

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

MARION D. SHERRILL,

Defendant.

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: **Civil Action File No.**
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: **1;05-CV-0386**
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COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

The plaintiff Securities and Exchange Commission (the “Commission”) files this complaint and alleges the following:

SUMMARY

1. From approximately May 2003 through as recently as January 26, 2005, Marion D. Sherrill, a recidivist securities law violator, perpetrated a Ponzi scheme, selling over \$400,000 of promissory notes to at least nineteen investors, many of whom were elderly.

2. While engaging in this Ponzi scheme, Sherrill was a registered representative of J.P. Turner & Company, LLC (“J.P. Turner”), a broker-dealer. The investors who purchased promissory notes were all brokerage customers of Sherrill and many were retired.

3. Under the terms of these notes, Sherrill “borrowed” from his investors principal amounts ranging from \$4,400 to \$41,000, in exchange for a promise that he would pay them monthly interest of 10% per annum and return to them the note’s principal at the end of the note’s term—a period of either twelve or twenty-four months.

4. Sherrill told some of these investors that he would invest their money in his brokerage business in order to expand its operations. Sherrill told at least one customer that he would invest her money in a “tax-free mutual fund,” from which she would get monthly tax-free income.

5. Contrary to his representations, Sherrill did not use investor funds to expand his business operations or to purchase mutual funds. Instead, he deposited most, if not all, of the note proceeds in his personal bank account, commingled those proceeds with his own money, and paid his living expenses and various operating expenses of his business such as rent and FedEx charges from the balance.

6. Sherrill did not disclose to the investors that he paid their monthly interest by using money from new investors and that lacked the capacity to repay the principal without raising new investments.

7. Though his conduct, Sherrill has violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §§ 78j(b)] and Rule 10b-5 [17 C.F.R. §§ 240.10b-5] promulgated thereunder.

JURISDICTION AND VENUE

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

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2); Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)]; and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Some of sales of the investments occurred in this district.

10. Sherrill has made use of the mails, the means and instruments of transportation and communication in interstate commerce, and the means and

instrumentalities of interstate commerce, in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

DEFENDANT

11. Marion D. Sherrill, 57, resides in Monroe, Georgia.

12. From April 1997 through January 31, 2005, Sherrill was a registered representative at J.P. Turner.

13. J.P. Turner terminated Sherrill for cause on January 31, 2005, based on the events alleged in this complaint.

14. Sherrill previously consented to a November 2003 Cease-and-Desist Order by the Commission, which found that Sherrill violated the antifraud provisions of the federal securities laws.

15. That Commission order found that Sherrill, while a registered principal of a broker-dealer, negotiated an agreement for an issuer to pay undisclosed compensation to the firm so that certain registered representatives of the firm would recommend the issuer's securities to their customers.

FACTS

16. Between May 2003 and at least January 26, 2005, Sherrill induced approximately nineteen of his brokerage customers to purchase at least \$401,000 in promissory notes executed by him.

17. Many of these customers were elderly and each had been a customer of Sherrill from one to four years since either retiring or being terminated from a division of Lucent Technologies, Inc. or its successor, and rolling over their retirement savings accounts to J.P. Turner.

18. Sherrill's notes provided for monthly interest payments, calculated at 10% per annum, with the principal to be repaid in either twelve or twenty-four months.

19. Although the notes specified that they reflected "business loans" or "personal business loans," Sherrill recommended the promissory notes to each customer as a way for them to receive a guaranteed monthly return.

20. Sherrill offered the notes to the investors as an investment.

21. To create the impression that the notes were offered through J.P. Turner, Sherrill prepared some of the promissory notes on J.P. Turner letterhead. In fact, the notes were not offered through the firm.

22. To purchase these notes, many of the customers, including Ms. Brown, Ms. Sims, Mr. Flowers, Ms. Clark and Ms. Oshields, liquidated the securities they held in their J.P. Turner brokerage accounts, and then wrote Sherrill a check for the face amount of the note.

23. In selling these notes and inducing the liquidation of the securities in the customers' accounts, Sherrill misrepresented to some customers, including Oshields, Brown and Sims, that he would use their money to expand his brokerage business.

