

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

JAMES E. HOCKER,

Defendant.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT

The Securities and Exchange Commission (“Commission” or “SEC”) alleges as follows for its complaint against defendant James E. Hocker (“Defendant” or “Hocker”):

SUMMARY

1. From at least 2010 through 2017, Hocker engaged in a fraudulent investment scheme, in which he falsely promised retail investors that he would invest their funds and achieve guaranteed returns of between 10% and 30%. In fact, Hocker did not invest any of the funds but instead misappropriated the money and used it for his personal living expenses and to make payments to other investors.

2. During the period of July 2013 through October 2017, Hocker raised approximately \$1.27 million from about 25 investors by offering and selling them securities. He induced them to invest by way of lies, false and misleading promises and assurances, and other deceptive conduct. Hocker preyed primarily on older investors without significant investment experience, at times encouraging them to withdraw money from their life insurance policies or retirement accounts to invest in the purported investment opportunity that he presented. Hocker received investor checks and deposited them into one of three bank accounts that he controlled.

3. Instead of investing the investors' money as he had represented, Hocker used the majority of the funds for his own personal living expenses. For example, he misappropriated investor funds to pay for restaurant and casino expenses, to pay his credit card bills, and to pay spousal support to his ex-wife. None of these expenditures were disclosed to or approved by investors.

4. By engaging in the conduct described in this Complaint, Hocker violated the antifraud provisions of the federal securities laws, 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 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, and unless restrained and enjoined will engage in further violations of these provisions.

5. The Commission seeks an order enjoining Hocker from further violations, requiring Hocker to disgorge his ill-gotten gains plus prejudgment interest, and imposing monetary penalties.

JURISDICTION AND VENUE

6. The Court has jurisdiction of this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa].

7. Venue is proper in the Middle District of Pennsylvania pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because many of the acts, transactions, practices and courses of business constituting the violations occurred in this district, and Defendant Hocker is a resident of and transacted business in this district. Hocker resides in Bellefonte, Pennsylvania and conducted business from his home. In addition, Hocker offered and sold securities to investors in this district, and also made material misrepresentations in this district to investors in connection with the sale of those securities.

8. In connection with the conduct alleged in this Complaint, Hocker directly or indirectly made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation and communication in interstate commerce, and the mails.

DEFENDANT

9. **James E. Hocker**, age 48, is a resident of Bellefonte, Pennsylvania. From approximately October 2001 to October 2007, Hocker was employed by an insurance agency in Milroy, Pennsylvania as an insurance agent. Hocker left the insurance agency in 2007 and began selling insurance products and annuities under the name James E. Hocker & Associates, an unregistered entity. Hocker holds a license to sell insurance products in Pennsylvania, but he does not hold any license relating to the securities industry. Hocker asserted his Fifth Amendment privilege against self-incrimination in connection with the SEC's investigation of the conduct alleged in this complaint, and he refused to answer substantive questions or produce documents pursuant to the SEC's investigatory subpoenas.

DEFENDANT'S VIOLATIONS

A. Defendant Raised Approximately \$1.27 Million From Investors Through Misstatements, False Promises, and Deceptive Conduct

10. During the period of July 2013 through October 2017, Hocker raised approximately \$1.27 million from about 25 investors by misrepresenting to them that he had an investment opportunity that would generate between 10% and 30% returns. Based on Hocker's misrepresentations, investors then made payments to Hocker for securities in the form of stock, stock funds, investment contracts and promissory notes.

11. Hocker met investors through his position as an insurance salesman, through church or other community groups, or through word of mouth referrals. He often initiated his relationship with investors by selling them life insurance policies and annuities. Investors were largely elderly retirees or individuals nearing retirement, without significant investment experience. Some of Hocker's investors were widows who relied on Hocker to manage their money following the death of their husbands.

12. After offering his clients life insurance and annuities, and thereby gaining their trust, Hocker presented them with an investment opportunity. Some investors withdrew money from their life insurance policy or retirement accounts to invest in this additional opportunity.

