

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
WICHITA DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

SCOTT B. KAYE,
TRUEHEDGE ADVISORS, L.L.C, and
TRUEHEDGE CAPITAL PARTNERS, L.P.,

Defendants.

**COMPLAINT
04:1275MLB**

Plaintiff Securities and Exchange Commission alleges:

SUMMARY

1. This case concerns the theft of investor funds by a Wichita investment adviser and former stockbroker, Scott B. Kaye. Using two entities he created and controlled—TrueHedge Advisors, L.L.C. (“TrueHedge Advisors”) and TrueHedge Capital Partners, L.P. (“TrueHedge Capital”)—Kaye misappropriated at least \$735,000 from 18 investors in Kansas, Colorado, and California.

2. From June 2002 through February 2003, Kaye, TrueHedge Advisors and TrueHedge Capital raised \$1.9 million from 18 mostly unsophisticated investors, through the sale of securities in the form of limited partnership interests. Although the offering documents Kaye provided to investors claimed that TrueHedge Advisors and Kaye would use the funds to invest in stocks and options, Kaye misappropriated approximately \$735,000 and pursued an unprofitable investment strategy with the remainder. Of the total \$1.9 million invested, only \$126,900 remains in TrueHedge Capital accounts. Despite

repeated requests, investors have not received an accounting or other full and complete disclosure regarding the failure of their investment.

3. While telling investors that their investment losses were the result of a bad market and bad luck, Kaye enjoys life in an expensive personal residence purchased largely with proceeds from the fraud.

4. In the interest of protecting the public against fraud and theft by unscrupulous investment advisers, the Commission brings this action against Defendants seeking: (1) injunctions against future violations of the specified federal securities laws; (2) disgorgement and prejudgment interest; (3) civil money penalties; and (4) such other equitable relief that may be deemed appropriate.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77v(a)], Section 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78aa], and Section 203 of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. § 80b-3].

6. Defendants have, directly and indirectly, made use of the means or instrumentalities of interstate commerce and/or the mails in connection with the transactions described in this Complaint.

7. Venue lies in this Court in that Kaye resides in Wichita, Kansas, the entities TrueHedge Capital and TrueHedge Advisors are headquartered in Kaye’s Wichita home, and certain of the acts and transactions described herein took place in Wichita.

DEFENDANTS

8. **Kaye**, 40, is the sole managing member of TrueHedge Advisors. Since 1994, when Kaye resigned as a stockbroker from a prominent national brokerage firm, he has pursued various business interests including investment advisory services. Kaye is not registered with the Commission or the State of Kansas as an investment adviser.

9. **TrueHedge Advisors** is a Kansas limited liability company and the sole general partner of TrueHedge Capital. According to the TrueHedge Capital private placement memorandum (“PPM”), TrueHedge Advisors (acting at the direction of Kaye) was solely responsible for the management of the TrueHedge Capital’s business and investments.

10. **TrueHedge Capital**, a Nevada limited partnership formed by Kaye in April 2002, purportedly operates as a small hedge fund based in Wichita.

FACTS

Offering Terms

11. From June 2002 through February 2003, Kaye and TrueHedge Advisors sold limited partnership interests in TrueHedge Capital. The primary offering document provided to investors, the PPM, represented that TrueHedge Advisors and Kaye would pool the offering proceeds and invest the funds in stocks and options, seeking above-average capital appreciation for investors.

12. The investment’s terms specifically precluded investors from withdrawing funds until one year after investment or from participating in the management of the fund. For his efforts, Kaye, through TrueHedge Advisors, would receive a management

fee of 2% per year of each investor's capital account balance and 20% of any net profits.

Misrepresentations and Misapplications During the Offering

13. After starting TrueHedge Capital in June 2002, Kaye began misapplying investor funds in August 2002. Initially, Kaye raised approximately \$1.12 million from 16 investors. Rather than invest all of the money in stocks and options as represented in the PPM, in late August Kaye directed transfers of \$50,000, or approximately 4% of the total, directly into accounts for his personal benefit. Over the next several months, Kaye used these funds to pay personal expenses, including meals, travel, and construction of a new private residence.

14. In September 2002, Kaye sold a seventeenth limited partnership interest for \$180,000. Kaye did not apply these funds to the purchase of securities for the benefit of the investor; but instead, he caused them to be transferred to his personal account by mid January 2003.

15. In February 2003, Kaye solicited an eighteenth investor, a Colorado resident, to invest \$640,000. This investor was not told that Kaye had misappropriated previous offering proceeds or that Kaye's investment of the remaining funds was unprofitable. A portion of these funds, \$68,211, was not applied to the purchase of securities for the benefit of the investor, but instead used to pay a refund to a prior investor.

