

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
PLAINTIFF,	:	
	:	
v.	:	
	:	CIVIL ACTION NO.
	:	304CV1342 (WWE)
WILLIAM A. DIBELLA AND NORTH	:	
COVE VENTURES, LLC.,	:	
	:	JURY TRIAL DEMANDED
DEFENDANTS.	:	
	:	
	:	
	:	

COMPLAINT

Plaintiff, Securities and Exchange Commission (Commission), for its Complaint, alleges as follows:

SUMMARY

1. During the period November 1998 through January 1999, Defendants William A. DiBella (DiBella) and North Cove Ventures, LLC (North Cove), participated in a fraudulent scheme with the former Treasurer of the State of Connecticut, Paul J. Silvester (Silvester), concerning Silvester’s investment of \$75 million of the Connecticut Retirement and Trust Funds (Pension Fund) with Thayer Capital Partners (Thayer) in Thayer’s private equity fund, Thayer Equity Investors IV, L.P. (Thayer IV). Silvester used the investment to reward DiBella, the former Majority Leader of the Connecticut State Senate and his friend and political supporter, for past and anticipated future services. In connection with this investment, Silvester requested that Thayer, through its senior officer, Frederick V. Malek (Malek), retain DiBella. Thayer, through

Malek, agreed to pay DiBella a fee calculated as a percentage of the Pension Fund's total investment in Thayer IV, even though DiBella had no prior involvement with the deal and ultimately performed no meaningful work related to the investment. Silvester increased the amount of the Pension Fund's investment by at least \$25 million (to a total investment of \$75 million) to secure a larger fee for DiBella. Thus, Thayer contracted to pay DiBella \$525,000 in fees, through DiBella's consulting firm North Cove. After Silvester left office in January 1999, his successor as state treasurer reduced the Pension Fund investment in Thayer IV. As a result, DiBella's fee was reduced and he was paid a total of \$374,500 in December 1998 and March 1999.

2. Silvester violated his fiduciary duty to the Pension Fund by engaging in a fraudulent scheme in which he solicited substantial fees for his friend and political supporter, DiBella, in connection with Silvester's investment of Pension Fund money with a private equity fund. Silvester did so with knowledge that DiBella would not provide any meaningful work in exchange for the fees he received from Thayer. Silvester failed to disclose this arrangement to the Pension Fund. Silvester's conduct also operated as a fraud and deceit on the Pension Fund. Silvester thereby violated §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]

3. Thayer, its affiliates, TC Equity Partners IV, LLC (TC Partners IV) and TC Management Partners IV, LLC (TC Management IV), and Malek also violated fiduciary duties to the Pension Fund by failing to disclose to the Pension Fund their employment of DiBella at the request of Silvester. Their conduct, directly or indirectly, violated §206(2) of the Investment Advisers Act of 1940 (Advisers Act) [15 U.S.C. §80b-6(2)].

4. Defendants DiBella and North Cove aided and abetted the foregoing violations by Silvester, Malek, Thayer, and its affiliates.

5. Defendants DiBella and North Cove, unless enjoined, will continue to engage in the transactions, acts, practices and courses of business alleged herein, or in transactions, acts, practices and courses of business of similar purport and object.

6. The Commission seeks to enjoin Defendants DiBella and North Cove from committing such acts or practices in violation of §10(b) of the Exchange Act, Rule 10b-5, thereunder, and §206(2) of the Advisers Act. The Commission also seeks disgorgement of all ill-gotten gains they received as a result of their violations, plus prejudgment interest thereon, and imposition of civil penalties against each of them. Further, the Commission seeks a permanent bar prohibiting DiBella from serving as an officer or director of a public company.

JURISDICTION

7. The Commission brings this action pursuant to §§21(d) and (e) of the Exchange Act [15 U.S.C. § 78u(d) and 78u(e)], and §§209(d) and (e) of the Advisers Act [15 U.S.C. §§ 80b-9(d) and 80b-9(e)].

8. This Court has jurisdiction pursuant to §§21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa], and §214 of the Advisers Act [15 U.S.C. § 80b-14].

9. Defendants have knowingly or recklessly participated in a fraudulent scheme, and certain of the transactions, acts, practices and courses of business of that scheme have occurred within the District of Connecticut.

10. Defendants have directly or indirectly made use of the means or instrumentalities of interstate commerce or of the mails in connection with the purchase or sale of securities and

other transactions, acts, practices and courses of business alleged herein.

THE DEFENDANTS

11. DiBella, age 59, is a resident of Old Saybrook, Connecticut. DiBella, a Democrat, served as Majority Leader of the Connecticut State Senate, retiring in 1996. Since leaving office, he has worked as a business consultant and lobbyist. DiBella is currently the chairman of the Metropolitan District Commission, a nonprofit municipal corporation that provides regional water and sewer services in the state of Connecticut.

