

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

_____)	
SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 19-cv-745-REB-NYW
)	
DIANE D. DALMY and)	JURY TRIAL DEMANDED
MICHAEL J. WOODFORD,)	
)	
Defendant.)	
_____)	

AMENDED COMPLAINT

Plaintiff Securities and Exchange Commission (“the Commission”) alleges the following against defendants Diane D. Dalmy and Michael J. Woodford and demands a jury trial.

PRELIMINARY STATEMENT

1. This enforcement action involves a fraudulent and deceptive scheme by Dalmy, a lawyer formerly based in Denver, Colorado, and now in federal prison in Phoenix, Arizona, to evade limitations and restrictions on her ability to prepare legal opinion letters concerning the sale of microcap securities. (The term “microcap” typically refers to companies with a market capitalization of less than \$250 million.) The opinion letters, which were sent to transfer agents and brokerage firms, expressed the legal opinion that certain shares were unrestricted and could be freely sold on the public market. Through the scheme described below, Dalmy arranged for Woodford, a lawyer living in Denver, to put his signature on opinion letters that she had actually written. Dalmy also used Woodford to conceal her role in preparing public filings with the Commission.

2. In September 2009, OTC Markets Group Inc. (“OTC Markets”), which owns and operates the largest U.S. electronic quotation and trading system for securities traded on the over-the-counter market, placed Dalmy on its list of prohibited attorneys. The OTC Markets ban would have had a devastating impact on Dalmy’s securities law practice. When an attorney is banned by OTC Markets, transfer agents and brokerage firms often refuse to accept legal opinion letters from the attorney concerning the legality of removing restrictive legends from stock certificates. In September 2016, the Commission permanently suspended Dalmy from appearing or practicing before it as an attorney.

3. To evade the consequences of the OTC Markets prohibition, and subsequently to evade the SEC suspension as well, Dalmy enlisted Woodford, a divorce attorney with no previous securities law experience, to help her. Dalmy continued to draft letters expressing the legal opinion that certain shares of stock in microcap companies were unrestricted and could be freely traded on the public market. Instead of signing the letters herself, she sent the letters to Woodford, who signed the letters without performing any due diligence on the securities in question and without conducting any legal analysis or reviewing any underlying documents. The letters with Woodford’s signature were sent to the issuer’s transfer agent and/or to brokerage firms, which treated the shares in question as eligible for sale to the public without registration. Through her scheme to use Woodford as her front man, Dalmy was able to conceal her own role and to continue getting paid for drafting opinion letters and preparing public filings with the Commission.

4. This was securities fraud, pure and simple. The opinion letters that Dalmy prepared and Woodford signed were materially false and misleading, because they stated that Woodford had reviewed certain documents, performed certain legal analysis, and reached certain

legal opinions, when in fact Dalmy wrote the letters and Woodford only signed the letters because he had agreed to be Dalmy's mouthpiece. The transfer agents and brokerage firms who received the opinion letters, as well as the members of the public who purchased the securities in the market, would have wanted to know that the attorney who actually wrote the opinion letters was on OTC Markets' list of prohibited attorneys.

5. Through the activities alleged in this Complaint, Dalmy and Woodford:
(a) engaged in fraud in the offer or sale of securities, in violation of Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §77q(a)]; and (b) engaged in fraud in connection with the purchase or sale of securities, in violation of 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. §240.10(b)-5]. In addition, Dalmy violated a final administrative order of the Commission.

6. Accordingly, the Commission seeks:
(a) a permanent injunction restraining the defendants from further violations of the relevant provisions of the federal securities laws;
(b) disgorgement of the defendants' ill-gotten gains, plus pre-judgment interest;
(c) an order barring the defendants from participating in the offer or sale of a penny stock, as that term is defined in Section 20(g) of the Securities Act [15 U.S.C. §77t(g)] and Section 21(d)(6) of the Exchange Act [15 U.S.C. §78u(d)(6)];
(d) an order pursuant to Section 21(e)(1) of the Exchange Act [15 U.S.C. §78u(e)(1)] requiring Dalmy to comply with the Commission's order permanently suspending her

from appearing and practicing before the Commission as an attorney, which was entered in *Matter of Diane D. Dalmy, Esq.*, Exchange Act Release No. 78993 (Sept 29, 2016); and

(e) an order permanently enjoining Dalmy from directly or indirectly providing professional legal services to any person or entity in connection with the offer or sale of securities pursuant to, or claiming, an exemption under Section 4(a)(1) predicated on Securities Act Rule 144, or any other exemption from the registration provisions of the Securities Act; and requiring Dalmy to provide any actual or potential client seeking legal advice or representation in matters relating to the federal securities laws with copies of (i) the Commission's complaint filed against her and the court's final judgment issued against her in both this action and in *SEC v. Zenergy Int'l, Inc.*, Case No. 1:13-cv-05511 (N.D. Ill. Sept. 30, 2015), and (ii) the Commission's order permanently disqualifying her from appearing and practicing before the Commission as an attorney, Exchange Act Release No. 78993 (Sept 29, 2016).