Lulling of Defrauded Investors

16. Kaye sporadically provided investors with account statements. Although these statements reflected losses, they did not reveal that a significant percentage of the losses were attributable to Kaye's misappropriations.

17. In December 2003, when several investors approached Kaye about their losses, Kaye tried to lull them into maintaining their partnership interests by blaming the losses on his unsuccessful investment strategy, a general downturn in the market and bad luck.

18. Kaye also appealed to the investors' religious convictions, claiming he was a Christian and would do everything in his power to earn back investment losses. Kaye further warned investors that bringing legal action would make it difficult for him to "do my best in any and all respects for the limited partners."

19. Finally, in late December 2003, after pressure from several investors to liquidate their partnership interests, Kaye acknowledged that he had taken funds from TrueHedge Capital to build his house. Incredibly, and contrary to representations in the PPM regarding use of investor funds, Kaye attempted to convince investors that use of funds for this unauthorized purpose was really a planned investment strategy.

20. Kaye also falsely advised certain investors that he subsequently repaid the funds with the proceeds of a mortgage on his new residence. At no time, however, did Kaye reveal his misappropriation of the \$310,000 for personal expenses in addition to the funds used for his residence.

Total Misapplications and Losses

21. Bank and brokerage records show that, out of a total of \$1.9 million raised, Kaye misappropriated approximately \$735,000 of investor funds, or approximately 38%, including \$531,000 for the construction of his private residence.

22. Kaye's utterly unsuccessful investment strategy, resulting in losses of more than \$1 million, further compounded the effects of the misappropriations. Of the total \$1.9 million invested, only \$126,900 remains in TrueHedge Capital accounts.

FIRST CLAIM

Violations of Section 17(a) of the Securities Act

(Against Kaye, TrueHedge Advisors, and TrueHedge Capital)

23. Paragraphs 1 through 22 are realleged and incorporated by reference.

24. Kaye, TrueHedge Advisors, and TrueHedge Capital, directly or indirectly, singly or in concert with others, in the offer or sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, Kaye (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 material facts 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 a purchaser.

25. Kaye, TrueHedge Advisors, and TrueHedge Capital acted knowingly or recklessly with respect to the activities alleged in this Claim.

26. Kaye, TrueHedge Advisors, and TrueHedge Capital were also negligent with respect to the activities alleged in this Claim.

27. By reason of the foregoing, Kaye, TrueHedge Advisors, and TrueHedge Capital violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM

Violations of Section 10(b) of the Exchange Act and Rule 10b-5

(Against Kaye, TrueHedge Advisors, and TrueHedge Capital)

28. Paragraphs 1 through 22 are realleged and incorporated by reference.

29. Kaye, TrueHedge Advisors, and TrueHedge Capital, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails (a) employed manipulative and deceptive devices, contrivances, 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 and (c) engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

30. Kaye, TrueHedge Advisors, and TrueHedge Capital, acted knowingly or recklessly with respect to the activities alleged in this Claim.

31. By reason of the foregoing, Kaye, TrueHedge Advisors, and TrueHedge Capital, unless enjoined, will continue to violate 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].

THIRD CLAIM

Violations of Sections 206(1) and 206(2) of the Advisers Act

(Against Kaye and TrueHedge Advisors)

32. Paragraphs 1 through 22 are realleged and incorporated by reference.

33. At all relevant times, the Kaye and TrueHedge Advisors were investment advisers, as defined by Section 202(a)(11) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. § 80b-2(a)(11)].

34. Kaye and TrueHedge Advisors, singly and in concert with others, directly and indirectly, in connection with the purchase or sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails (a) intentionally, knowingly and/or recklessly employed devices, schemes and artifices to defraud clients and prospective clients, and (b) negligently engaged in transactions, practices, and courses of business which operated as a fraud or deceit upon clients and prospective clients.

35. By reason of the foregoing, Kaye and TrueHedge Advisors violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Permanently enjoin all Defendants from violations of Sections 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]; additionally, permanently

enjoin Kaye and TrueHedge Advisors from violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

II.

Order Defendants to disgorge an amount equal to the funds and benefits they obtained illegally or inequitably as a result of the violations alleged herein, plus prejudgment interest on that amount.

III.

Order civil penalties against all Defendants pursuant to Section 20(d) of the Securities Act, [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]; additionally order civil penalties against Kaye and TrueHedge advisors pursuant to Section 209(e) [15 U.S.C. § 80b-9(e)] of the Advisers Act in an amount to be determined by the Court for the violations alleged herein.

IV.

Grant such other relief as this Court may deem just or appropriate.

Respectfully submitted,

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