

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

TERRY'S TIPS, INC., a Vermont corporation,
TERRY F. ALLEN, an individual,

Defendants.

Civil No. 2:05-cv-188

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) for its complaint against Terry’s Tips, Inc. (“Terry’s Tips”) and Terry F. Allen (“Allen”) (collectively, Defendants), alleges as follows:

INTRODUCTION

1. Defendants deceived investors, through false promises of unrealistic and unreasonable investment returns, into paying for Terry’s Tips autotrading program whereby the investors gave Defendants discretionary authority to trade options in the investors’ brokerage accounts.

2. Terry’s Tips is a Vermont corporation based in Vergennes, Vermont. Terry’s Tips was founded by Allen on or about May 6, 2003.

3. Allen resides in Ferrisburg, Vermont. He is the founder, owner and control person of Terry’s Tips and is a self-proclaimed stock options picking guru.

4. Beginning in 2001, Allen marketed his options trading strategies and investment newsletters through a website at www.terrystips.com.

5. In 2003, Terry's Tips introduced a new product to its subscribers called autotrading. The autotrading program allowed subscribers to designate Terry's Tips to automatically direct trades in the subscriber's personal brokerage account.

6. Terry's Tips and Allen used false and misleading performance projections to encourage subscribers to enroll in the autotrading program. Rather than achieving the high rates of return Allen advertised on the Terry's Tips website, Allen's trading strategies actually lost money.

7. Through the use of false and misleading performance projections, defendants convinced hundreds of clients to enroll in Terry's Tips autotrading program.

8. Clients who subscribed to Terry's Tips autotrading service did not achieve the advertised returns. Instead, the clients lost substantial amounts of money.

STATUTES AND RULES ALLEGED TO HAVE BEEN VIOLATED

9. Defendants have engaged and, unless enjoined, will continue to engage, directly or indirectly, in transactions, acts, practices, and courses of business which constitute violations of 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].

10. Defendants have engaged and, unless enjoined, will continue to engage, directly or indirectly, in transactions, acts, practices, and courses of business which constitute violations of Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and (2)].

11. Defendants' conduct occurred in connection with the purchase and sale of securities and related to clients and potential clients of Terry's Tips.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to Sections 21(d)(3), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u(e) and 78aa] and Sections 209(d) and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d) and 80b-14].

13. Defendants, directly or indirectly, have made use of the mails, means or instruments of transportation or communication in interstate commerce, or means or instrumentalities of interstate commerce in connection with the transactions, acts, practices and courses of business described in this Complaint.

14. Venue over this action is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

15. Certain of the transactions, acts, practices and courses of business constituting violations alleged herein occurred within the state of Vermont. Terry's Tips is headquartered in Vergennes, Vermont. Allen is a Vermont resident who engaged in and transacted business within the state of Vermont.

DEFENDANTS

16. **Terry's Tips, Inc.**, is a Vermont corporation, founded by Allen on May 6, 2003. It is based in Vergennes, Vermont. In September 2004, Terry's Tips had approximately 1,200 clients participating in its autotrading program with total assets under management of over \$14 million.

17. **Terry F. Allen**, age 65, resides in Ferrisburg, Vermont. Allen is a self-proclaimed options picking guru and claims to have successfully traded stock options for

over 20 years. He graduated from Harvard Business School and earned his doctorate in business at the University of Virginia. Allen is the owner and control person of Terry's Tips.

BACKGROUND

18. In general, autotrading programs allow individuals to designate an online adviser to automatically direct trades in the client's personal brokerage account.

Autotrading services are typically offered as an additional service provided by online financial newsletters.

19. The financial newsletters usually require subscribers to pay a fee to autotrade in addition to the subscription fee paid to receive the general newsletter.

20. The online advisers have arrangements with one or more broker-dealers which accept that adviser's autotrading clients. The autotrading client must set up a brokerage account with one of these broker-dealers and execute a power of attorney or trading authorization authorizing the broker-dealer to execute trades in the client's account on instructions from the online adviser.

21. Once the brokerage account is established, the online adviser sends specific trading instructions directly by e-mail or facsimile to the broker-dealer in the form of "trading alerts." These alerts are not sent on a regular basis. Instead, the alerts are timed to take advantage of market changes or current events.

TERRY'S TIPS AUTOTRADING PROGRAM

22. Terry's Tips is an online adviser that makes recommendations regarding options trading. Allen is the owner and control person of Terry's Tips. Allen makes the determinations as to which options trades to recommend to Terry's Tips clients.

23. Terry's Tips has several autotrading strategies available to its clients.

Terry's Tips advises its clients individually, by telephone or e-mail, as to which strategies would be most appropriate for the individual client.

