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UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

-against-

MICHAEL BARRY CARTER,

Defendant.

COMPLAINT

20 Civ. 2112

JURY TRIAL DEMANDED

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against Defendant Michael Barry Carter (“Carter” or “Defendant”), alleges as follows:

SUMMARY

1. From approximately October 2007 through May 2019, Carter misappropriated approximately \$6 million from brokerage customers and an elderly investment advisory client while he served as their financial advisor at a large financial institution registered with the Commission as broker-dealer and investment adviser (“Financial Institution A”). Of that sum,

Carter misappropriated approximately \$2.5 million in the last five years. Carter's victims include people close to him who knew and trusted him through familial ties and friendship.

2. Carter carried out his scheme by falsifying internal forms to effect approximately 60 unauthorized cash wire transfers from the customers' and client's accounts to his personal bank account at another financial institution ("Financial Institution B"). Carter concealed his fraud from the investors by providing them with fake account statements that he fabricated, diverting their real account statements and other correspondence to post office boxes that he controlled or to a false email address that he created, and by making misrepresentations to them concerning their securities investments.

3. Carter used the funds that he misappropriated from the investors to support his lifestyle, which included hundreds of thousands of dollars of credit card bills, thousands of dollars of cash withdrawals, payments for a substantial home mortgage, and a luxury car.

VIOLATIONS

4. By virtue of the foregoing conduct and as alleged further herein, Carter has violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Section 206(1) and Section 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

5. Unless Carter is restrained and enjoined, he will engage in the acts, practices, transactions, and courses of business set forth in this Complaint or in acts, practices, transactions, and courses of business of similar type and object.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

6. The Commission brings this action pursuant to the authority conferred upon it by Exchange Act Section 21(d) [15 U.S.C. § 78u(d)] and Advisers Act Sections 209(d) and

209(e) [15 U.S.C. § 80b-9(d) and 80b-9(e)].

7. The Commission seeks a final judgment: (a) permanently enjoining Carter from violating the federal securities laws and rules this Complaint alleges he has violated; (b) ordering Carter to disgorge all ill-gotten gains he received as a result of the violations alleged herein and to pay prejudgment interest thereon; (c) ordering Carter to pay civil money penalties pursuant to Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)] and Advisers Act Section 209(e) [15 U.S.C. § 80b-9(e)]; and (d) ordering any other and further relief the Court may deem just and proper.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant Exchange Act Section 27 [15 U.S.C. § 78aa] and Advisers Act Section 214 [15 U.S.C. § 80b-14].

9. Defendant, directly and indirectly, has made use of the means or instrumentalities of interstate commerce or of the mails in connection with the transactions, acts, practices, and courses of business alleged herein.

10. Venue lies in this District under Exchange Act Section 27 [15 U.S.C. § 78aa] and Advisers Act Section 214 [15 U.S.C. § 80b-14]. Carter transacted business in this District, and certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within this District. During the relevant time period, the advisory client defrauded by Carter was a resident of Maryland, and Carter visited her home to conduct fraudulent transactions and make misrepresentations.

DEFENDANT

11. **Carter**, age 46, is a resident of Knoxville, TN. He was employed by Financial Institution A as an investment adviser representative and registered representative in McLean,

VA from August 2006 until April 2011 and again from November 2011 until he was terminated in July 2019 in connection with the conduct alleged herein.

FACTS

I. Carter Begins Misappropriating Funds From A Brokerage Customer

12. In approximately January 2007, Investor A, who had familial ties to Carter and was then age 72, opened a brokerage account at Financial Institution A for which Carter served as the registered representative. Prior to opening the account, Carter represented to Investor A that her funds would be invested in tax-free United States bonds paying a six percent annual interest rate.

13. In October 2007, Carter began misappropriating from Investor A's account by making unauthorized cash wire transfers from the account to his personal bank account at Financial Institution B. Carter initiated these transfers by using falsified authorization forms in which he stated that he had received verbal requests for the wires from Investor A. For wires over \$100,000, he submitted fraudulent authorization forms in which he forged Investor A's signature.

14. In an effort to avoid detection, Carter disguised the true destination of the wires by naming fictitious entities in the authorization forms as the beneficiary account holder and fraudulently entered variations of his home address as the beneficiaries' mailing addresses in the forms.