JURISDICTION AND VENUE

7. The Commission brings this action pursuant to the enforcement authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. §§78u(d)].

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

9. Venue is proper in this District pursuant to the general federal court venue rule [28 U.S.C. §1391(b)(2)], 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, at all relevant times, the defendants resided in Colorado.

10. In connection with the conduct alleged in this Complaint, the defendants directly or indirectly made use of the means or instruments of transportation or communication in interstate commerce, the facilities of a national securities exchange, or the mails.

DEFENDANTS

11. **Diane D. Dalmy**, age 63, formerly lived in Denver, Colorado, and practiced business and securities law in this state. At one time, Dalmy was also an adjunct professor at the University of Colorado/Denver Business School, where she taught courses on business law and ethics. Dalmy is currently in federal prison in Phoenix, Arizona.

12. **Michael J. Woodford**, age 64, lives in Longmont, Colorado, and is licensed to practice law in Colorado. He practiced divorce law full time until 2004, when he retired after being diagnosed with a serious illness.

FACTUAL ALLEGATIONS

Dalmy's Lengthy Disciplinary History

13. On September 25, 2009, OTC Markets placed Dalmy on its list of prohibited attorneys after previously warning her that she had submitted inadequate opinion letters. OTC Markets refused to accept attorney opinion letters from Dalmy after she was placed on this prohibited list.

14. In August 2013, the Commission filed an enforcement action in the District Court for the Northern District of Illinois charging Dalmy and numerous other parties who participated in a pump-and-dump scheme. Dalmy's role in the fraud was to prepare opinion letters falsely stating that she had performed due diligence and expressing the legal opinion that certain

securities held by certain shareholders could be publicly traded. In September 2015, the court entered partial summary judgment against Dalmy, finding that she had engaged in the offer or sale of unregistered securities. *SEC v. Zenergy Int'l Inc.*, 141 F.Supp.3d 846 (N.D.Ill. 2015).

15. On January 15, 2015, the Commission's Division of Enforcement initiated cease-and-desist proceedings against Dalmy and several other respondents concerning sham offerings of stock in twenty companies. Dalmy's role in the scheme was to prepare opinion letters falsely stating that she had performed due diligence and expressing the legal opinion that certain securities held by certain shareholders could be freely traded. On September 18, 2015, after a hearing, an administrative law judge ordered Dalmy to cease-and-desist from committing fraud in the offer or sale of securities and to pay a civil penalty of \$680,000. *In the Matter of John Briner, Esq. et al.*, Release No. ID-886 (Sept. 18, 2015).

16. On December 22, 2015, in a follow-on administrative proceeding after the entry of partial summary judgment against Dalmy in the *Zenergy* case, the Commission temporarily suspended Dalmy from appearing or practicing before it as an attorney. *In the Matter of Diane D. Dalmy*, Release No. 34-76740 (Dec. 22, 2015). On July 29, 2016, an administrative law judge issued an initial decision holding that the suspension should become permanent. *In the Matter of Diane D. Dalmy*, Release No. ID-1042 (July 29, 2016). On September 29, 2016, the Commission permanently suspended Dalmy from appearing or practicing before it as an attorney. *In the Matter of Diane D. Dalmy*, Release No. 34-78993 (Sept. 29, 2016).

17. On February 6, 2018, the U.S. Attorney's Office for the District of Connecticut charged Dalmy with conspiracy to commit wire fraud in connection with her securities-related legal work for several public companies. The same day, Dalmy pleaded guilty to the charge. On May 15, 2018, she was sentenced to serve three years in prison and to pay \$2 million in

restitution. On November 6, 2018, she was resentenced to five years in prison after the government learned that she had been hiding money to avoid paying restitution. *U.S. v. Dalmy*, 2018 WL 5817158 (D.Conn. Nov. 6, 2018).

Fraudulent Scheme to Conceal Dalmy's Authorship of Legal Opinion Letters

18. After OTC Markets placed Dalmy on its list of prohibited attorneys in September 2009, she contacted Woodford, whom she had met earlier that year. Dalmy told him that she was corporate counsel to numerous companies, and that she needed his help with legal opinion letters that she could not sign. Woodford agreed to sign his name to opinion letters that Dalmy prepared. Between 2014 and 2016, Dalmy prepared, and Woodford signed, at least 85 opinion letters concerning more than 25 issuing companies.

