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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JAMES P. TONER, JR.,

Defendant.

COMPLAINT

**17 Civ. 1111
ECF Case**

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against Defendant James P. Toner, Jr. (“Toner”), alleges as follows:

SUMMARY

1. From mid-2013 through 2014, Toner, a self-described real estate investment expert, raised at least \$915,000 from 18 investors through a series of material misrepresentations relating to supposed investments in three real estate ventures (collectively, the “Offerings”). Due to Toner’s lies and failures to fulfill his duties as an investment manager, investors lost over three-quarters of their capital.

2. The stated purpose of each Offering was to purchase a residential property in or around Phoenix, Arizona, renovate that property, and then sell it for a profit. While the funds invested in each Offering were pooled to invest in one of the three properties, two of the ventures were structured as partnerships while investors purchased promissory notes in order to invest in the third.

3. In connection with marketing these Offerings, Toner (a) falsely stated that he planned to personally manage at least some of the properties; (b) falsely stated that he would make personal investments in the projects; and (c) falsely stated that his compensation would be derived either solely from his capital contribution in the Offerings, which he never made, or after profits had been distributed to investors.

4. Contrary to his false representations to investors, Toner (a) did not manage the properties himself and had a preexisting plan to transfer the vast majority of investment proceeds to a real estate broker (the "Broker") so that she could manage the properties; (b) did not invest in the Offerings, as he was enmeshed in protracted bankruptcy proceedings relating to prior failed real estate ventures and did not have sufficient assets to make an investment; and (c) collected upfront management fees from the ventures before any profits had been distributed to investors.

5. Moreover, in order to skirt the registration requirements of the federal securities laws, Toner also instructed some investors to falsely state that they were "accredited investors" for purposes of subscribing to the offerings, and took other steps to evade the registration requirements of the federal securities laws.

6. Of the \$915,000 they invested with Toner, the investors in the Offerings lost approximately \$682,000, of which approximately \$442,000 was squandered. Additionally,

Toner misappropriated \$51,000 of investor funds from 2013 through 2014, which he attempted to conceal through a series of transfers between numerous bank accounts under his control. Specifically, Toner misappropriated \$31,000 by taking undisclosed management fees even though he did not manage any of the Offerings and, in 2014, stole \$20,000 directly from an investor.

VIOLATIONS

7. By virtue of the conduct alleged here, Toner engaged in securities fraud in violation of Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and, without a registration statement being in effect or filed, Toner engaged in the unlawful sale and offer to sell securities in violation of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c)]. Unless Toner is permanently restrained and enjoined, he will again engage in the acts, practices, and courses of business set forth in this Complaint and in acts, practices, and courses of business of similar type and object.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

8. The Commission brings this action under Securities Act Section 20(b) [15 U.S.C. § 77t(b)] and Exchange Act Section 21(d) [15 U.S.C. § 78u(d)]. The Commission seeks to permanently enjoin Toner from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint and seeks an order requiring Toner to disgorge all ill-gotten gains from the unlawful sale of unregistered securities set forth in this Complaint, together with prejudgment interest. The Commission also seeks civil penalties against Toner pursuant to

Securities Act Section 20(d) [15 U.S.C. § 77t(d)] and Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)].

JURISDICTION AND VENUE

9. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, Securities Act Sections 20(b), 20(d) and 22(a) [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)] and Exchange Act Sections 21(d), 21(e), and 27 [15 U.S.C. §§ 78u(d) and 78aa]. Certain of the acts, practices, transactions, and courses of business alleged in this Complaint were effected, directly or indirectly, by making use of the means, instruments, or instrumentalities of transportation or communication in interstate commerce, or of the mails, or the facilities of a national securities exchange.

10. Defendant has consented to venue in this District.

FACTS

Defendant

11. **Toner** is a resident of Scottsdale, Arizona. Since at least 2008, Toner has been marketing real estate investment programs to individuals across the United States. Toner's primary source of income is from the sale of his real estate investment programs, including a program known as "We Do It For You" and "Jim Toner's Creating Wealth 101."

Relevant Entities

12. **iDepot One, LLC** ("iDepot One") is an Arizona limited liability company organized by Toner in June 2013, with its principal place of business in Scottsdale, Arizona. Toner has been the manager of iDepot One at all relevant times. At least ten investors purchased a minimum of \$365,000 in iDepot One partnership interests in 2013. iDepot One was

purportedly formed to invest in a residential property located on East Osborn Road in Phoenix, Arizona (the “Osborn Property”).

13. **iDepot Two, LLC** (“iDepot Two”) is an Arizona limited liability company organized by Toner in June 2013, with its principal place of business in Scottsdale, Arizona. Toner has been the manager of iDepot Two at all relevant times. At least four investors purchased a minimum of \$160,000 in iDepot Two partnership interests in 2013. iDepot Two was purportedly formed to invest in a residential property located on East Gold Dust Avenue in Paradise Valley, Arizona (the “Gold Dust Property”).