24. As of September 2004, Terry's Tips managed over \$14 million in client assets through its autotrading programs.

25. In Terry's Tips autotrading program, Terry's Tips sends specific instructions, in the form of a "trading alert," on an options trade directly by e-mail or facsimile to the broker-dealer with which the autotrading client has established an account.

26. By prior arrangement, the broker then executes trades in client's accounts consistent with the information contained in the trading alert.

27. These alerts contain little or no commentary and analysis and are transmitted on a sporadic basis as trading opportunities arise. The alerts are short and identify specific trades. The trading alerts are timed to take advantage of market changes or current events.

28. After Terry's Tips sends an alert to the broker-dealer, Terry's Tips either posts the alert on its website or sends a copy of the alert to the subscriber. Any added commentary explaining the reasons for the trade reaches the client well after the trades have been executed.

29. Terry's Tips offers two types of newsletter memberships. First, for \$79.95, a subscriber receives Allen's white paper and a two-month subscription to Options Tutorial, an Internet newsletter that provides examples of Allen's options picks and trading information, and access to the portion of the website where Allen posts specific trades as he makes them so the subscriber can "mirror" the trades in his own account. After the initial

two month subscription period this subscription costs between \$19.95- \$24.95 per month, depending on the features subscribed to.

30. The second type of membership, for \$119.95 per month, provides everything included in the first type of membership plus participation in the Terry's Tips autotrading program.

31. To maintain the autotrading membership, the client pays between \$49.97 and \$89.97 per month depending on the number of autotrading strategies he or she uses.

32. Terry's Tips has at least nine different strategies available for autotrading.

33. Terry's Tips sends the newly enrolled client an e-mail called "Auto-Trade 101." This e-mail explains that the client must open a brokerage account at either optionsXpress or thinkorswim.com, the two broker-dealers which have autotrading arrangements with Terry's Tips.

34. In order to participate in the autotrading program, a subscriber must open a brokerage account with optionsXpress or thinkorswim.com with a minimum of \$5,000.

35. The e-mail Terry's Tips sent to new enrollees gave detailed instructions on how to open an account and designate Terry's Tips as the adviser to that account. The e-mail also explained that the client would receive a weekly report "plus the extra reports for your auto-trade account."

36. After clients opened accounts at optionsXpress or thinkorswim.com, the clients execute a power of attorney or trading authorization designating Allen as the individual with trading authority in their accounts. Through this arrangement, Terry's Tips has discretionary authority over the client's account.

37. Allen, through Terry's Tips, sends specific trading instructions directly by facsimile or email in the form of autotrading alerts directly from Terry's Tips to the broker-dealers managing the autotrading accounts. The clients receive the alerts after the trades have already been executed.

38. The alerts consist almost entirely of specific trading instructions, giving the security, volume and price.

39. The timing of the alerts is highly irregular. At times, Terry's Tips may send multiple alerts in the same day. At other times, as much as a week may pass between alerts. The alerts are timed to specific market activity.

40. In addition to the trading instructions sent to the broker-dealer, Allen and his staff provide individual advice regarding the autotrading program to clients over the telephone and by e-mail.

41. Terry's Tips has set up a separate e-mailbox for questions from autotrading customers. Allen or a member of Terry's Tips' staff personally responds to all client e-mail and telephone inquiries regarding autotrading.

42. Allen or a member of Terry's Tips' staff provides clients, on an individualized basis, specific advice on matters such as the degree of risk associated with each autotrading strategy, which of the several strategies to select given the client's investment objectives and when to switch from one strategy to another.

43. Defendants told autotrading clients that their money was safely invested and that the clients would not experience substantial losses. In fact, Terry's Tips encouraged clients to adopt the autotrading program for their individual retirement accounts because the risk was so low.

44. Clients were told not to worry about their investments and that Allen would manage their money for them.

45. Clients developed trust and confidence in the Defendants through these one-on-one communications.

**MISREPRESENTATIONS AND OMISSIONS REGARDING
PERFORMANCE**

46. Terry's Tips represents, in numerous locations on its website, that its strategies can be expected to achieve outstanding performance returns. Allen is responsible for the performance statistics found on Terry's Tips website.

47. The website also claims that Terry's Tips' "10K Strategy" – a strategy which can be used to trade any security – will yield substantial profits in most trading markets. The website also claims that the 10K strategy "...will make over 100% (annualized) every month if your stock stays flat, goes up by any amount, or falls by less than 5%." The website also claims that this strategy works best with the Nasdaq 100 tracking stock for a variety of reasons (primarily liquidity and very small difference between bid and ask prices) listed on the website. These statements are false and misleading.

48. Terry's Tips clients have not realized gains of over 100% (annualized) every month as stated on the website.

49. Between November 2003, when Terry's Tips began its autotrading program, and October 2004, the Nasdaq 100 tracking stock has either risen or fallen less than 5% every month except July 2004, when it fell 7.5%. Despite this favorable movement in the price of the Nasdaq 100, clients invested in autotrading strategies based on the Nasdaq 100

tracking stock have lost substantial amounts of money ranging from 60% to 100% of the amount invested.

