

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

CHARLES DWAIN DAVIS, JR.

Defendant.

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COMPLAINT
3:04-CV-1023-D

Plaintiff Securities and Exchange Commission alleges as follows:

SUMMARY

1. From at least July 1998 until July 2003, Charles Dwain Davis, Jr., a Dallas-based stockbroker, engaged in a fraudulent scheme by misappropriating approximately \$3 million from eight of his brokerage customers.

2. Davis misappropriated funds from his customers after convincing them to purchase securities that he recommended. Rather than buying for his customers' accounts the securities he had recommended, Davis diverted the customers' funds into bank accounts he controlled.

3. To prevent the discovery of his fraud, Davis sent his customers fictitious account statements that falsely represented securities that his customers purportedly owned. To satisfy his customers' periodic instructions to sell securities, Davis made *Ponzi*-type payments to those customers totaling \$377,000 by using monies from other customers. Later, when faced with increasing liquidation requests, Davis forged customer signatures on Letters of Authorization and transferred funds from the requesting customer's retirement account to the customer.

4. By reason of these activities, Davis has engaged, is engaged and will continue to

engage in acts and practices which constitute and will constitute violations 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 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

JURISDICTION AND VENUE

5. The Commission is an agency of the United States of America established by Section 4(a) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78d(a)].

6. The Commission seeks a permanent injunction and disgorgement of ill-gotten gains pursuant to Section 20(b) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

7. The Commission seeks the imposition of civil 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)].

8. This Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d) and 77v(a)], and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa].

9. Venue is proper in this district because many of the acts, practices, courses of business, and transactions alleged in this Complaint occurred within the Northern District of Texas and the defendant resides in the district.

DEFENDANT

10. Charles Dwain Davis, age 45, resides in Dallas, Texas. During the relevant period, Davis was employed as a stockbroker with Birchtree Financial Services, Inc. from July 1998 to November 2000; FAS Wealth Management Services, Inc. from November 2000 to October 2001; Meyers Associates, L.P. from October 2001 to August 2002; and Moloney Securities Company, Inc. from August 2002 to

July 2003.

11. Davis was previously employed with Smith Barney from May 1992 to June 1994, and with RBC Dain Rauscher, Inc. from June 1994 to March 1998. Rauscher terminated Davis following a customer complaint alleging that he engaged in unauthorized transactions.

THE FRAUDULENT SCHEME

Davis' Misappropriation of Customer Funds

12. Davis began misappropriating customer funds in July 1998 and continued stealing from his customers despite frequent changes in broker-dealer association through July 2003.

13. Davis targeted eight of his brokerage customers to further his fraudulent activities and recommended that these customers purchase specific securities, typically mutual funds. The securities Davis represented he would purchase on behalf of his customers were well known and conservative, including: Nuveen Flagship Multist Hi-Yield Fund, Thornburg Ltd. Term Municipal Fund, various State Street funds, and various Mainstay funds.

14. To cover the purported purchase of securities, Davis instructed his customers to mail checks to his Dallas office. Davis then deposited the checks into bank accounts assigned to d/b/a's (the "d/b/a/ accounts") with names identical to the name of the broker-dealer with whom he was associated or the firms' clearing broker, Dain Correspondent Services, Inc. Alternatively, Davis directed his customers to wire funds directly to his d/b/a accounts.

15. As reflected in the chart below, Davis misappropriated approximately \$3 million from eight customers, without their knowledge or consent, by depositing customer funds into d/b/a accounts controlled by Davis:

Customer	Total Amount of Misappropriated Funds
Owens (1)	\$1,203,181
Owens (2)	\$659,125
Daniels	\$540,947
Collins	\$86,882
Sobczak	\$200,000
Dorsett (1)	\$78,703
Dorsett (2)	\$94,400
Davis	\$150,000
TOTAL	\$3,013,238

16. During the relevant period, Davis misappropriated customer funds while associated with the following broker-dealers in the following amounts: Birchtree, July 1998 through November 2000, \$1,355,014; FAS, November 2000 to October 2001, \$451,687; Meyers, October 2001 to August 2002, \$794,445; and Moloney, August 2002 to July 2003, \$108,500.

Davis' Attempts to Conceal His Fraudulent Activity

17. During the relevant period, Davis established bogus brokerage account numbers for each of the eight clients he defrauded, and prepared and sent to them fictitious account statements. Davis meticulously tracked the performance of the securities purportedly held by each client, and detailed in the account statement fluctuations in the current value of the securities.

18. On several occasions, customers instructed Davis to sell the securities they purportedly owned and forward the proceeds to them. To satisfy these requests, Davis

remitted approximately \$377,000 of other customers' funds, in classic *Ponzi* fashion, to at least six of his customers as reflected in the chart below:

Customer	Ponzi-Type Payments
Owens (1)	\$136,447
Daniels	\$45,980
Collins	\$25,622
Sobczak	\$108,638
Dorsett (1)	\$45,767
Davis	\$15,000
TOTAL	\$377,454

19. In November 2002, faced with increased liquidation requests, Davis satisfied customer requests by transferring funds from the requesting customer's retirement account to their personal bank account. To facilitate the unauthorized transfers, Davis forged customer signatures on Letters of Authorization. Davis made at least five such transfers in the Owens' and Sobczak accounts without their authorization or knowledge between November 2002 and June 2003.

Davis' Use of the Stolen Funds

20. Beginning in at least July 1998, Davis used customer funds without their knowledge or consent for his personal expenses, including the lease of a skybox at American Airlines Arena in Dallas at a cost of \$50,446; payments to Neiman Marcus totaling \$64,288; payments to his wife (from whom he was divorced in 2001) totaling \$77,875, and payments to a former wife of \$14,550; and rent for a loft apartment of approximately \$3,000 per month. Additionally, Davis withdrew at least \$554,825 in cash from the d/b/a accounts, which he squandered.

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

21. Plaintiff Commission repeats and incorporates paragraphs 1 through 20 of this Complaint by reference as if set forth verbatim.

22. Davis, directly or indirectly, singly or in concert with others, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce, or by the use of the mails, has: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material facts or omissions of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business, which operated or would operate as a fraud or deceit upon the purchaser.

23. Davis engaged in the above-referenced conduct knowingly or with recklessness regarding the truth.

24. By reason of the foregoing, Davis violated, and unless enjoined, will continue to violate the provisions of Section 17(a) of the Securities Act [15 U.S.C. § 77q].

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

25. Plaintiff Commission repeats and incorporates paragraphs 1 through 20 of this Complaint by reference as if set forth verbatim.

26. Davis, directly or indirectly, singly or in concert with others, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails has: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices and courses of business

which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

27. Davis engaged in the above-referenced conduct knowingly or with recklessness regarding the truth.

28. By reason of the foregoing, Davis violated and, unless enjoined, will continue to violate the provisions 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].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Enter a permanent injunction restraining Davis, and his respective agents, servants, employees and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in violations of, or aiding and abetting violations of, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], 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].

II.

Order Davis to disgorge an amount equal to the funds and benefits he obtained illegally as a result of the violations alleged, plus pre-judgment interest on that amount.

III.

Order Davis to pay an appropriate civil monetary penalty 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)] for the violations alleged herein.

IV.

Order further relief as this Court deems just and proper.

Respectfully submitted,

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