14. **Shangri-La** refers to a series of promissory notes that at least three investors purchased in approximately June 2013. The proceeds from these notes totaling approximately \$370,000 were pooled in order to invest in a residential property located on East Shangri La Road in Scottsdale, Arizona (the “Shangri-La Property”).

15. **Jim Toner’s Specialty Services** (“Specialty Services”) is a Pennsylvania S Corporation, with its principal place of business in Scottsdale, Arizona. Toner owns 100% of Specialty Services’ stock. Specialty Services is the entity that pays Toner the income that he earns as a result of his various business ventures.

16. **Jim Toner’s Wealth Builders, Inc., a/k/a JTWB, LLC and JTWB International, LLC** (“Wealth Builders”) is a Pennsylvania corporation, with its principal place of business in Irwin, Pennsylvania. Wealth Builders is the entity Toner uses to operate “Jim Toner’s Creating Wealth 101” program. In particular, Toner used Wealth Builders to market and solicit potential investors to participate in the offerings at issue in this case.

17. **Creating Wealth LLC** (“Creating Wealth,” together with Specialty Services and Wealth Builders, the “Companies”) is a Pennsylvania limited liability company, with its

principal place of business in Huntington, Pennsylvania. Upon information and belief, Creating Wealth is another entity that Toner uses to operate “Jim Toner’s Creating Wealth 101” program and to obtain contact information of individuals to whom he marketed and solicited potential investments in the offerings at issue in this case.

Toner’s Real Estate Marketing Background

18. Since at least 2009, Toner has offered online and in-person seminars across the country to individuals interested in investing in real estate. In connection with the seminars, Toner typically sold for a few thousand dollars a series of instructional materials called “We Do It For You,” which purported to instruct an individual on how to invest in real estate—either to flip a home or to become a landlord.

19. In connection with these seminars, Toner also solicited investments in his own real estate projects or offered investors the opportunity to provide Toner with funds to invest on their behalf.

20. Toner instructed some of the individuals that showed interest in his projects to direct funds through self-directed Individual Retirement Accounts to him and his entities, including Wealth Builders and Specialty Services.

21. Through these seminars, which Toner posted on various websites including his Facebook page and on YouTube, Toner obtained the names and contact information of thousands of individuals that had attended or expressed interest in his seminars and to whom he was able to further market his investment deals. Toner, through his Wealth Builders email account, periodically sent these individuals emails concerning real estate investment opportunities.

22. From at least 2009 through 2012, while a resident of Pennsylvania, Toner obtained funds from at least six individuals in Pennsylvania to invest in purported real estate

ventures in the Commonwealth. In April 2012, after several of these real estate projects had failed, Toner and his wife commenced Chapter 7 bankruptcy proceedings in the Western District of Pennsylvania.

Toner's Relationship With the Broker

23. Toner was introduced to the Broker in mid-2012 during a conference call to discuss real estate business opportunities in Arizona.

24. Before Toner solicited investments in the Offerings, Toner and the Broker agreed that Toner would use his contacts with current and potential investors to solicit pooled investments in Arizona real estate that the Broker would then manage.

Toner Fraudulently Raises Funds for the Offerings

25. After relocating to Arizona, Toner, in May 2013, began soliciting thousands of individuals by email and other means to invest in real estate ventures in Arizona through issuances of limited partnership interests in iDepot One and iDepot Two, and promissory notes in Shangri-La (together, the "Offerings").

26. In June 2013, Toner organized and conducted a webinar accessible to thousands of potential investors, who Toner located utilizing the contacts he had obtained throughout the years promoting his online and in-person real estate seminars in Pennsylvania.

27. In the webinar, Toner solicited investments in the Offerings, misrepresenting his purported expertise as a real estate investor.

28. Toner pitched the Offerings as pooled investments in residential properties for which he would manage and oversee renovations and then quickly resell the properties for a profit.

29. Investors in Shangri-La were provided with a promissory note evidencing the money owed to them with respect to a specific pooled investment project.

30. After one investor questioned whether promissory notes would adequately reflect the joint ownership of the property, the investment structure was changed for the subsequent offerings. For iDepot One and iDepot Two, Toner offered partnership interests instead of promissory notes, along with a subscription agreement and a partnership operating agreement (the "Offering Documents") that would evidence the formation of partnerships.

31. Toner offered and sold investors partnership interests in iDepot One and iDepot Two and explained that each partnership would pool investor funds and that each partnership would be managed by Toner for investment in the Osborn and Gold Dust Properties, respectively.