50. The accuracy of the performance statistics posted on Terry's Tips website would have been important to the reasonable investor in determining whether to become a Terry's Tips' autotrading client and allow Terry's Tips to direct trading in the client's autotrading account.

51. Contrary to the performance statistics quoted on Terry's Tips website, Allen's strategies performed so poorly in 2004 he offered to stop charging certain of his earlier autotrading clients the additional monthly autotrading fee until they recover some of their losses.

52. Allen was forced to revise his trading strategies due to their poor performance.

53. Allen knew or was reckless in not knowing the performance figures on Terry's Tips website were false and misleading.

54. As of August 2004, Terry's Tips had approximately 1,200 autotrading clients with over \$14 million under management.

55. Defendants continue to solicit new subscribers to the autotrading program using false and misleading performance projections.

FIRST CAUSE OF ACTION

FRAUD IN CONNECTION WITH THE PURCHASE AND SALE OF SECURITIES

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]

56. The allegations contained in paragraphs 1 through 55 are realleged and incorporated herein by reference.

57. Defendants, by engaging in the conduct described in paragraphs 1 through 55 above, directly or indirectly, in connection with the purchase and sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly, with scienter: (1) employed devices, schemes or artifices to defraud; (2) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (3) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon other persons.

58. By reason of the foregoing, defendants, directly or 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 thereunder [17 C.F.R. § 240.10b-5].

SECOND CAUSE OF ACTION

FRAUD BY AN INVESTMENT ADVISER

Violations of Sections 206(1) and (2) of the Advisers Act [15 U.S.C. §§ 80b-6 (1) and (2)]

59. The allegations contained in paragraphs 1 through 55 are realleged and incorporated herein by reference.

60. Terry's Tips and Allen received compensation for engaging in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

61. Defendants, by engaging in the conduct described in paragraphs 1 through 55 above, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly: (1) employed devices, schemes, or artifices to defraud clients or

prospective clients; and (2) engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon clients or prospective clients.

62. By reason of the foregoing, defendants, directly or indirectly, violated, and unless restrained and enjoined, will continue to violate, Sections 206(1) and (2) of the Advisers Act [15 U.S.C. §§ 80b-6 (1) and (2)].

THIRD CAUSE OF ACTION

**AIDING AND ABETTING VIOLATIONS OF THE
ADVISERS ACT BY ALLEN**

**Violations of Sections 206(1) and (2) of the Advisers Act
[15 U.S.C. §§ 80b-6(1) and (2)]**

63. The allegations contained in paragraphs 1 through 55 are realleged and incorporated herein by reference.

64. Allen is the owner and control person of Terry's Tips and is responsible for the content of Terry's Tips website.

65. Terry's Tips violated Sections 206(1) and (2) of the Advisers Act.

66. Allen was generally aware or knew that his actions were part of an overall course of conduct that was improper or illegal and violated Sections 206(1) and (2) of the Advisers Act.

67. Allen substantially assisted Terry's Tips violations of Sections 206(1) and (2) of the Advisers Act.

68. By reason of the foregoing, defendant Allen aided and abetted Terry's Tips violations of Sections 206(1) and (2) of the Advisers Act and unless enjoined or restrained, will continue to aid and abet Terry's Tips violations of Sections 206(1) and (2) of the Advisers Act.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue findings of fact and conclusions of law that the defendants committed the violations charged and alleged herein.

II.

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, orders permanently enjoining defendants, and their officers, agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from engaging in the transactions, acts, practices and courses of business described herein, and from engaging in conduct of similar purport and object in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

III.

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, orders permanently enjoining defendants, and their officers, agents, servants, employees, attorneys, and accountants, and those 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 engaging in the transactions, acts, practices and courses of business described herein, and from engaging in conduct of similar purport and object in violation of Section 206(1) and (2) of the Advisers Act.

IV.

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, an order permanently enjoining Defendant Allen, and his officers, agents, servants, employees, assigns, attorneys and those persons in active concert or participation with them who receive actual notice of the Order of Permanent Injunction by personal service or otherwise, and each of them, from engaging in the transactions, acts, practices and courses of business described herein, and from engaging in conduct of similar purport and object in aiding and abetting violations of Sections 206(1) and (2) of the Advisers Act.

V.

Enter an order directing defendants to disgorge all sums unjustly realized in the transactions identified in this Complaint, together with prejudgment interest thereon.

VI.

Enter an order directing each defendant to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act and Section 209(e)(2) of the Advisers Act.

VII.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

Dated this 30th day of June 2005.

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