

Since approximately 1999, Montana has induced approximately 300 investors located in at least eight states to invest with M & M Financial by promising, and in some cases guaranteeing, a return of 10 to 15 percent annually.

2. Montana assured the investors of the safety of the investment by promising to buy liquid securities with their pooled funds. He reinforced those assurances by sending to the investors false account statements created on his personal laptop computer purportedly tracking the value of their investments.

3. Montana has nearly exhausted M & M Financial's assets in an elaborate "Ponzi" scheme.

4. On August 13, 2004, Montana deposited \$109,829 from a new investor into M & M Financial's bank account. Instead of investing the funds, Montana immediately disbursed the funds to other investors and paid M & M Financial's business expenses.

5. By reason of these activities, Defendants have violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §77q(a)] and 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]. The Commission, in the interest of protecting the public from any further fraudulent activity, brings this action against Defendants seeking temporary, preliminary and permanent injunctive relief, disgorgement of illicit profits, plus accrued prejudgment interest and a civil monetary penalty. Additionally, the Commission is seeking disgorgement, plus prejudgment interest, from the Relief Defendant, a person to which Montana diverted investor funds, regarding all funds derived, directly or indirectly, from the Defendants' fraudulent conduct. Finally, the Commission seeks an asset freeze against Defendants and Relief

Defendant, an accounting and other incidental relief, including the appointment of a receiver to take possession of Defendants' and Relief Defendant's assets so that investor assets will not be further dissipated.

II. JURISDICTION

6. The Commission brings this action pursuant to the 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)] to enjoin the Defendants from future violations of the federal securities laws. The Commission also seeks disgorgement of ill-gotten gains from the Defendants, plus prejudgment interest, and civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. §78u(d)]. The Commission is also seeking disgorgement, plus prejudgment interest, from the Relief Defendant, regarding all funds derived, directly or indirectly, from the Defendants' fraudulent conduct.

7. This Court has jurisdiction over this action pursuant to §22(a) of the Securities Act [15 U.S.C. §77v(a)] and §27 of the Exchange Act [15 U.S.C. §78(aa)] and Title 28 U.S.C. §1331. Defendants, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, practices and courses of business described in this *Complaint*.

8. Venue is proper because many of the transactions, acts, practices and courses of business described below occurred within the jurisdiction of the Southern District of Texas.

III. DEFENDANTS

9. Mark D. Montana, age 38, is a resident of Lake Jackson, Texas. Montana, who currently holds Series 7 and Series 63 securities licenses, has been a registered representative

associated with Crown Capital since August 2000. M & M Properties is a d/b/a created and controlled by Montana.

10. M & M Financial, Inc. was a Delaware corporation, controlled by Montana, with its principal place of business located in Lake Jackson, Texas. It forfeited its charter on February 13, 2004. M & M Financial was a satellite of a Crown Capital branch office located in Houston. M & M Financial's investor funds have been diverted to accounts in the name of M & M Properties.

IV. RELIEF DEFENDANT

11. Karen E. Montana, age 46, is Montana's wife and is listed as the treasurer of M & M Financial. M & M Financial's bank records from January 1, 2004 through August 25, 2004, indicate that K. Montana received investor funds totaling at least \$18,000.

V. STATEMENT OF FACTS

A. Background

12. On August 12, 2004, the Federal Bureau of Investigation brought this matter to the Commission's attention after sources with knowledge of Montana's business operations complained that Montana has been conducting a fraudulent investment scheme through M & M Financial. It appears that M & M Financial's bank accounts are nearly depleted and that Montana's fraudulent scheme is about to collapse. Even though he continues to raise funds from new investors, Montana has had to infuse capital by transferring funds from his bank accounts and liquidating securities in his personal, as well as M & M Financial's brokerage accounts.

13. Montana's scheme was uncovered when several customers complained of discrepancies in the account statements or that pre-authorized withdrawals or cash dividends

were not timely paid. M & M Financial's bank balance has been rapidly decreasing, which has required multiple deposits and transfers from various brokerage and bank accounts controlled by Montana to cover expenditures. Significantly, the most recent deposit of new investor funds in the amount of \$109,829, Montana immediately disbursed in "Ponzi" payments to pay other investors' dividends and principal withdrawals, as well as business expenses for M & M Financial.

B. Montana's Fraudulent Scheme

14. Since in or about 1999, Montana has convinced approximately 300 persons to invest their funds with M & M Financial. In his sales pitch to potential investors, Montana represented that M & M Financial could purchase large blocks of securities at a discount and, using his expertise in the securities industry, could provide annual returns of up to 15 percent. In at least two instances, he guaranteed investors a 10 percent annual return. Additionally, Montana promised investors that their funds were safe, because he claimed that their funds were SIPC insured. Finally, on either a monthly or quarterly basis, as evidence of the success and safety of M & M Financial investments, some investors were paid cash dividends or automatic principal withdrawals.