32. Investors in Shangri-La were offered and sold promissory notes to evidence their interest in pooled funds that would be invested in the Shangri-La Property. The promissory notes provided that the funds would be used "for the purchase, improvement, holding costs, and miscellaneous fees associated" with the Shangri-La Property, and would be returned in approximately 90 days after the improvement and sale of the Property.

33. As a result of the webinar and of Toner's subsequent written and oral solicitations, Toner raised or helped raise \$895,000 in 2013: at least ten investors purchased \$365,000 in iDepot One partnership interests for investment in the Osborn Property; at least four investors purchased \$160,000 in iDepot Two partnership interests for investment in the Gold Dust Property; and at least three investors invested \$370,000 in the Shangri-La promissory notes.

34. Toner received \$525,000 of these funds directly from investors.

35. In connection with the raising of funds for the Offerings, both in oral and written statements, Toner made a series of false or misleading representations and omissions to potential and actual investors with respect to the Offerings.

36. Specifically, Toner made false and misleading representations about (a) his role as a purported manager of the real estate ventures and the role he intended the Broker to play; (b) his financial participation in the Offerings; (c) the fees he would collect for himself from the funds; and (d) the fact that he was then engaged in a protracted bankruptcy relating to failed real estate ventures.

37. First, the Offering Documents for iDepot One and iDepot Two identified Toner as the managing member of both entities and stated that Toner was the only person authorized to make contracts, incur liabilities, and sell assets in connection with managing the investments at issue.

38. Toner assured investors that he would manage their funds with expertise, stating that he was willing to serve as a “life preserver” for novice investors, but that investors had to be prepared to move quickly.

39. In fact, contrary to his representations that he personally would manage the investments, Toner only sent approximately \$123,000 of the \$525,000 he received to a title agency to purchase the Osborn Property, but took an upfront \$10,000 management fee, and immediately turned over control of the remaining proceeds to the Broker. The Broker then paid Toner an additional management fee of \$21,000.

40. Toner also immediately turned over control of the management of the Offerings to the Broker. Toner failed to take any steps to assure himself that the funds would be safe in the hands of the Broker by, for example, doing simple due diligence on her background or

monitoring her use of the funds.

41. When Toner handed over \$392,000 of the ventures' investment proceeds to the Broker, the Broker was under federal investigation for federal tax evasion and fraud, charges for which she would be eventually sentenced to four years in prison.

42. In addition to receiving from Toner over \$392,000 of the ventures' investment proceeds, the Broker received \$370,000 directly from Shangri-La investors.

43. The Broker, who had already purchased the Gold Dust and Shangri-La Properties prior to receiving investor funds, then "sold" those two the properties to the iDepot Two and Shangri-La investors, respectively, at handsome profits. She also remitted approximately \$300,000 to a contractor to work on the Properties, and transferred \$21,000 to Toner as a management fee.

44. Second, Toner also misrepresented to some investors in the Offerings that he would invest his own assets in the Offerings. During the June 2013 webinar, Toner represented that he was investing in every deal with the investors. Outside of the webinar, Toner told at least one investor in each of the iDepot One and iDepot Two Offerings that he personally owned or was buying the properties at the time the investors made their investments and told at least one investor that he was investing \$30,000 of personal funds into the transactions.

45. For example, Toner falsely stated in an email to a married couple that invested in iDepot One ("Investor A") that they were "partners [with him] in these deals." He also falsely told Investor A in a subsequent email that "[the Broker] and I are both in this deal so we are VERY confident that our numbers are on."

46. In fact, Toner had no intention of investing in the properties and he never did invest. As he knew all along, he had no assets that would allow him to invest because he was

engaged in protracted bankruptcy proceedings while soliciting investors for the ventures.

47. Third, the Offering Documents provided for Toner to be paid management fees only *after* the partners received profits from the venture, and Toner affirmatively told some investors that his entire compensation would be derived in the same manner as their investment returns (i.e., proportional to each individual's investments).

48. As discussed above, Toner received over \$31,000 in management fees from the Offerings' proceeds: he took \$10,000 before any investments were even made, and he received \$21,000 from the Broker well before the Offerings' generated any returns.

49. Toner later took affirmative steps to hide his undisclosed "management fees" from investors. For example, he removed a reference to the amount he had been paid from an accounting ledger he then forwarded to iDepot One investors who had demanded the information.

Toner Continued to Mislead Investors About the Offerings

50. Throughout 2014 and 2015, Toner continued to falsely tell investors that he had invested alongside them in the Offerings, using that as a way to lull investors who were demanding their funds back. For example, in one e-mail, Toner falsely told an investor: "I don't think you understand the severity of the situation. We lost almost ALL of our money and I lost even more due to attorneys' fees and other costs that I personally paid on behalf of all the other investors."