15. In total, between October 2007 and August 2014, Carter completely depleted Investor A's account by misappropriating at least \$2.4 million through 28 unauthorized wire transfers. In September 2014, Investor A's account was closed.

16. Carter concealed his fraud from Investor A by diverting her actual Financial

Institution A account statements and other documents to a post office box that he controlled and by providing her with fake account statements that he created. In the application to open Investor A's account, Carter added a post office box that he controlled as her mailing address. Carter also created fake statements that omitted the wire transfers and showed inflated account balances and securities holdings that did not exist. Carter continued sending these fake account statements to Investor A until at least March 2019 even though he knew that the account was closed in September 2014 with no remaining balance. In addition, Carter provided Investor A with fraudulent year-end consolidated tax statements that falsified her investment income.

II. Carter Expands His Fraud By Misappropriating From Additional Brokerage Customers

17. From approximately October 2012 through April 2018, Carter misappropriated funds from other brokerage customers who were friends of his. Carter served as the registered representative on the accounts of Investors B, C, and D and, prior to opening the accounts at Financial Institution A, Carter represented to them that their funds would be invested in securities. Carter instead misappropriated their funds and sold securities without authorization, in some instances immediately misappropriating the proceeds of such sales. When Carter spoke with the customers about their accounts, he frequently would misrepresent the status and performance of their investments.

18. As with his fraud involving Investor A, Carter carried out his scheme against Investors B, C, and D primarily by submitting fraudulent wire authorization forms that falsely indicated that the customer had requested and authorized the wire. Similar to his fraud against Investor A, Carter wired the cash to his account at Financial Institution B, disguising the destination of the wire by using fictitious beneficiary names and designating post office boxes that he controlled as the beneficiaries' mailing addresses. In addition, in one instance in 2012,

Carter wrote himself a \$56,000 check from Investor B's account by forging Investor B's signature and deposited the check into his bank account at Financial Institution B. In total, between October 2012 and April 2018, Carter misappropriated approximately \$1.9 million from the accounts of Investors B, C and D. Of that sum, Carter misappropriated approximately \$835,000 in the last five years.

19. Occasionally, Investor B would request substantial cash withdrawals from his brokerage account. In 2017, at a time when Investor B's account had been substantially depleted due to Carter's earlier misappropriation, Investor B requested that Carter wire out approximately \$170,000 from his account to fund a real estate purchase. To cover the wire, Carter forged Investor C's signature on a securities transfer form, thereby transferring approximately \$170,000 worth of securities from Investor C's account to Investor B's account. Carter then liquidated the securities and used the proceeds to fund Investor B's withdrawal request. Carter took these steps without authorization and without the knowledge of either Investor B or Investor C.

20. In February 2015, Carter liquidated 700 shares of a large technology company in Investor D's account and wired \$90,000 of the proceeds to Carter's bank account at Financial Institution B by submitting a fraudulent authorization form. Shortly thereafter, Carter fraudulently replaced Investor D's missing 700 shares by misappropriating 700 shares of the same company from Investor B's account and transferring those shares to Investor D's account. The liquidation and securities transfer was made without authorization and without the knowledge of Investor B or Investor D.

21. As with Investor A, Carter concealed his fraud from Investors B, C and D by diverting their account statements and other correspondence to post office boxes that he controlled, and as to Investors B and C, by creating and providing them with false documents

purporting to reflect their investments.

III. Carter Misappropriates Funds From An Elderly Advisory Client

22. In November 2017, Carter began misappropriating funds from the accounts an elderly advisory client (“Investor E”), then age 84. By that time, Investor E had held accounts at Financial Institution A for approximately six years during which time Carter served as Investor E’s investment adviser. Carter was the sole financial advisor at Financial Institution A assigned to advise Investor E with respect to her investments in securities and was compensated for these services through his receipt of a portion of the advisory fees Investor E paid to Financial Institution A. Carter regularly called Investor E to advise her as to the status of her investments and provide investment recommendations.

23. As her investment adviser, Carter owed Investor E an affirmative fiduciary duty of utmost good faith. In violation of that duty, between December 2017 and May 2019, Carter made approximately \$1.5 million in unauthorized cash transfers from Investor E’s accounts. He sent approximately \$905,000 of the \$1.5 million directly to himself, and he used the rest to repay funds he had taken from Investor B and to pay interest and principal on a line of credit, as described below.

