

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

92 CIV. 8564

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

TELFAN ASSOCIATES LTD.,
TELFAN ASSOCIATES CORP.,
STEVEN MENDELOW, and
EDWARD GLANTZ,

Defendants.

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COMPLAINT FOR

PRELIMINARY AND

PERMANENT INJUNCTIVE

AND OTHER EQUITABLE

RELIEF

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Jury Trial Demanded

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Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendants Telfran Associates Ltd. ("Telfran Ltd."), Telfran Associates Corp. ("Telfran Corp."), Steven Mendelow ("Mendelow") and Edward Glantz ("Glantz"), alleges as follows:

SUMMARY

1. From in or about 1989 to in or about November 1992, defendant Telfran Ltd. has been accepting funds from investors across the United States. In return for these funds, Telfran Ltd. has been issuing notes to investors with an average fixed interest rate of 15%. Defendant Telfran Ltd. invested the funds obtained through the sale of Telfran Ltd. notes with Avellino and Bienes ("A&B") by purchasing notes issued by A&B. A&B paid Telfran Ltd. approximately 19% interest on such notes. A&B, in turn, invested the funds it received from Telfran Ltd. in

discretionary trading accounts at one particular broker-dealer. The broker-dealer invested the funds in securities. As a result of these activities, from at least in or about 1989 to the present, the defendants Telfran Ltd., Telfran Corp., Mendelow and Glantz have been operating Telfran Ltd. as an unregistered investment company and have been engaging in the unlawful sale of unregistered securities.

STATUTES AND RULES ALLEGED TO HAVE BEEN VIOLATED

2. Defendant Telfran Ltd. has engaged in, and unless enjoined, will continue to engage in transactions, acts, practices and courses of business which constitute violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a) and 77e(c)] and Section 7 of the Investment Company Act of 1940 ("Investment Company Act") [15 U.S.C. § 80a-7].

3. Defendants Telfran Corp, Mendelow and Glantz have engaged in, and unless enjoined, will continue to engage in transactions, acts, practices and courses of business which constitute violations of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)], and aiding and abetting violations of Section 7 of the Investment Company Act [15 U.S.C. § 80a-7].

JURISDICTION

4. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 44 of the Investment Company Act [15 U.S.C. §

80a-44]. Violations of federal securities statutes are alleged herein. The defendants, directly and indirectly, singly and in concert, have made use of, and are using, the means and instruments of transportation or communication in interstate commerce, or of the mails, or the means or instrumentalities of interstate commerce, in connection with the transactions, acts, practices and courses of business alleged in this Complaint. Such transactions, acts, practices and courses of business include, but are not limited to, sending confirmation letters and quarterly statements to investors and speaking to investors on the telephone.

VENUE

5. Venue is proper in this district under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 44 of the Investment Company Act [15 U.S.C. § 80a-44]. Among other things, defendants invested customers' funds in securities issued by A&B which is located in New York, New York.

NATURE OF RELIEF BEING SOUGHT

6. The Commission brings this action pursuant to the authority conferred upon it by Sections 20(b) and (d) of the Securities Act [15 U.S.C. §§ 77t(b) and (d)] and Sections 42(d) and (e) of the Investment Company Act [15 U.S.C. §§ 80a-42(d) (e)] to preliminarily and permanently enjoin the defendants from engaging in the conduct detailed below. In addition, the Commission seeks other equitable relief in the form of an order appointing a trustee to oversee the liquidation of Telfran Ltd.

and the distribution of the proceeds to investors. The Commission also seeks disgorgement of all unjust enrichment resulting from the violative activities detailed herein and civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 42(e) of the Investment Company Act [15 U.S.C. § 80a-42(e)].

THE DEFENDANTS

7. Telfran Ltd. is a limited partnership formed in or about 1989 in the state of Florida. Telfran Ltd.'s general partner is Telfran Corp., which is solely owned by Mendelow and Glantz. Telfran Ltd. is located at 4901 N.W. 17th Way, Suite 406, Fort Lauderdale, Florida 33309. Telfran Ltd. is solely engaged in the business of obtaining money from investors through the sale of Telfran Ltd. notes and investing the money with A&B through the purchase of A&B notes. Telfran Ltd. is not, and has never been, registered with the Commission in any capacity, including as an investment company.

8. Telfran Corp. is a Florida state corporation registered with the Florida Department of State since 1982. Telfran Corp. is wholly owned by Mendelow and Glantz. Telfran Corp. is located at 4901 N.W. 17th Way, Suite 406, Fort Lauderdale, Florida 33309.

9. Mendelow, age 49, resides at 88 Central Park West, Apt. 10 South, New York, New York 10023. Mendelow is currently employed as an accountant with a New York City accounting firm. Mendelow has been affiliated with Telfran Ltd. and Telfran Corp.

since their inception. Mendelow is the President of Telfran Associates Corp..