51. In July 2014, Toner continued his fraudulent securities offerings by soliciting an elderly investor ("Investor B") for an additional \$20,000 that he told her would be invested in iDepot One.

52. Toner did not use Investor B's money for iDepot One, despite assuring Investor B that he would do so. Instead, he fraudulently misappropriated these funds as operating capital for his Companies.

Toner's Misappropriation and Loss of Investor Funds

53. Of the \$915,000 that Toner raised on the basis of his fraudulent statements, at most \$422,000 of these funds were invested in purchasing and rehabbing the Properties, with another \$51,000 going into Toner's pocket and the remaining \$442,000 squandered.

54. The Osborn, Gold Dust, and Shangri-Law properties were collectively sold for \$256,000, net outstanding mortgages on the properties. Not all of the proceeds from these sales were transferred to the Offerings' investors.

55. Investors collectively lost \$682,000 of the \$915,000 that they invested in the Offerings.

56. Toner also refused to pay Investor A, another iDepot One investor, its proportionate share of the Osborn sale proceeds. Instead, Toner demanded that Investor A sign a full release protecting Toner from all legal liability for any misconduct before paying Investor A the amount due under the Offering Documents. The investor refused to sign and, to date, has not received any funds back from Toner.

Toner Instructed Certain Investors to Lie About Their Accreditation Status

57. The iDepot One and iDepot Two Offering Documents required all investors to certify their status as accredited investors.

58. When certain investors asked about the certification, Toner deliberately misled them into believing that they were accredited simply because Toner was willing to accept their investments. For example, in response to one investor's questions about the accredited investor

criteria provided in the iDepot One subscription agreement, Toner misleadingly advised him “[y]ou are an investor accepted into the LLC [i.e., iDepot One] by being accredited via the LLC.”

59. In other instances, Toner instructed investors that they did not need to indicate how they qualified as accredited investors. For example, at least two iDepot One investors told Toner that they did not satisfy any of the accredited investor categories listed on the subscription agreement. Toner instructed these investors to simply complete the Offering Documents without the certification concerning how they satisfied the criteria or to affirmatively lie about their status.

60. Investors who failed to certify their accreditation status and investors who were not in fact accredited investors were nevertheless accepted into the Offerings. In fact, Investor A specifically told Toner “[w]e did not initial any of the items in Section A, Verification of Status as ‘accredited investor’ under Regulation D because none of the statements are applicable to us.”

FIRST CLAIM FOR RELIEF

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

61. The Commission realleges and incorporates by reference paragraphs 1 through 60, as though fully set forth herein.

62. By virtue of the foregoing, Toner, in connection with the purchase or sale of securities, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or 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; and/or (c) engaged in acts, practices or courses of business which operated or would have operated as a fraud or deceit upon persons.

63. By virtue of the foregoing, Toner, directly or indirectly, violated and, unless enjoined will again violate, Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF
Violations of Securities Act Section 17(a)

64. The Commission realleges and incorporates by reference paragraphs 1 through 60, as though fully set forth herein.

65. By virtue of the foregoing, in the offer or sale of securities, by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, Toner: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of an untrue statement of a material fact or 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/or (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

66. By reason of the conduct described above, Toner, directly or indirectly violated and, unless enjoined will again violate, Securities Act Section 17(a) [15 U.S.C. § 77q(a)].

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

67. The Commission realleges and incorporates by reference paragraphs 1 through 60, as though fully set forth herein.

68. By virtue of the foregoing, (a) without a registration statement in effect as to that security, Toner, directly and indirectly, made use of the means and instruments of transportation

or communications in interstate commerce and of the mails to sell securities through the use of means of a prospectus, and (b) made use of the means and instruments of transportation or communication in interstate commerce and of the mails to offer to sell through the use of a prospectus, securities as to which no registration statement had been filed.

69. By reason of the conduct described above, Toner, directly or indirectly violated and, unless enjoined will again violate, Securities Act Sections 5(a) and 5(c) [15 U.S.C. §§ 77e(a) and e(c)].

RELIEF SOUGHT

WHEREFORE, the Commission respectfully requests that this Court enter a Final Judgment:

I.

Permanently restraining and enjoining Toner and his agents, servants, employees and attorneys and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing future violations of each of the securities laws and rules promulgated thereunder as alleged in this Complaint;

II.

Ordering Toner to disgorge, with prejudgment interest, all ill-gotten gains from the conduct alleged in this Complaint;

III.

Ordering Toner to pay a civil monetary penalty pursuant to Securities Act Section 20(d) [15 U.S.C. § 77t(d)] and Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)]; and

IV.

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

Dated: New York, New York
February 14, 2017

A handwritten signature in black ink, appearing to be "A. Calamari", written over a solid horizontal line.

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