24. In November 2017, Carter established a line of credit in Investor E’s name secured by her advisory accounts at Financial Institution A (the “Loan Account”). Carter established the Loan Account without Investor E’s knowledge or authorization.

25. Between December 2017 and May 2019, Carter drew approximately \$835,000 against Investor E’s line of credit in the Loan Account and wired the funds to his personal bank account at Financial Institution B without Investor E’s knowledge or authorization. Similar to his earlier misappropriations, Carter provided his bank account number at Financial Institution B

as the wire destination, falsely identified a fake company as the beneficiary account holder, and misrepresented that the purpose of the wire was a construction investment. In addition, in June and October 2018, Carter transferred a total of \$70,000 from one of Investor E's accounts to his bank account at Financial Institution B by submitting authorization forms in which he falsely represented that he had received verbal requests from Investor E for the transfers. These forms similarly falsely identified the fake company as the beneficiary and the purpose as a construction loan payment.

26. In addition to misappropriating funds from Investor E for his own personal benefit, on four occasions between October 2018 and May 2019, Carter wired payments totaling \$350,000 from her accounts to external bank accounts controlled by Investor B in order to cover withdrawal requests made by Investor B, but for which his account lacked sufficient funds due to Carter's prior misappropriation. Between March 2018 and March 2019, Carter also transferred a total of approximately \$260,000 from one of Investor E's other accounts to the Loan Account as payment toward the principal and interest owed because of the debt Carter had incurred by misappropriating funds. All of these wires and transfers were made without Investor E's knowledge or authorization.

27. Carter also misappropriated approximately \$345,000 that originated from 529-plan college savings accounts that Investor E held at another financial institution ("Financial Institution C") for the benefit of her grandchildren between March and May 2019. On the basis that he would transfer the accounts to new college savings accounts at Financial Institution A, Carter obtained access to the accounts at Financial Institution C, liquidated the securities in those accounts, transferred the proceeds to one of Investor E's accounts at Financial Institution A, and then used that money to fund some of the misappropriation described above.

IV. Carter Uses Misappropriated Funds To Support His Lifestyle

28. Carter used the funds that he misappropriated from the investors to support his lifestyle, which included hundreds of thousands of dollars of credit card bills, thousands of dollars of cash withdrawals, payments for a substantial home mortgage, and a luxury car.

**FIRST CLAIM FOR RELIEF
Violation of Exchange Act Section 10(b) and Rule 10b-5 Thereunder**

29. The Commission re-alleges and incorporates by reference here the allegations in paragraphs 1 through 28.

30. Carter, directly or indirectly, singly or in concert, in connection with the purchase or sale of securities and by the use of means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange, knowingly or recklessly has (i) employed one or more devices, schemes, or artifices to defraud, (ii) made one or more untrue statements of a material fact or omitted to state one or more material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and/or (iii) engaged in one or more acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

31. By reason of the foregoing, Carter, directly or indirectly, singly or in concert, has 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 Advisers Act Sections 206(1) and (2)**

32. The Commission re-alleges and incorporates by reference here the allegations in paragraphs 1 through 28.

33. At all relevant times, Carter was an investment adviser under Advisers Act Section 202(11) [15 U.S.C. § 80b-2(11)].

34. Carter, by use of the mails or any means or instrumentalities of interstate commerce, directly or indirectly has: (i) knowingly or recklessly employed one or more devices, schemes, or artifices to defraud any client or prospective client, and/or (ii) knowingly, recklessly, or negligently engaged in one or more transactions, practices, and courses of business which operated or would operate as a fraud or deceit upon any client or prospective client.

35. By reason of the foregoing, Carter, directly or indirectly, singly or in concert, has violated and, unless enjoined, will again violate Advisers Act Sections 206(1) and (2) [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

PRAYER FOR RELIEF

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

I.

Permanently enjoining Carter and his agents, servants, employees, and attorneys and all persons in active concert or participation with him from violating, directly or indirectly, Exchange Act Section 10(b) [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Advisers Act Sections 206(1) and 206(2) [15 U.S.C. §§ 80b-6(1) and 80b-6(2)];

II.

Ordering Carter to disgorge all ill-gotten gains he received directly or indirectly, with pre-judgment interest thereon, as a result of the alleged violations;

III.

Ordering Carter to pay civil monetary penalties under Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)]; and

IV.

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

Dated: New York, New York

July 20, 2020

/s/Marc P. Berger

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