12. North Cove is a consulting firm founded in 1998 by DiBella and headquartered in Wethersfield, Connecticut. DiBella is the sole owner of North Cove.

BACKGROUND

13. Silvester, age 41, of West Hartford, Connecticut, is a longtime friend of DiBella. Silvester served as Treasurer of the State of Connecticut from July 1997 until January 1999, when he left office after losing the November 3, 1998 election. Silvester previously served as Deputy Treasurer from January 1995 until July 1997.

14. Thayer is a Washington, D.C.-based private equity firm founded in 1996 that manages funds totaling over \$1.2 billion. Thayer organizes funds that provide investment opportunities for its participants. TC Partners IV is the general partner of Thayer IV, an \$880 million private equity fund founded in 1998 in which the Pension Fund is a limited partner. Thayer, through Malek and others, controls TC Partners IV. TC Management IV is a private management company that manages, and receives fees from, Thayer IV. At all times relevant to this Complaint, Thayer, TC Partners IV and TC Management IV have acted as unregistered investment advisers and owed a fiduciary duty to the Pension Fund.

15. Malek, age 67, is a resident of McLean, Virginia. Malek is the chairman of Thayer and each of the foregoing Thayer affiliates, and as such, owed a fiduciary duty to the Pension Fund.

16. At all times relevant to this Complaint, the Pension Fund consisted of approximately \$18 billion in assets held for approximately 150,000 Connecticut teachers and other state and municipal employees in at least the following fourteen funds: Teachers' Retirement Fund; State Employees' Retirement Fund; Municipal Employees' Retirement Fund; Judge's Retirement Fund; Probate Court Retirement Fund; Soldiers' Sailors' & Marines' Fund; Policemen & Firemen Survivor's Benefit Fund; Art Endowment Fund; School Fund; Ida Eaton Cotton Fund; Hopemead Fund; Andrew Clark Fund; State's Attorneys' Retirement Fund; and the Agricultural College Fund. The Connecticut Treasurer is a fiduciary with authority to invest money from the Pension Fund on behalf of the beneficiaries.

17. At all times relevant to this Complaint, a board called the Investment Advisory Council ("IAC") was responsible for advising the Connecticut Treasurer regarding the Pension Fund. Under Connecticut law, the IAC was charged with reviewing all of the Treasurer's investments and providing reports concerning the investments to the Governor, the state legislature, and the Pension Fund beneficiaries. In addition, there is a mechanism for the IAC to petition the Governor to overturn individual investments made by the Treasurer. To effectively carry out these duties, the IAC should be provided all material information about each investment.

18. The fraud alleged in this Complaint occurred in connection with a type of investment made by the Pension Fund in a vehicle known as a private equity fund. A private equity fund generally invests in privately held companies and often works closely with the

management of its portfolio companies. Thayer IV, the Thayer private equity fund in which the Pension Fund invested, was structured as a limited partnership. Accordingly, when the Pension Fund invested in Thayer IV, it did so by purchasing a limited partnership interest.

FACTS

19. DiBella introduced Silvester to the president of PaineWebber in approximately the fall of 1997. Thereafter, DiBella set up a meeting between PaineWebber and Silvester in about July 1998 and maintained occasional contact between the two. Eventually, Silvester agreed to make a Pension Fund investment of \$100 million in a real estate private equity deal with PaineWebber in late 1998. Silvester and DiBella believed that DiBella was due a finder's fee for introducing the parties in the PaineWebber real estate deal.

20. In August 1998, Thayer, through a broker-dealer acting as its exclusive placement agent, began soliciting the staff of the Treasurer's office to invest Pension Fund monies in a new fund Thayer was forming, Thayer IV. By mid-September, a state treasury investment officer, Michael MacDonald, decided against the proposed investment. Silvester overruled his recommendation and directed MacDonald to perform due diligence for the proposed Thayer IV investment.

21. On November 3, 1998, Silvester, the Republican candidate for Treasurer, lost the election to the Democratic candidate.

22. By mid-November 1998, the Treasurer's Office Staff had completed its due diligence for investment in Thayer IV. MacDonald issued a Due Diligence Report recommending an investment of up to \$25 million. In addition, by this time, the Treasurer's Office Staff had negotiated and prepared the necessary closing documents to complete the transaction.

23. On about November 10, 1998, Silvester and DiBella learned that DiBella would not receive a fee for his role in the Pension Fund's \$100 million investment with PaineWebber.