15. Montana controlled every aspect of M & M Financial, insisting on meeting personally with prospective investors to discuss the proposed investment. After the investors' funds were deposited into M & M's bank account, Montana directed the fund's disbursement. More importantly, Montana is the sole preparer of investor account statements, which he maintains on his personal laptop computer, and issues on either a monthly or a quarterly basis.

After preparing and printing the statements, Montana directed the employees to copy and to mail them to M & M Financial's investors.

16. Montana maintains an electronic file on his laptop computer, which contains a list of the specific securities M & M Financial purportedly held for each investor. Montana used the information in this file to create a false account statement for each investor. According to Montana's electronic file, as of August 5, 2004, the aggregate amount of securities purchased and held on behalf of M & M Financial's investors was approximately \$11 million.

17. However, in reality, it is believed the current aggregate value of the securities in the brokerage accounts under Montana's control is less than \$275,000.

C. Montana's Misrepresentations

1. Robert Crawford

18. Robert Crawford ("Crawford"), a 64-year old appliance merchant residing in Lake Jackson, Texas, is Montana's most recently identified victim. On August 11, 2004, Crawford invested \$109,829 apparently for the purpose of investing in various equity securities. According to Crawford's August 26, 2004 investor statement prepared by Montana and issued by M & M Financial, Montana represented that he invested \$49,484 of Crawford's funds in six different equity securities, with the remaining \$60,345 held in cash.

19. However, according to M & M Financial's bank records, Montana did not purchase any securities on behalf of Crawford. Instead, Crawford's funds have been disbursed in payments to Montana, other investors, and to meet office payroll.

2. Donny Smith

20. In February 1999, Donny Smith (“Smith”), of Brazoria, Texas, met with Montana. Montana told Smith that M & M Financial could purchase various securities, including stocks, bonds and mutual funds in large blocks at a discount. Montana told Smith that, although M & M would hold the securities, Smith would own a pro rata share. In addition to guaranteeing Smith a 10 percent annual return, Montana falsely represented that all investments with M & M Financial were SIPC insured. Based on Montana’s claims, Smith invested \$440,000 with M & M Financial.

21. Thereafter, Smith received quarterly account statements from M & M Financial, prepared by Montana, showing nearly all of his funds were invested in GMAC 8.5% SmartNotes or QQQ, a NASDAQ index stock. On an August 20, 2004 account statement, Montana falsely represented to Smith that his account with M & M Financial was valued in excess of \$356,000, including \$326,000 in the GMAC notes and 3,800 shares of QQQ.

22. Brokerage records show that on August 20, 2004, neither M & M Financial nor Montana’s securities accounts owned either of these securities.

23. Despite recent repeated requests by Smith to Montana that he produce evidence of the purchase of the securities reflected in the account statements, Montana has been unable to provide that verification and has offered various excuses for his failure to do so.

24. In March 2004, believing that Montana had wisely and safely invested his funds, Smith asked Montana to meet with his 78-year old mother, Mary Smith. Mary Smith told Montana that she could not afford to lose her life savings of \$90,000. Montana assured her that her investment was SIPC insured and that she would “not lose a dime.”

25. A June 30, 2004 account statement prepared by Montana and issued to Mary Smith shows that Montana falsely represented that he purchased “GMAC 10% QUREVSMNTS” in the amount of \$90,000 and that she had earned interest to date in the amount of \$2,250.

26. A review of all known securities accounts reveals that neither M & M Financial nor Montana owned these securities as of June 30, 2004.

3. Barry Campbell

27. In August 2003, Barry Campbell (“Campbell”), a M & M Financial investor living in Clute, Texas, requested that Montana close his account and, rather than of liquidating his position to issue his holdings to him in certificate form. According to account statements issued to Campbell by Montana, Campbell’s account held shares in Hewlett-Packard, Abbot Laboratories, Starbucks and Solutia. Neither Montana nor M & M Financial owned these securities at the time of Campbell’s request. In an effort to avoid detection of his fraudulent scheme, trading records show that Montana was forced to purchase these securities in market transactions after Campbell made his request in order to furnish him with the stock certificates.

D. Use of Investors’ Proceeds

28. Even though Montana’s scheme has only recently been discovered, it is apparent that most of the investors’ funds have been diverted to Montana’s personal accounts and spent on real estate, vacations, automobiles, motorcycles, his wife and even a personal bodyguard. Bank records show that Montana received approximately \$318,000 from investors for the period, January to August 2004. Interestingly, this amount includes approximately 33 checks totaling over \$95,000, which were issued in increments of just under \$5,000, the amount that required Montana to obtain two signatures before he could negotiate a check.