19. Most of the opinion letters that Dalmy prepared for Woodford's signature concerned stock issued by microcap companies whose securities were traded on the over-the-counter market. Most of the letters expressed the legal opinion that certain shares of stock held by certain individuals were unrestricted and could be freely traded on the public market. On some occasions, the opinion letters with Woodford's signature were sent to the issuing company's transfer agent, which would remove the restrictive legend from stock certificates for the shares in question, thereby enabling the owners to sell the shares to the public. On other occasions, the opinion letters with Woodford's signature were sent to a brokerage firm, which would accept the shares for deposit into a brokerage account. Either way, the shareholders in question were able to sell their shares to the public, even though the purported legal opinion that the shares were unrestricted had actually been prepared by a lawyer who was on OTC Markets' list of prohibited attorneys.

20. Woodford relied entirely on Dalmy for the content of the opinion letters that he signed. He did not perform any due diligence on the companies or their shareholders. He did not analyze any legal issues or review any underlying documents. He did nothing to check the accuracy of any factual information in the letters. At most, he looked for typographical or other trivial errors.

21. Some of the opinion letters concerned an entity (hereafter, “Company A”) that sought to avail itself of a provision of the federal securities laws – Section 3(a)(10) of the Securities Act [15 U.S.C. §77c(a)(10)] – that permits the public sale of certain stock without having to complete a formal registration process. Specifically, Section 3(a)(10) provides an exemption from the registration requirements for securities that a corporation issues as part of a court-approved settlement of a legal claim against it. A legal opinion letter stating that Company A had acquired certain shares through a court-approved settlement that was covered by the Section 3(a)(10) exemption would enable Company A to obtain stock certificates that did not contain a restrictive legend. That kind of opinion letter would also enable Company A to deposit the shares at a brokerage firm and then sell the shares on the public market without registering the sales with the Commission.

22. Dalmy prepared, and Woodford signed, opinion letters dated March 13, 2014, March 17, 2014, March 25, 2014, and March 27, 2014 stating that Woodford was “special counsel” to a second corporation (hereafter, “Company B”), which asked for his legal opinion as to whether certain shares of stock that Company B had issued to Company A qualified for the Section 3(a)(10) exemption from the registration requirements. Woodford wrote to Dalmy on April 29, 2014, “Unfortunately, I simply do not understand what 3a10 is.” Nevertheless, each of these four opinion letters signed by Woodford stated that “the opinions expressed herein

represent my reasonable professional judgement.” Each letter identified several specific documents that Woodford supposedly “reviewed and relied exclusively on” when reaching his opinions. Each letter contained the following opinion language:

Based upon the foregoing, I am of the opinion that the subject Shares:
(i) may be issued under the exception to the registration requirement of Section 5 of the Act as provided in Section 3(a)(10) of the Act; and
(ii) may be issued without a restrictive legend and that any stop order transfer instructions may be removed from the subject Shares.

The letters with Woodford’s signature were sent to Company B’s transfer agent.

23. Dalmy also prepared, and Woodford signed, opinion letters dated December 30, 2016, January 12, 2017, January 30, 2017, January 31, 2017, February 27, 2017, and April 26, 2017 stating that he was “special counsel” to a corporation (hereafter, “Company C”) in connection with its issuance of shares of common stock to another entity (hereafter, “Company D”). Each of these six opinion letters signed by Woodford stated that he based his opinion “solely upon my examination” of the relevant state and federal laws and related rules and regulations. Each letter identified several specific documents that Woodford supposedly examined when reaching his opinions. Each letter contained the following opinion language:

Based on such examination, I am of the opinion that: (i) the share certificates issued to [Company D] ... should not contain any restrictive legends; and (ii) the [number of shares] may be sold by [Company D] free from any restrictions on transfer without registration under the Securities Act of 1933... I am further of the opinion that such shares of Common Stock issued to [Company D] are duly authorized and when issued ... will be validly issued, fully paid and non-assessable.

The letters with Woodford’s signature were sent to Company C’s transfer agent and to a brokerage firm.

