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DISTRICT OF UTAH
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

PLAINTIFF,

v.

STEVEN B. HEINZ, an individual and S.B.
HEINZ & ASSOCIATES, INC., a Utah
Corporation.

DEFENDANTS,

and

SUSAN K. HEINZ

RELIEF DEFENDANT

COMPLAINT

Case: 2:13cv00753
Assigned To : Sam, David
Assign. Date : 8/8/2013
Description: SEC v. Heinz et al

Plaintiff, Securities and Exchange Commission (the "Commission"), for its Complaint against defendants S.B. Heinz & Associates, Inc. ("S.B. Heinz") and Steven B. Heinz ("Heinz"), (collectively "Defendants"), and relief defendant Susan K. Heinz ("Susan" or "Relief Defendant") alleges as follows:

INTRODUCTION

1. This matter involves an ongoing offering fraud and Ponzi scheme operated by Heinz and his company, S.B. Heinz, a financial planning and insurance agency located in Provo, Utah. Since January 1, 2012, Heinz has solicited approximately \$4 million from more than fifteen investors to enable Heinz to execute rapid buy and sell orders of futures contracts.

2. Heinz represents to investors that he can consistently generate investment returns due to his successful trading strategy and guarantees a fixed rate of return to investors. Heinz has issued investment contracts to investors which guarantee returns ranging from 6% to 120% per year.

3. Heinz is not generating a profit sufficient to repay investors as guaranteed and is currently dissipating investor funds in an amount in excess of \$100,000 per month by using investor funds for his own personal purposes and to pay principal and interest payments to earlier investors.

4. Heinz omitted to disclose to investors that their funds would be used to make principal and interest payments to previous investors and used for his own personal purposes.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction by authority of Sections 20 and 22 of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §§ 77t and 77v], Sections 21 and Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78u and 78aa], and Sections 209 and 214 of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. §§ 80b-9 and 80b-14].

6. Defendants, directly and indirectly, singly and in concert, have made use of the means and instrumentalities of interstate commerce and the mails in connection with the

transactions, acts and courses of business alleged herein, certain of which have occurred within the District of Utah.

7. Venue for this action is proper in the District of Utah under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], under Section 27 of the Exchange Act [15 U.S.C. § 78aa] and under Section 214(a) of the Advisers Act [15 U.S.C. § 80b-14(a)] because certain of the transactions, acts, practices, and courses of business alleged in this Complaint took place in this district and because the Defendants reside in and transact business in this district.

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

9. Defendants' conduct took place in connection with the offer, purchase and/or sale of investment contracts issued by Heinz, which are securities.

DEFENDANTS

10. **S.B. Heinz & Associates, Inc.**, is incorporated in Utah since April 2004. Its principal place of business is in Provo, Utah. S.B. Heinz provides financial planning and insurance services.

11. **Steven Bruce Heinz ("Heinz")**, age 56, is a Utah resident living in Orem, Utah. Heinz is the owner and President/CEO of S.B. Heinz. From 1986 until October 2012, Heinz was a registered representative associated with various registered brokers or dealers. From approximately January 2012 and continuing through the present, Heinz offered investment advice to and solicited investments from individuals.

RELIEF DEFENDANT

12. **Susan K. Heinz**, age 56, resides in Provo, Utah. Susan K. Heinz is married to Heinz and received an unknown amount of investor funds.

STATEMENT OF FACTS

13. From 1986 through March 2004, Heinz was associated with Northwestern Mutual Investment Services, LLC (“Northwestern Mutual”) as a registered representative. From April 2004 until October 2012, Heinz was associated with Ogilvie Security Advisors Corp. (“Ogilvie Security”) as a registered representative.

14. Beginning in January 2012, and continuing through the present, Heinz and S.B. Heinz provided investment advice and offered and sold investment contracts to more than fifteen investors raising approximately \$4 million. Heinz solicited investments from his current and former clients at Northwestern Mutual and Ogilvie Security. Heinz also solicited investments from church associates, family members, and friends.

15. Heinz told potential investors that his trading strategy was so successful with his personal funds that he was willing to assist a select group with their investments.

16. Heinz personally as well as through S.B. Heinz, advised individuals to liquidate their securities holdings and invest the funds with him.

17. Heinz had a pre-existing advisory relationship with many, if not most, of the clients he solicited because Heinz advised and managed their investments while employed at various other firms.