29. A review of Montana's personal bank records indicates that K. Montana has received at least \$18,000 from M & M Financial, but she neither was an employee of nor provided services to M & M Financial.

E. Ongoing Activities

30. Montana continues to contact potential investors and is attempting to raise additional funds. For example, in addition to Crawford's \$109,829 investment on August 11, 2004, another new investor opened an account with a deposit of \$12,000 on Monday, August 30, 2004. Additionally, Montana has recently directed the employees to send "investor packets" to two other prospective investors, who, together, may invest approximately \$75,000. Finally, Montana continues to prepare and issue false investor account statements.

CLAIMS

FIRST CLAIM

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

Plaintiff Commission repeats and incorporates paragraphs 1 through 30 of this *Complaint* by reference as if set forth *verbatim*.

31. Defendants, 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 (a) have employed devices, schemes and artifices to defraud, (b) have made untrue statements of material facts and have 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) have engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

32. As a part of and in furtherance of their scheme to defraud, Defendants, directly and indirectly, prepared, disseminated, used, issued and made oral presentations, false and misleading account statements, written offering documents, promotional materials, investor and other correspondence, which contained untrue statements of material facts and misrepresentations of material facts and which 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, including, but not limited to, those set forth above.

33. Defendants made these misrepresentations and omissions knowingly or with reckless disregard for the truth.

34. By reason of the foregoing, Defendants have violated and, unless enjoined, will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

SECOND CLAIM

Violations of Section 17(a) of the Securities Act

35. Plaintiff Commission repeats and incorporates paragraphs 1 through 30 of this *Complaint* by reference as if set forth *verbatim*.

36. Defendants, directly or indirectly, singly or in concert with others, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, have (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 operate or would operate as a fraud or deceit.

37. As part of and in furtherance of this scheme, Defendants, directly and indirectly, prepared, disseminated, used, issued and made oral presentations, false and misleading account statements, written offering documents, promotional materials, investor and other correspondence, which contained untrue statements of material fact and which 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, including, but not limited to, those statements and omissions set forth above.

38. Defendants made the above-referenced misrepresentations and omissions knowingly or with reckless disregard for the truth. Defendants, in addition, were negligent in connection with their offer and sale of the securities alleged in this *Complaint*.

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

THIRD CLAIM

Claims Against the Relief Defendants as Custodians of Investor Funds

40. Plaintiff Commission repeats and incorporates paragraphs 1 through 30 of this *Complaint* by reference as if set forth *verbatim*.

41. Relief Defendant received, directly or indirectly, funds and/or other benefits from the Defendants, which either are the proceeds of, or are traceable to the proceeds of, the unlawful activities alleged herein and to which they have no legitimate claim to these funds and property.

42. Relief Defendant obtained the funds and property as part of and in furtherance of the securities violations alleged and under circumstances in which it is not just, equitable or conscionable for her to retain the funds and property, and accordingly, she has been unjustly enriched.

43. The Commission is entitled to an order requiring that Relief Defendant disgorge these funds and property plus prejudgment interest thereon.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

I.

Enter a temporary restraining order restraining each Defendant from continuing violations of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] and 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.

Enter a preliminary injunction enjoining each Defendant from further violations of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] and 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].

III.

Permanently enjoin each Defendant and their agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] and 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].

IV.

Require a full and accurate accounting and an interim asset freeze of all assets of each Defendant and Relief Defendant until a full and accurate accounting can be made of all investor monies raised in this scheme and a determination made as to the disposition of those assets.

V.

Enter and order *instanter* that each Defendant and Relief Defendant be restrained and enjoined from destroying, removing, mutilating, altering, concealing or disposing of, in any manner, any of their books and records or documents relating to the matters set forth in the Complaint, or the books and records and such documents of any entities under their control, until further order of the Court;

VI.

Enter an order that the parties may commence discovery immediately, and that notice periods be shortened to permit the parties to require production of documents or to take oral depositions on seventy-two (72) hours notice by facsimile or personal service;

VII.

Order each Defendant to disgorge an amount equal to the funds and benefits they obtained as a result of the violations alleged, plus prejudgment interest on that amount, and Relief Defendant to disgorge an amount equal to the funds and benefits she obtained as a result, directly or indirectly, from the Defendants conduct alleged herein, plus prejudgment interest on that amount.

VIII.

Order civil penalties against each Defendant pursuant to Section 20(d) of the Securities Act, Section 21(d)(3) of the Exchange Act for violations of the federal securities laws as alleged herein; and

IX.

Such other and further relief as the Commission may show itself entitled.

DATED: September 9, 2004.

Respectfully submitted,

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