13. The investors wrote checks to Hocker for his promised investment, with at least five investors noting on the memo line of their checks that the funds were for an "investment." Hocker told the investors that he would invest their funds in the S&P 500 and other unspecified investment vehicles.

14. To that end, Hocker deceptively provided at least 11 investors with printouts of historical prices for the S&P 500, with the explicit or implied promise that he would invest their funds in the S&P 500, or a similar type of equity investment. These acts were deceptive and misleading as Hocker did not invest the investors' funds in the S&P 500 or any other similar investment.

15. Hocker told one investor that his investment would be safe because he would take insurance out on the invested funds, and he would be investing millions of dollars on behalf of many investors. These representations were false, as Hocker did not invest funds received from the investors in any type of investment. He also did not take out any insurance on invested funds.

16. Hocker also falsely promised investors that their money would generate annual returns, sometimes as high as 30%. Investors expected to earn returns solely from Hocker's efforts.

17. Hocker provided at least 15 investors with a handwritten note confirming the receipt of funds, and falsely setting forth a specific rate of returns for a defined term. A number of those handwritten notes stated that the money given to Hocker was for investment. Many of the handwritten notes also stated that the investor's principal, plus a defined rate of return, would be returned to the investor on a specific date, with an option to renew for a new term. In one handwritten note signed by Hocker, Hocker indicated the investment would provide "tax free growth."

18. As one example, on December 10, 2015, Hocker signed and gave a note to an investor in which he wrote,

I, James E. Hocker, received \$50,000 from [Investors] for investment for a period of one year. Guarantee rate of return 12 months 25% $50,000 + 12,500 = 62,500$ due on 12-10-2016 with option to renew for new 12 month term to 12-10-2017 for 25% rate of return. New rate determined on 12-10-2018.

19. As a second example, on or about April 18, 2017, Hocker signed and gave a note to an investor in which he wrote,

I, James E. Hocker, received 5,000 from [Investors] on 4-18-17 for one year investment. Rate of return 30%. Total due \$6,500 4-18-18.

20. Hocker provided these handwritten notes to his investors, knowing, or reckless in not knowing, that they were false and misleading. He knew that he was not investing any funds, and that he could not possibly provide any guaranteed returns of 25 or 30 percent, or any “tax free growth.”

21. Many investors met with Hocker on an annual basis to review their life insurance, annuities and purported investments. In some instances, Hocker orally provided investors with the current amount of their investment, which purportedly correlated to their principal plus the return percentage he had initially promised the investor. These were false and misleading statements, as Hocker did not invest any of the investor’s funds, and their funds had not increased in value through any investments. In fact, their investments were depleted by way of Hocker’s personal expenditures and his use of pooled funds to pay redemptions to existing investors.

22. Based on Hocker's false and misleading statements, positive reports, and deceptive conduct, many investors continued to invest additional funds year after year. For instance, one investor invested \$50,000 three times from 2015 to mid-2017, for a total of \$150,000.

23. When investors requested their money back, Hocker would dissuade them from taking their full investment, and in some instances encouraged the investors to instead take money from their other financial accounts. Some investors were repaid small amounts when requested. More recently, when investors requested their money back, Hocker told them that it was unavailable or failed to respond to the investors' requests.

24. During the period of July 2013 to October 2017, Hocker returned approximately \$236,000 to the investors, which further perpetuated the fraud.

B. Defendant Misappropriated Funds Received From Investors

25. Rather than invest any funds from his investors, Hocker deposited investor funds into several bank accounts that he controlled. He comingled and pooled the investments together and did not have sub-accounts for any of the investors. The majority of investor funds were deposited and pooled in an account in the name of James E. Hocker & Associates. James E. Hocker & Associates is not a registered business, and the bank account held in that name reflects little to no business activity. Hocker was the only signatory on this account.