24. Sherrill told at least one investor, Ms. Clark, that he would use her money to purchase tax free mutual funds for her.

25. In truth, Sherrill deposited substantially all of the note proceeds in his personal bank account, commingled those proceeds with his own money, and paid his living expenses, such as his monthly mortgage, car payment and the personal loan on his farm equipment.

26. While Sherrill used some money in this account for business expenses, it was for the regular operating expenses incurred in maintaining his current business, such as office rent and Federal Express charges, not for an investment in expansion or development of his business.

27. Sherrill also failed to tell the investors that he had no source of income sizeable enough to repay these investors' principal other than through money raised by new investors.

28. Sherrill paid the monthly interest called for by the promissory notes with personal checks written on the same bank account into which he deposited the

note proceeds. As a result, Sherrill used proceeds from new note investors to make the monthly interest payments to his investors.

29. To reinforce the impression that the notes were offered through J.P. Turner, Sherrill mailed some of the monthly interest checks to investors in J.P. Turner envelopes. In fact, the promissory notes were not offered through that firm.

30. When questioned by the Commission's broker-dealer examination staff on or around January 26, 2005, Sherrill initially denied selling any promissory notes to his customers, receiving any checks from his customers, or giving personal checks to his customers for interest payments.

31. The day after the Commission staff questioned Sherrill about the promissory notes, Sherrill transferred his house, including 23 acres of land, in Monroe, Georgia to his wife, Dorothy E. Sherrill.

COUNT ONE- FRAUD

Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]

32. Paragraphs 1 through 31 are hereby realleged and are incorporated herein by reference.

33. At various times between May 2003 and January 2005, Sherrill, in connection with the offer or sale of securities described herein, by the use of the

means and instruments of interstate commerce and by use of the mails, directly and indirectly:

- (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 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 purchasers of securities, all as more particularly described in the paragraphs above.

34. By reason of the foregoing, Sherrill directly and indirectly, violated and unless restrained and enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT TWO- FRAUD

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (a)(3)]

35. Paragraphs 1 through 31 are hereby realleged and are incorporated herein by reference.

36. At various times from at least May 2003 through January 2005, Defendant Sherrill, in the offer or sale of securities, directly or indirectly, 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 and/or engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon the purchasers of securities, all as more particularly described above.

37. While engaging in the courses of conduct described above, Defendant Sherrill, directly or indirectly, made use of the mails, or means or instruments of transportation or communication in interstate commerce, or means or instrumentalities of interstate commerce.

38. By reason of the foregoing, Defendant Sherrill violated and, unless restrained and enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and (3)].

COUNT THREE-FRAUD

Violations 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]

39. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 31 above.

40. At various times from at least May 2003 through January 2005, Defendant Sherrill, in connection with the purchase and sale of securities described herein, by the use of the means or instrumentalities of interstate commerce or by use of the mails, or of any facility of any national securities exchange, directly and indirectly:

- (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; and
- (c) engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon other persons, as more particularly described above.

41. Defendant Sherrill knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Sherrill acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

42. By reason of the foregoing, defendant Sherrill directly and indirectly violated and, unless restrained and 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.

PRAYER FOR RELIEF

WHEREFORE, the Commission, respectfully prays that the Court:

I.

Make findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure, finding that Defendant Sherrill committed the violations alleged herein.

II.

Issue a temporary restraining order, preliminary and permanent injunctions enjoining defendant, his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the order by personal service or otherwise, and each of them, from violating 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.

Issue an order requiring an accounting by Sherrill of the proceeds he collected through the scheme alleged in the complaint and ordering the disgorgement of all ill-gotten gains from the illegal conduct with prejudgment interest.

IV.

Issue an order 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)] imposing civil penalties against the defendant.

V.

Grant such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors. Further, the Securities and Exchange Commission respectfully prays that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that are entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

DATED: January 9, 2005¹

¹ Pursuant to Local Rule 7.1D, undersigned counsel for the Commission certifies that this complaint has been prepared with one of the font and point selections approved by the Court in LR 5.1B (14 point Times New Roman).

RESPECTFULLY SUBMITTED,

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