18. Heinz promised some investors that they would earn tax-free income if they provided a “loan” to Heinz to invest for them.

19. Heinz offered to manage the investments of other individuals and make all investment decisions for them. One investor, the recent widow of a church associate of Heinz, invested with Heinz after he volunteered to assist her with her finances and investments after her spouse died.

20. In another instance, Heinz explained to a couple, who had been Heinz's clients when he was associated with Ogilvie Security, that Ogilvie Security no longer allowed him to sell the securities the couple owned. Heinz promised the couple that by investing with Heinz he would guaranteed a return of 1% each month. Heinz's convinced the elderly couple to liquidate their investments and invest those funds with him personally. Heinz did not disclose to the couple that they would incur \$45,000 in penalties as a result of early liquidation of their investments.

21. Heinz provided written investment contracts to investors, which specified a guaranteed rate of return. The investment contracts, which are between Heinz and the investor, are a one page document which states the amount invested and the guaranteed rate of return.

22. Heinz did not prepare a private placement memorandum or any other document disclosing the nature of the investment or the risks involved and did not provide financial disclosures or audited financial statements to any investor.

23. Funds from investors are deposited into bank accounts in the name of S.B. Heinz, or Steven B. Heinz then transferred to futures trading accounts maintained in the name of S.B. Heinz. Heinz is the signer on the bank and trading accounts and makes all trading decisions.

24. Heinz told certain investors who had provided "loans" to Heinz that all profits generated from their investment would be reinvested and that he would make monthly payments

to the investor of their principal, rather than interest, to enable the customer to realize tax-free income.

25. Heinz represented to investors that their funds would be pooled with his personal money and other investor funds.

26. Heinz represented that he was extremely successful in his trading and that any profit generated beyond the fixed rate of return guaranteed to the investor would result in profit for Heinz.

27. Heinz told investors that he maintains sufficient funds in his trading accounts to repay all investors their principal at all times.

28. Heinz represented to one investors that he purchased equities, bonds, crude oil, and the Euro, but assured this same investor that he did not purchase individual stocks, but rather invested in the S&P, Dow, and NASDAQ. Heinz told some investors that he traded futures and other investors that he invested in the stock market.

MATERIAL MISREPRESENTATIONS AND OMISSIONS

29. Contrary to the representations Heinz made to investors, Heinz did not purchase equities, bonds, or Euros with investor funds. Instead, Heinz executed high risk rapid buy and sell orders of futures contracts using investor funds.

30. While Heinz did use a portion of investor funds to purchase crude oil futures contracts, among other types of futures contracts, bank records show that Heinz misappropriated approximately \$1 million in investors' funds for personal purposes, such as the payment of his personal credit cards in the amount of \$331,000, household expenses, and personal travel.

31. Heinz used investor funds to repay a \$600,000 loan he incurred against his personal life insurance policy more than a decade earlier. Heinz also uses investor money to pay

his adult children to fund various business opportunities they are involved in, including multi-level marketing and web-based advertising business opportunities.

32. Bank records also reflect that S.B Heinz misappropriated investor funds to pay for various expenses incurred by S.B. Heinz such as the salary for its secretary and its office rent.

33. Contrary to representations made by Heinz that his trading strategy generated a profit and that he always maintained sufficient funds in his trading account to repay all investor principal, as of June 2013 only \$311,000 remains in Heinz's trading accounts. Since January 2012, Heinz has lost in excess of \$1.5 million buying and selling high risk futures contracts. On more than one occasion, Heinz has lost in excess of \$100,000 in a single day using his strategy of rapidly buying and selling futures contracts.

34. In addition to the \$1 million Heinz has spent on personal expenses such as paying for family members to accompany him to Mexico on vacation, Heinz has also withdrawn approximately \$332,000 in cash from his personal and business bank accounts. Although some cash was used to make payments of principal and/or interest to investors, Heinz also reportedly makes large monthly cash payments to his wife.

35. Bank records show Heinz uses new investor funds to repay earlier investors their purported profits or return of principal.

36. The misrepresentations and omissions detailed above are material to a reasonable investor.

37. Heinz acted with scienter. He controlled S.B. Heinz's and his own personal bank and authorized all transfer of funds. Heinz also controlled the S.B. Heinz trading accounts and authorized all trades. He was well aware of his representations to investors regarding the use of

investors' funds. He knew that the representations being made to investors regarding the use of investor funds were false.