26. Hocker deposited other investor funds into a joint checking account held in the name of Hocker and his ex-wife. He also deposited a small number of investor checks into a savings account held solely by Hocker. The bank statements for these three accounts from 2012 to 2017 do not reflect outgoing payments for any stock whatsoever, much less any stock included in the S&P 500, or payments to any other investment vehicle, fund, or brokerage firm. Instead, Hocker diverted a substantial portion of his investors' funds to pay his own personal expenses.

27. For example, in September 2015, Hocker deposited checks from two investors, totaling \$20,000, into his James E. Hocker and Associates bank account. Days later, he used over \$6,000 of those funds to pay his credit card bill, and over \$4,000 to pay a local tax official. He also used those funds to write a \$1,500 check to another investor, which was itself deceptive conduct in that such minor disbursements helped to conceal Hocker's scheme. He spent the remaining money on restaurants, retail purchases, and spousal support for his ex-wife.

28. Similarly, from December 2015 through March 2016, Hocker received \$262,000 in payments from investors. He used over \$24,000 of those funds to pay his credit card bills, over \$20,000 to send wire payments to his ex-wife, over \$14,000 to repay personal loans, and he spent over \$3,000 at casinos. In addition, Hocker used over \$64,000 of those funds to make payments to other investors, or on their behalf, again to conceal his fraud. The balance of the funds

was used for other expenses, such as restaurants, bill payments, retail purchases and tax payments.

29. Hocker's false representations to investors that he would invest their funds and generate returns, his false assurances to investors that their investments were performing well, and other deceptive conduct, including his payments of small amounts to investors funded from other investors' pooled deposits, providing investors with misleading S&P 500 performance reports, and false handwritten notes promising guaranteed and/or tax free returns, were all undertaken in furtherance of his multi-year fraudulent scheme to deceive investors and misappropriate investor funds for his personal use.

30. Hocker's investment scheme bears the hallmarks of a Ponzi scheme. For example, Hocker raised more than \$1 million from investors through false statements and deceptive conduct; contrary to his representations to investors, he failed to invest their money or produce any profits for them; and the source of payments to investors was cash infused by other investors.

31. At all times, Hocker acted with scienter, knowing or reckless in not knowing that he misstated material facts to investors and was engaged in deceptive conduct.

FIRST CLAIM FOR RELIEF

**Fraud – Violations of Securities Act Section 17(a)
[15 U.S.C. § 77q(a)]**

32. Paragraphs 1 through 31 are re-alleged and incorporated by reference herein.

33. Defendant, by engaging in the conduct described above, directly or indirectly, in connection with the offer or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange and acting with the requisite degree of knowledge or state of mind:

- a. employed devices, schemes, or artifices to defraud;
- b. obtained 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 light of the circumstances under which they were made, not misleading; and
- c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

34. By engaging in the conduct described above, Defendant violated, and unless restrained and enjoined will continue to violate, Sections 17(a)(1), (2), and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), (2), and (3)].

SECOND CLAIM FOR RELIEF

**Fraud – Violations of Exchange Act Section 10(b) and Rule 10b-5
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]**

35. Paragraphs 1 through 31 are re-alleged and incorporated by reference herein.

36. Defendant, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter:

- a. employed devices, schemes, or artifices to defraud;
- b. made untrue statements of a material fact or omitted 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; and
- c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

37. By engaging in the conduct described above, Defendant violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rules 10b-5(a), (b), and (c) thereunder [17 C.F.R. §§ 240.10b-5(a), (b), and (c)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

- A. Permanently enjoin Defendant from violating, directly or indirectly, Sections 17(a) of the Securities Act; Section 10(b) of the Exchange Act; and Exchange Act Rule 10b-5;
- B. Order Defendant to disgorge the ill-gotten gains obtained as a result of the conduct alleged in this Complaint, with prejudgment interest;
- C. Order Defendant to pay civil money penalties 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)]; and
- D. Grant such further relief as the Court may deem just and appropriate.

Dated this 21st day of June 2018.

/s/ Paul W. Kisslinger

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