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UNITED STATES DISTRICT COURT CLERK
WESTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

GEN-SEE CAPITAL CORPORATION a/k/a
GEN UNLIMITED and RICHARD S. PICCOLI,

Defendants.

COMPLAINT

09 Civ. ___ () 0014

Plaintiff Securities and Exchange Commission for its complaint against Gen-See Capital Corporation a/k/a Gen Unlimited ("Gen-See") and Richard S. Piccoli, alleges as follows:

SUMMARY

1. This emergency action arises from an ongoing Ponzi scheme orchestrated by defendants Gen-See and its owner and president, Richard S. Piccoli of Williamsville, New York.
2. Gen-See and Piccoli promised investors a "guaranteed" annual return of 7.1% for a \$5,000 investment, with a higher guaranteed rate of return for larger investments. Gen-See and Piccoli claim to be able to generate these "guaranteed" returns by using investors' funds to purchase high-quality residential mortgages.

3. Gen-See and Piccoli have not invested the funds; instead, they have used investor funds to make payments owed to other investors, which is the hallmark of a Ponzi scheme. In the past two years, Piccoli and Gen-See raised at least \$4.1 million from investors and, in November 2008, Piccoli and Gen-See deposited investor checks totaling at least \$500,000 and made payments to at least two hundred investors, including Catholic priests, religious orders, and cemetery funds.

4. Defendants' conduct violated Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

5. Unless restrained and enjoined by the Court, Defendants will continue to engage in the transactions, acts, practices and courses of business alleged herein, and in transactions, acts, practices, and courses of business of a similar type and object.

6. By this action, the Commission seeks: (a) permanent injunctive relief; (b) disgorgement and prejudgment interest; (c) civil penalties; (d) emergency and preliminary relief including (i) a temporary restraining order and preliminary injunction, (ii) asset freezes, and (iii) orders requiring Defendants to provide sworn accountings, permitting expedited discovery, and prohibiting the destruction of documents; and (e) such further relief as the Court may deem appropriate.

JURISDICTION AND VENUE

7. The Commission brings this action pursuant to authority conferred 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)]. This Court has jurisdiction over this action pursuant to Section 22(a) of

the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 77u(e) and 78aa].

8. Venue lies in this district pursuant to 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]. Certain of the transactions, acts, practices and courses of business constituting the violations alleged in this complaint occurred within the Western District of New York.

9. Defendants, directly or indirectly, singly or in concert, have made use of the means or instrumentalities of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

THE DEFENDANTS

10. **Gen-See Capital Corporation**, a/k/a Gen Unlimited, is a New York corporation incorporated in 1975. Its offices are presently located at 5500 Main Street, Suite 301, Williamsville, New York 14221. Gen-See describes itself as an investment advisory and business brokerage services business. Gen-See is not registered with the Commission in any capacity. Gen-See's notes are not traded on any securities exchange or registered with the Commission under any provision of the federal securities laws.

11. **Richard S. Piccoli**, age 82, resides in Williamsville, New York, and is the president and owner of Gen-See. He is not registered with the Commission in any capacity.

THE DEFENDANTS' FRAUDULENT SCHEME

12. For at least the past decade, Defendants have engaged in a fraudulent Ponzi scheme primarily targeting the elderly and members of the Catholic community.

13. Defendants have placed numerous advertisements in Catholic publications. Gen-See's ads state that it has been "[s]erving Seniors and Retirees Since 1975." To enhance Gen-See's appeal to elderly investors seeking to protect life savings and retirement funds, the advertisements and marketing materials depict Gen-See as an extremely safe investment. These advertisements state:

- "Unlike the **Ups and Downs** of the stock market, Gen-See investors earn **7.1% Annual Interest** ... guaranteed no interest fluctuation."
- "**Safety is very important!**"
- "Since 1975, Gen-See has unfailingly served its investors with uninterrupted monthly checks either for income and/or capital growth."

14. Gen-See's marketing materials state that "our seniors and clergy are absolutely pleased with Gen-See's Re-Investment Program for the following reasons: 1. No fees or commissions. 2. You can draw a monthly check at any time you wish with 30 days notice. 3. A significant return on capital...as you are investing 100% of your funds with no fees or commissions."

15. Although Defendants claim that "**Safety is very important,**" and that investments in Gen-See are "guaranteed," investor returns depend on Defendants' ability to solicit new investments in amounts sufficient to meet obligations owed to current investors.

16. Defendants also have not disclosed to investors that Gen-See has commingled investors' funds.

17. Defendants provide investors with a certificate bearing the name "Gen-See Capital Corporation," which memorializes the amount of the investment and the rate of "guaranteed" interest payments.

18. Defendants falsely represent to investors that Gen-See invests their money in portfolios of “high-quality” residential mortgages, which permits Gen-See to provide “guaranteed” returns to investors. For example, marketing materials state that “since 1975, Gen-See Capital Corporation has a single investment product...the purchase of high quality residential mortgages from bankers at discount.”