10. Glantz, age 78, resides at 4674 Fountains Drive South, Lake Worth, Florida 33467. Glantz is a retired Certified Public Accountant. Glantz has been affiliated with Telfran Ltd. and Telfran Corp. since their inception. Glantz is the Secretary and Treasurer of Telfran Associates Corp.

DEFENDANTS' SALE OF INVESTOR NOTES

11. From in or about 1989 through in or about November 1992, the defendants accepted funds from investors living across the United States. In return, the defendants agreed to pay the investors a fixed rate of interest, usually 15% ("Telfran Ltd. investments"). The Telfran Ltd. investments took the form of notes issued by Telfran Ltd., which were memorialized by a letter to the investor, confirming, among other things, the interest rate Telfran Ltd. would pay the investor.

12. The defendants then invested investors' funds with A&B by purchasing, in Telfran Ltd.'s name, A&B notes.

13. Telfran Ltd. has purchased A&B notes through at least two accounts at A&B. The first account, "Telfran Associates Ltd. (#1)," yielded 19% interest, and as of November 16, 1992 had an outstanding balance of approximately \$25 million. This account was comprised of the funds from Telfran Ltd. noteholders who received quarterly interest payments. The second account, "Telfran Associates Ltd. (#2)," yielded 15% interest, and as of November 16, 1992 had an outstanding balance of

approximately \$63 million. This account was comprised of the funds from Telfran Ltd. noteholders who rolled over their quarterly interest payments.

14. A&B invested the money it obtained from Telfran Ltd. in discretionary trading accounts at a registered broker-dealer ("the broker-dealer"). The broker-dealer managed the accounts, determining which securities to buy and sell.

15. The defendants profited from the Telfran Ltd. investments by retaining the difference between the fixed interest they paid to investors and the fixed interest they earned from A&B.

16. As of November 16, 1992, Telfran Ltd. owned \$88,785,137 million of A&B notes.

17. As of November 16, 1992, the defendants had issued approximately \$89,623,196 million of Telfran Ltd. notes either through new sales to investors or through the rollover of interest payments.

18. The defendants have never filed a registration statement with the Commission with respect to the notes issued by Telfran Ltd., nor is a registration statement in effect as to these notes.

DEFENDANTS' RELATIONSHIP WITH INVESTORS

19. The defendants have sold notes to investors across the United States. Initially, the defendants sold notes to friends, family and past accounting clients. Thereafter, the defendants obtained new investors almost entirely through

referrals by existing investors.

20. To date, the defendants have sold securities to over 800 individuals and entities.

21. Once the defendants have obtained or accepted a new investor, the investor sends his or her funds to the defendants by a check sent through the mail.

22. Some investors who have questioned Telfran Ltd. regarding the use of these funds have been told that Telfran Ltd. invests investors' funds by purchasing A&B notes. Some of these investors have also been told that A&B invests the funds with one specific broker-dealer in New York who invests the funds in securities, using arbitrage and hedging strategies.

23. The defendants pay investors a fixed rate of interest, usually 15%, calculated on an annual basis. Interest is paid on a quarterly basis. Investors can receive the interest in quarterly payments, or they can have the interest rolled over into their account. Most investors roll over their interest.

24. Upon receipt of an investor's funds, Telfran Ltd. sends the investor a confirmation letter. The confirmation letter, which is a form letter, includes the following information:

- (a) an acknowledgement of Telfran Ltd.'s receipt of the investor's funds;
- (b) the annual interest rate the investor will receive, and the amount of quarterly interest payments;
- (c) a confirmation of the investor's instructions

as to whether quarterly interest payments should be paid by check to the investor or rolled over into the investor's account; and

(d) a reminder that the investor's funds can be returned, upon written request to Telfran Ltd. within thirty days.

25. Every quarter, the defendants send each investor a quarterly statement reflecting the quarterly interest accrued, and confirming the investor's instructions with respect to the disposition of quarterly interest payments.

FIRST CLAIM FOR RELIEF

[Against All Defendants]

Violations of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)]

26. The allegations of paragraphs 1 - 25 are realleged and incorporated herein by reference.

27. The Telfran Ltd. investments which the defendants sold investors are "notes," and thus securities, within the meaning of Section 2(1) of the Securities Act [15 U.S.C. § 77b] and Section 2(a)(36) of the Investment Company Act [15 U.S.C. § 80a-2(a)(36)].

28. From in or about 1989 through at least in or about November 1992, the defendants offered to buy, sold, and offered to sell securities by accepting funds from investors for the purchase of Telfran Ltd. notes.

29. The defendants offered to buy, offered to sell, and sold securities using the means or instruments of

transportation or communication in interstate commerce and the mails to send investors, inter alia, confirmation letters and quarterly statements for the Telfran Ltd. investments.

30. By reason of the foregoing, the defendants Telfran Ltd., Telfran Corp., Mendelow and Glantz have violated, and unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

SECOND CLAIM FOR RELIEF

[Against all Defendants]

Violations of Section 7 of the Investment
Company Act [15 U.S.C. § 80a-7]

31. The allegations of paragraphs 1 - 30 are realleged and incorporated herein by reference.

32. From in or about 1989 through the present, Telfran Ltd. has been an issuer of securities within the meaning of Section 2(4) of the Securities Act [15 U.S.C. § 77b(4)], since it is a partnership issuing and proposing to issue its own notes, which are securities.