24. Silvester decided on about November 11, 1998 to arrange payment of a fee for DiBella in connection with the Thayer transaction. Silvester did so despite the near-completion of the transaction and in the absence of any meaningful assistance provided, or to be provided, by DiBella. Silvester made this arrangement for several reasons: to compensate DiBella for his role in the unrelated Pension Fund investment with PaineWebber; to repay political favors DiBella had provided Silvester in the past; and to curry favor with DiBella, a powerful and influential politician and business person, whom Silvester believed would be helpful to his career in the future.

25. On November 11, 1998, Silvester telephoned Malek and told him the Thayer IV investment was going forward, but that he could make no promises. Silvester indicated that any such investment would be in the \$50 million range. Silvester suggested to Malek that Thayer hire DiBella as a local representative to help with the incoming administration. The incoming Treasurer, like DiBella, was a Democrat.

26. Shortly after his November 11, 1998 telephone call with Malek, Silvester telephoned DiBella and told him that he would take care of DiBella's non-payment of a fee for his role in the Pension Fund's investment with PaineWebber by putting DiBella in the Thayer deal. Silvester instructed DiBella to call Malek and to work out a deal as a placement agent or a finder. Silvester made clear to DiBella that he intended to do the Thayer deal and did not suggest there was any work to be done by DiBella. DiBella asked Silvester how he would be compensated. Silvester indicated that DiBella should ask for a point or a percent of the Pension Fund investment

in Thayer IV.

27. Thereafter, on about November 12, 1998, Malek and DiBella met in New York to discuss DiBella's retention by Thayer. Malek offered DiBella a half point (i.e., 0.5% of the Pension Fund investment), which DiBella rejected. By about November 18, 1998, Malek agreed to pay DiBella a fee of 70 basis points (0.7%) of the investment. Thereafter, DiBella pressured Silvester to increase the amount of the Pension Fund's investment in Thayer IV solely to increase the size of DiBella's fee.

28. On November 23, 1998, Silvester met with Malek in Washington, D.C. to solidify Thayer's agreement to hire DiBella. Silvester told Malek that it would be helpful to Silvester if Thayer hired DiBella. In addition, Silvester told Malek that the Pension Fund would invest in Thayer IV and that the only question was the size of the investment.

29. DiBella signed a written consultant and representation agreement with TC Partners IV dated November 24, 1998. The contract provided for payment to North Cove of 0.7% of the amount that the Pension Fund invested in Thayer IV as DiBella's fee.

30. Also on November 24, 1998, Silvester signed closing documents for the Pension Fund investment in Thayer IV. Silvester, under pressure from DiBella, had increased the amount of Connecticut's investment in Thayer IV from \$25-\$50 million to \$75 million in order to increase the size of DiBella's fee. The investment deal closed on November 30, 1998, when TC Partners IV signed the Thayer IV documents.

31. In December 1998, TC Management IV made its first payment to DiBella (through North Cove) in the amount of \$25,000. In January 1999, the newly elected Treasurer reached an agreement with Thayer to reduce the amount of the Pension Fund's investment in Thayer IV from

\$75 million to \$53.5 million. Thayer then reduced the amount of DiBella's fee and paid him the balance due in a lump sum payment of \$349,500 in March 1999, for total payments of \$374,500.

32. DiBella and North Cove performed no meaningful work in connection with the Pension Fund's investment in Thayer IV.

33. Silvester thus devised a fraudulent scheme in which he persuaded Thayer and its affiliates, through Malek, to hire DiBella in connection with the Pension Fund's investment in Thayer IV. As part of the scheme, Silvester and DiBella did not expect that DiBella would perform any work in exchange for substantial fees paid to him by Thayer, and Silvester increased the size of the Pension Fund's investment in Thayer IV to increase the size of DiBella's fee. In addition, Silvester failed to disclose these facts to the Pension Fund in breach of his fiduciary duty; and his conduct operated as a fraud or deceit upon the Pension Fund.

34. DiBella knew or recklessly disregarded that Silvester was engaging in the foregoing fraudulent scheme, that Silvester failed to disclose the scheme to the Pension Fund, or that Silvester's conduct operated as a fraud or deceit upon the Pension Fund. In addition, DiBella provided knowing and substantial assistance to Silvester's misconduct by, among other things, pressuring Silvester to increase the Pension Fund's investment in Thayer IV to increase his own fees, and agreeing to accept substantial consulting fees from Thayer despite DiBella's lack of previous involvement in an almost completed transaction and his performance of no meaningful work in connection with the investment.

35. Thayer and its affiliates, through Malek, failed to disclose to the Pension Fund that they employed DiBella, in connection with the Pension Fund's investment in Thayer IV and at Silvester's request. Their conduct breached their fiduciary duty to the Pension Fund and operated

as a fraud or deceit upon the Pension Fund.