19. Investors’ funds are not, however, invested in anything, let alone mortgage portfolios. Instead, investor funds are misappropriated by Defendants to pay off other investors and perpetuate their fraudulent scheme.

20. Account statements and bank records show that Defendants have deposited thousands of checks from investors in Gen-See. Many of the investor checks contain notations in the memo field showing that they are for the purchase of Gen-See certificates. Some of the checks contain notations indicating the promised annual rate of return.

21. These account records further show that Defendants have used funds received from new investors to fund thousands of interest payments to existing investors. Checks written by Gen-See to investors indicate that they are payments on a particular “note.” The bank records show that Defendants send investors a separate check for each “note” the investor holds, and issue most investors several checks each month.

22. The account statements and bank records show that since January 2007, Gen-See and Piccoli have received more than \$16 million and also that during this period they paid out approximately the same amount.

23. These funds were not invested as Piccoli represented.

24. Contrary to Defendants’ representations that investor returns are funded by the purchase of mortgages, the bank records do not reflect any mortgage, real estate, or investment

activity. The bank records show that Gen-See's only business activity is depositing checks written by new investors or existing investors depositing more funds, and the payment of checks to investors using funds received from other investors.

25. No registration statement is on file with the Commission or in effect as to the offering and sale of the Gen-See notes.

FIRST CLAIM FOR RELIEF
**Violations of Section 17(a) of the Securities Act,
Section 10(b) of the Exchange Act, and Rule 10b-5**

26. - The Commission repeats and realleges the allegations contained in paragraphs 1 through 24 by reference as if fully set forth herein.

27. The certificates offered and sold by Defendants are securities within the meaning of Section 2(a)(1) of the Securities Act [15 U.S.C. § 77b(1)] and Section 3(a)(10) of the Exchange Act [15 U.S.C. § 78c(a)(10)].

28. The misrepresentations and omissions described above are material.

29. Defendants, directly and indirectly, singly and in concert, knowingly or recklessly, by the use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or by the use of the mails, in the offer or sale, and in connection with the purchase or sale, of securities, have: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of, or otherwise made untrue statements of material fact, or omitted to state material facts necessary to make the statements, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, acts, practices and courses of business which operated or would operate as a fraud or deceit upon purchasers of securities or other persons.

30. By reason of the acts, omissions, practices, and courses of business set forth in this complaint, Defendants have violated, are violating, and unless restrained and enjoined, will continue to violate, Section 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 [17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF
Violations of Sections 5(a) and 5(c) of the Securities Act

31. The Commission repeats and realleges the allegations contained in paragraphs 1 through 25 by reference as if fully set forth herein.

32. Defendants, directly or indirectly: (a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities through the use or medium of a prospectus or otherwise; or carried securities or caused such securities to be carried through the mails or in interstate commerce, by means or instruments of transportation, for the purpose of sale or for delivery after sale; and (b) made use of the 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, securities without a registration statement having been filed with the Commission or being in effect as to such securities, and no exemption from registration is applicable.

33. By reason of the foregoing, Defendants have violated, are violating, 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)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court issue:

I.

Orders temporarily and preliminarily, and Final Judgments permanently, restraining and enjoining the Defendants, their agents, servants, employees, attorneys in-fact, 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 violating Section 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 [17 C.F.R. § 240.10b-5].

II.

Orders temporarily and preliminarily, and Final Judgments permanently, restraining and enjoining the Defendants, their agents, servants, employees, attorneys in-fact, 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 violating Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. § 77e(a) and (c)].

III.

An Order directing the Defendants, and their financial and brokerage institutions, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of such Order by personal service, facsimile service, or otherwise, to hold and retain within their control, and otherwise prevent, any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment or other disposal of any assets, funds, or other property (including money, real or personal property, securities, commodities, choses in action or other property of any kind whatsoever) of, held by, or under the

control of the Defendants, whether held in their names or for their direct or indirect beneficial interest wherever situated.

IV.

An Order directing the Defendants to each file with this Court and serve upon the Commission verified written accountings, signed under penalty of perjury.

V.

An Order permitting expedited discovery.

VI.

An Order enjoining and restraining the Defendants, and any person or entity acting at their direction or on their behalf, from destroying, altering, concealing, or otherwise interfering with the access of the Commission to relevant documents, books and records.

VII.

A Final Judgment requiring the Defendants to disgorge their ill-gotten gains from the violative conduct alleged in this complaint, and to pay prejudgment interest thereon.

VIII.

A Final Judgment imposing civil money penalties 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)] against the Defendants.

IX.

Such other and further relief as the Court deems appropriate.

Dated: January 7, 2009
New York, New York

Respectfully submitted,



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