24. Dalmy also prepared, and Woodford signed, an opinion letter dated January 12, 2017 stating that he was “special counsel” to Company C in connection with the deposit of some of its shares with the Depository Trust Company (“DTC”), so that the shares could be sold to the

public. (DTC provides electronic recordkeeping of securities balances and acts as a clearinghouse to process and settle securities transactions.) The opinion letter that Woodford signed identified several specific documents that he supposedly “examined and relied upon” when reaching his opinion. The letter stated that Woodford had reviewed such other categories of documents “as I have deemed necessary and appropriate as a basis for the opinion set forth herein.” The letter contained the following opinion language:

Based upon the foregoing, I am of the opinion that:

It is not necessary to register with the Commission under the Securities Act the issuance of the Subject Securities in the manner described above pursuant to the Forward Stock Split and the Name Change.

The Subject Securities are transferable without registration under the Securities Act by any holding which: (a) is not an “affiliate” of the Company as defined in Rule 144(a)(1) under the Securities Act; (b) has not been an “affiliate” within three months of such transfer and (c) has not acquired the Subject Securities from such an “affiliate” within six months of such transfer.

The letter with Woodford’s signature was sent to DTC.

25. This was a fraudulent and deceptive scheme orchestrated by Dalmy. The opinion letters described in the preceding paragraphs, which Dalmy prepared and Woodford signed, were materially false and misleading. Contrary to the representations in the letters, Woodford did not review the documents identified in the letters, he did not perform any legal analysis, and the letters did not reflect his professional judgment. The reality was that Dalmy wrote the letters, was responsible for their contents, and was using Woodford’s signature to disguise her role. The misrepresentations in the opinion letters were material. If a reasonable transfer agent were informed that the opinion letters had actually been written by a lawyer who was on OTC Markets’ list of prohibited attorneys, the transfer agent would – at a minimum – exercise great caution before preparing stock certificates without a restrictive legend for the shares in question.

Similarly, DTC would – at a minimum – exercise great caution before processing any sales of the shares in question to the public.

Fraudulent Scheme to Conceal Dalmy’s Role in Public Filings with the Commission

26. After her suspension from appearing or practicing before the Commission as an attorney was made permanent in September 2016, Dalmy continued to help Company C make filings with the Commission.

27. On October 6, 2016, a document entitled Form 8-K was filed with the Commission to report that Company C had retained a new accounting firm to certify its financial statements. One of the attachments to the Form 8-K was a letter from the previous accounting firm agreeing with Company C’s description of the circumstances surrounding the change. Just prior to the filing of the Form 8-K, the previous accounting firm emailed to Dalmy a draft of the firm’s letter for her review. Dalmy approved the previous accounting firm’s letter and arranged for the Form 8-K to be filed with the Commission on behalf of Company C.

28. On October 14, 2016, three documents entitled Schedule 13D were filed with the Commission to report that certain shareholders had acquired a greater than 5% ownership interest in Company C. On October 13 and 14, 2016, Dalmy sent drafts of the Schedules 13D to a filing service that handles the process of submitting documents to the Commission’s electronic filing system. After the filing service agreed to file the documents, Dalmy sent the documents to Woodford and told him to tell the filing service that he authorized the filing of the documents with the Commission. Woodford did as Dalmy directed, and the documents were filed with the Commission.

End of the Fraudulent Scheme

29. On March 14, 2017, OTC Markets placed Woodford on its list of prohibited attorneys. At that point, Dalmy could no longer use Woodford to conceal her preparation of legal opinion letters, and her fraudulent and deceptive scheme collapsed.

FIRST CLAIM FOR RELIEF
(Violation of Section 17(a) of the Securities Act)

30. The Commission repeats and incorporates by reference the allegations in paragraphs 1-29 above.

31. The shares of common stock of Company B and Company C constitute “securities” for purposes of Section 2(a)(1) of the Securities Act [15 U.S.C. §77b(a)(1)].

32. Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] makes it unlawful for any person, directly and indirectly, acting intentionally, knowingly or recklessly, by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails, in the offer or sale of securities: (a) to employ devices, schemes or artifices to defraud; (b) to obtain 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 the light of the circumstances under which they were made, not misleading; or (c) to engage in transactions, practices or courses of business which operate as a fraud or deceit upon purchasers of the securities.

33. As set forth above, Dalmy enlisted Woodford for a fraudulent and deceptive scheme to evade limitations or restrictions on her ability to practice securities law. Dalmy prepared, and Woodford signed, opinion letters concerning securities issued by Company B and Company C that were materially false and misleading. The letters purported to reflect Woodford’s legal opinions, when in fact Dalmy prepared the letters and Woodford signed the

letters without performing his own due diligence or legal analysis. In addition, Dalmy prepared public filings for Company C even though the Commission had permanently suspended her from appearing or practicing before it as an attorney.