**FIRST CAUSE OF ACTION
EMPLOYMENT OF A DEVICE, SCHEME OR ARTIFICE TO DEFRAUD
Violation of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]**

38. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 37 above.

39. Defendants, and each of them, by engaging in conduct described above, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, with scienter, employed devices, schemes, or artifices to defraud.

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

**SECOND CAUSE OF ACTION
FRAUD IN THE OFFER AND SALE OF SECURITIES
Violations of Section 17(a)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)]**

41. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 37 above.

42. Defendants, and each of them, by engaging in the conduct described above, directly and indirectly, in the offer and sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, obtained money or property by means of untrue statements of material fact or by omitting 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 engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

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

**THIRD CAUSE OF ACTION
FRAUD IN CONNECTION WITH THE PURCHASE AND SALE OF SECURITIES
Violations of 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]**

44. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 37 above.

45. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, by the use of means or instrumentalities of interstate commerce or use of the mails, in connection with the purchase or sale of securities, with scienter: (1) employed devices, schemes, or artifices to defraud; (2) made untrue statements of material fact or omitted to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made not misleading; or (3) engaged in acts, practices, or courses of business that operated or would operate as a fraud and deceit upon other persons.

46. By reason of the foregoing, Defendants violated, and unless restrained and 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].

**FOURTH CAUSE OF ACTION
FRAUD BY INVESTMENT ADVISERS
Violations of Sections 206(1) and (2) [15 U.S.C. §§ 80b-6(1) and 80b-6(2)]**

47. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 37 above.

48. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, by the use of the use of the mails or any means or instrumentality of interstate commerce, while acting as investment advisers, knowingly, willfully, or recklessly: (1) employed devices, schemes or artifices to defraud clients or prospective clients; (2) engaged in transactions, practices and courses of business that operated as a fraud or deceit upon clients or prospective clients; and (3) engaged in acts, practices and courses of business which were fraudulent, deceptive, or manipulative.

49. By reason of the foregoing, Defendants, and each of them, directly or indirectly violated, and unless enjoined will continue to violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80(b)-6(1) and 80(b)-6(2)].

**FIFTH CAUSE OF ACTION
UNJUST ENRICHMENT**

50. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 37 above.

51. As a result of the unlawful conduct of Defendants, Relief Defendant has thus been unjustly enriched, and it would be unjust and inequitable for her to retain those funds and/or property.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue findings of fact and conclusions of law that Defendants committed the violations charged herein.

II.

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure orders that temporarily, preliminarily and permanently enjoin Defendants and their officers, agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from engaging in transactions, acts, practices, and courses of business described herein, and from engaging in conduct of similar purport and object in violation of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1) and (2) of the Advisers Act.

III.

Issue, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, orders that temporarily, preliminarily and permanently enjoin Defendants and Relief Defendant, and their officers, agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from transferring, changing, wasting, dissipating, converting, concealing, or otherwise disposing of, in any manner, any funds, assets, claims, or other property or assets owned or controlled by, or in the possession or custody of the Defendants and/or Relief Defendant.

IV.

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure orders that temporarily, preliminarily and permanently restrain and enjoin Defendants, and each of them, and their officers, agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order

by personal service or otherwise, and each of them, from destroying, mutilating, concealing, transferring, altering, or otherwise disposing of, in any manner, books, records, computer programs, computer files, computer printouts, correspondence, including e-mail, whether stored electronically or in hard copy, memoranda, brochures, or any other documents of any kind that pertain in any manner to the business of Defendants.

V.

Enter an order directing Defendants, and each of them, to pay civil money penalties pursuant to Section 20(d) of the Securities Act, Section 21(d)(3) of the Exchange Act and Section 209(e) of the Advisers Act.

VI.

Enter an order directing Defendants to disgorge all ill-gotten gains received during the period of violative conduct and pay prejudgment interest on such ill-gotten gains.

VII.

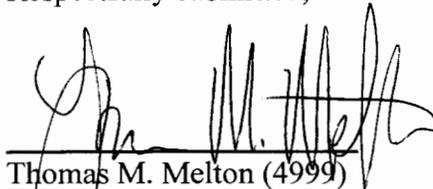
Declare and impose a constructive trust on all property received by Relief Defendant and require her to disgorge the property she obtained from Defendants as a result of the illegal conduct alleged herein.

VIII.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

Dated August 8, 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas M. Melton', is written over a horizontal line.

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