33. From at least in or about 1989 through the present, Telfran Ltd. has held itself out as being engaged in and has engaged primarily in the business of investing, reinvesting, or trading in securities.

34. From at least in or about 1989 through the present, Telfran Ltd. has engaged in or proposed to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of

Telfran Ltd.'s total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

35. From at least in or about 1989 through the present, Telfran Ltd. has been operating as an investment company within the meaning of Sections 3(a)(1) and 3(a)(3) of the Investment Company Act [15 U.S.C. §§ 80a-3(a)(1) and 3(a)(3)].

36. From at least in or about 1989 through the present, while operating as an investment company organized or otherwise created under the laws of the United States, Telfran Ltd., aided and abetted by Telfran Corp., Mendelow and Glantz; directly or indirectly, by the use of the mails or any means or instrumentalities of interstate commerce, has offered for sale, sold and delivered after sale, notes issued by Telfran Ltd. without registering with the Commission as an investment company pursuant to Section 8 of the Investment Company Act [15 U.S.C. § 80a-8];

37. From at least in or about 1989 through the present, while operating as an investment company organized or otherwise created under the laws of the United States, Telfran Ltd., aided and abetted by Telfran Corp., Mendelow and Glantz, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, has purchased, redeemed or otherwise acquired or attempted to acquire notes issued by Telfran Ltd. without registering with the Commission pursuant to Section 8 of the Investment Company Act [15 U.S.C. § 80a-8];

38. From at least in or about 1989 through the

present, Telfran Ltd., aided and abetted by Telfran Corp., Mendelow and Glantz, has engaged and is engaging in business in interstate commerce without registering with the Commission as an investment company pursuant to Section 8 of the Investment Company Act [15 U.S.C. § 80a-8].

39. By reason of the foregoing, Telfran Ltd. has violated, and, unless enjoined, will continue to violate Section 7 of the Investment Company Act [15 U.S.C. § 80a-7], and Telfran Corp., Mendelow and Glantz have aided and abetted, and, unless enjoined, will continue to aid and abet violations of Section 7 of the Investment Company Act [15 U.S.C. § 80a-7].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court enter:

(1) An order preliminarily and permanently enjoining the defendants, Telfran Ltd., Telfran Corp., Mendelow and Glantz, their officers, agents, servants, employees and attorneys-in-fact, and all persons acting in concert or participation with them, who receive actual notice of said Order by personal service, facsimile or otherwise, and each of them, directly or indirectly, singly or in concert, from violating Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c)] by:

(a) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell any securities through the use or medium of any prospectus or otherwise; or carrying or causing any

securities to be carried through the mails or in interstate commerce by the means and instruments of transportation, for the purpose of sale or delivery after sale, unless a registration statement is in effect as to such securities; and

(b) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security.

(2) An order preliminarily and permanently enjoining the defendants, Telfran Ltd., Telfran Corp., Mendelow and Glantz, their officers, agents, servants, employees and attorneys-in-fact, and all persons acting in concert or participation with them who receive actual notice of said Order by personal service, facsimile or otherwise, and each of them, directly or indirectly, singly or in concert, from violating, or aiding and abetting any investment company in violating, Section 7 of the Investment Company Act [15 U.S.C. § 80a-7], by, while acting as an investment company organized or otherwise created under the laws of the United States, or aiding and abetting such investment company:

(a) offering for sale, selling, or delivering after sale, by the use of the mails or any means or instrumentalities of interstate commerce, any security or

any interest in a security, whether the issuer of such security is such investment company or another person; or offering for sale, selling, or delivering after sale any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by the use of the mails or any means or instrumentalities of interstate commerce; or

(b) purchasing, redeeming, retiring or otherwise acquiring or attempting to acquire by use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person; or

(c) engaging in any business in interstate commerce.

(3) An order appointing a trustee to conduct an audit of Telfran Ltd.'s financial statements, to confirm the identity of all Telfran Ltd. noteholders and the amounts owed such noteholders, to make a complete redemption of all investors' funds, and to take such other action as the Court may deem appropriate, pursuant to Section 42(d) of the Investment Company Act [15 U.S.C. § 80a-42(d)].

(4) An order directing defendants Telfran Ltd., Telfran Corp., Mendelow and Glantz to disgorge all unjust enrichment earned as a result of the violative activities alleged herein.

(5) An order directing defendants Telfran Ltd., Telfran Corp., Mendelow and Glantz to pay civil penalties, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 9(d) of the Investment Company Act [15 U.S.C. § 80a-9(d)].

(5) An order retaining jurisdiction of this action in order to implement and carry out the terms of any Orders and Decrees which may be entered herein.

(6) An order granting such other and further relief as this Court may deem appropriate.

Respectfully submitted,



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