34. The defendants' misconduct was in the offer or sale of a security.

35. As a result, the defendants violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act.

SECOND CLAIM FOR RELIEF
(Violation of Section 10(b) of the Exchange Act and Rule 10b-5)

36. The Commission repeats and incorporates by reference the allegations in paragraphs 1-29 above.

37. The shares of common stock of Company B and Company C constitute "securities" for purposes of Section 3(a)(10) of the Exchange Act [15 U.S.C. §78c(a)(10)].

38. 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] make it unlawful for any person, directly or indirectly, acting intentionally, knowingly or recklessly, by the use of means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) to employ devices, schemes or artifices to defraud; (b) to make untrue statements of material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) to engage in acts, practices or courses of business which operate as a fraud or deceit upon certain persons.

39. As set forth above, Dalmy enlisted Woodford for a fraudulent and deceptive scheme to evade limitations or restrictions on her ability to practice securities law. Dalmy prepared, and Woodford signed, opinion letters concerning securities issued by Company B and Company C that were materially false and misleading. The letters purported to reflect

Woodford's legal opinions, when in fact Dalmy prepared the letters and Woodford signed the letters without performing his own due diligence or legal analysis. In addition, Dalmy prepared public filings for Company C even though the Commission had permanently suspended her from appearing or practicing before it as an attorney.

40. The defendants' misconduct was in connection with the purchase or sale of a security.

41. As a result, the defendants violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act and Rule 10b-5.

THIRD CLAIM FOR RELIEF
(Violation of the Commission's Administrative Order by Dalmy)

42. The Commission repeats and incorporates by reference the allegations in paragraphs 19 above.

43. Section 21(e)(1) of the Exchange Act [15 U.S.C. §78u(e)(1)] provides that the Commission may apply to a district court of the United States for a writ of mandamus, injunction, and order commanding any person to comply with the provisions of the Exchange Act, the rules and regulations thereunder, and Commission administrative orders instituted pursuant to the Exchange Act.

44. As set forth above, Dalmy failed to comply with the administrative order that the Commission entered on September 29, 2016 permanently suspending her from appearing or practicing before it as an attorney.

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

A. Enter a permanent injunction restraining the defendants, as well as their agents, servants, employees, attorneys, and other persons in active concert or participation with them,

from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of:

1. Section 17(a) of the Securities Act [15 U.S.C. §77q(a)]; and
2. 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];

B. Require the defendants to disgorge her ill-gotten gains, plus prejudgment interest, with said monies to be distributed in accordance with a plan of distribution to be ordered by the Court;

C. Enter 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)], requiring Woodford to pay an appropriate civil penalty;

D. Enter an order barring the defendants from participating in the offer or sale of a penny stock, as that term is defined in Section 20(g) of the Securities Act [15 U.S.C. §77t(g)] and Section 21(d)(6) of the Exchange Act [15 U.S.C. §78u(d)(6)];

E. Enter an order, pursuant to Section 21(e)(1) of the Exchange Act [15 U.S.C. §78u(e)(1)], requiring Dalmy to comply with the Commission's order permanently suspending her from appearing or practicing before it as an attorney, which was entered in *Matter of Diane D. Dalmy, Esq.*, Exchange Act Release No. 78993 (Sept 29, 2016);

F. Enter an order permanently enjoining Dalmy from directly or indirectly providing professional legal services to any person or entity in connection with the offer or sale of securities pursuant to, or claiming, an exemption under Section 4(a)(1) predicated on Securities Act Rule 144, or any other exemption from the registration provisions of the Securities Act; and requiring Dalmy to provide any actual or potential client seeking legal advice or representation in matters relating to the federal securities laws with copies of (i) the Commission's complaint filed

against her and the court's final judgment issued against her in both this action and in *SEC v. Zenergy Int'l, Inc.*, Case No. 1:13-cv-05511 (N.D. Ill. Sept. 30, 2015), and (ii) the Commission's order permanently disqualifying her from appearing and practicing before the Commission as an attorney, Exchange Act Release No. 78993 (Sept 29, 2016).

G. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

H. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Frank C. Huntington

Frank C. Huntington (Mass. Bar No. 544045)

Senior Trial Counsel

Lauchlan Wash (Mass. Bar No. 629092)

Senior Enforcement Attorney

Martin F. Healey (Mass Bar No. 227550)

Regional Trial Counsel

Attorneys for Plaintiff

SECURITIES AND EXCHANGE COMMISSION

Boston Regional Office

33 Arch Street

Boston, MA 02110

(617) 573-8960 (Huntington direct)

(617) 573-4590 (fax)

huntingtonf@sec.gov (Huntington email)

Dated: June 26, 2019