § 77 q(a)] and 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].

III.

An order requiring the disgorgement by Defendants of all ill-gotten gains or unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws.

IV.

An order 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)] imposing civil penalties against Defendants.

V.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

Dated: June 2, 2011

Respectfully submitted,



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