36. DiBella knew or recklessly disregarded that Thayer and its affiliates, through Malek, failed to disclose their agreement with Silvester to employ DiBella, and that their conduct operated as a fraud or deceit upon the Pension Fund. In addition, DiBella provided knowing and substantial assistance to Thayer and its affiliates by agreeing to accept substantial fees despite providing no meaningful services to Thayer as described above.

37. North Cove is a limited liability company owned by DiBella. DiBella used North Cove to receive his fees for the Thayer deal. DiBella's knowledge of and substantial assistance to the scheme is imputed to North Cove.

38. The Silvester investment scheme was conducted in connection with the purchase or sale of securities in the limited partnership, Thayer IV.

FIRST CLAIM
(Aiding and Abetting Violations of Exchange Act §10(b) and Rule 10b-5 thereunder)

39. Plaintiff repeats and re-alleges paragraphs 1 through 38 above.

40. Silvester, singly or in concert with others, directly or indirectly, intentionally, knowingly or recklessly, by use of the means or instrumentalities of interstate commerce or of the mails: (a) has employed, or is employing devices, schemes, or artifices to defraud; (b) has made, or is making untrue statements of material facts or has omitted, or is omitting to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) has engaged, or is engaging, in acts, practices, or courses of business which have operated, or are operating as a fraud or deceit upon persons, in connection with the purchase or sale of securities as set forth above, in violation of §10(b) of the Exchange Act [15

U.S. C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

41. Defendant DiBella knew or recklessly disregarded that Silvester's conduct was improper, and he rendered knowing and substantial assistance to Silvester in his commission of the foregoing securities law violation. Because DiBella is the sole owner and principal of North Cove, his knowledge of and substantial assistance to Silvester's securities law violation is imputed to North Cove.

42. By reason of the foregoing, Defendants DiBella and North Cove aided and abetted violations of §10(b) of the Exchange Act and Rule 10b-5 thereunder by Silvester and therefore are liable pursuant to §20(e) of the Exchange Act [15 U.S.C. §78(e)].

43. Defendants' conduct involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss or significant risk of substantial loss to other persons, within the meaning of §21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)]. Therefore, DiBella and North Cove are **subject** to imposition of significant civil penalties.

SECOND CLAIM
(Aiding and Abetting Violations of Advisers Act §206(2))

44. Plaintiff repeats and re-alleges paragraphs 1 through 38 above.

45. Thayer, TC Partners IV, and TC Management IV, singly or in concert with others, directly or indirectly, by use of the mails or any means or instrumentality of interstate commerce, have engaged in transactions, practices, or courses of business which operate as a fraud or deceit upon clients or prospective clients, as set forth above, in violation of §206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)]. As a result of the conduct described above, Malek willfully aided and abetted and caused Thayer's, TC Partners IV's, and TC Management IV's violations of §206(2) of the Advisers Act.

46. Defendant DiBella knew or recklessly disregarded that the conduct of Malek, Thayer, TC Partners IV, and TC Management IV, was improper, and he rendered knowing and substantial assistance to them in their commission of the foregoing securities law violation. Because DiBella is the sole owner and principal of North Cove, his knowledge of and substantial assistance to Malek's, Thayer's and its affiliates' securities law violation is imputed to North Cove.

47. By reason of the foregoing, Defendants DiBella and North Cove aided and abetted violations of §206(2) of the Advisers Act by Thayer, TC Partners IV, and TC Management IV (who acted through Malek), and therefore are liable pursuant to §209(d) of the Advisers Act [15 U.S.C. §80b-9(d)].

48. Defendants' conduct involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss or significant risk of substantial loss to other persons, within the meaning of §209(e) of the Advisers Act [15 U.S.C. §80b-9(e)]. Therefore, DiBella and North Cove are subject to imposition of significant civil penalties.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff Commission respectfully requests that the Court:

I.

Permanently enjoin the Defendants, DiBella and North Cove, from, directly or indirectly, violating §10(b) of the Exchange Act and Rule 10b-5 thereunder, or §206(2) of the Advisers Act.

II.

Order the Defendants, DiBella and North Cove, to disgorge all monies received by them as a result of the fraudulent conduct alleged herein plus prejudgment interest thereon.

III.

Permanently bar Defendant DiBella, pursuant to §21(d)(2) of the Exchange Act [15 U.S.C. §78u(d)(2)], from serving as an officer or director of any issuer that has a class of securities registered pursuant to §12 of the Exchange Act or that is required to file reports pursuant to §15(d) of the Exchange Act [15 U.S.C. §§781(b), 781(g) and 78o(d)].

IV.

Order the Defendants DiBella and North Cove to pay civil penalties pursuant to §21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], and/or §209(e) of the Advisers Act [15 U.S.C. §80b-9(e)].

V.

Grant such other and further relief as this Court deems necessary and appropriate under the circumstances.

Respectfully submitted,

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