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**CV 07 4144**

**GLASSER, J.**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**AZRACK, J.**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

:  
:  
: Civil Action No.  
:  
:

-against-

KEVIN JAMES DUNN, JR.,

Defendant.

:  
:  
: **COMPLAINT**  
: **FILED**  
: IN CLERK'S OFFICE  
: U.S. DISTRICT COURT E.D.N.Y.  
: \* 001 04 2007 \*  
: BROOKLYN OFFICE

Plaintiff Securities and Exchange Commission ("Commission"), for its complaint against defendant Kevin James Dunn, Jr. ("Dunn"), alleges as follows:

**SUMMARY OF ALLEGATIONS**

1. This action involves the fraudulent misappropriation of nearly \$250,000 from the widow of a Port Authority police officer who died on September 11, 2001 (the "Customer"). The stolen funds were part of the compensation the Customer received in 2004 from the September 11<sup>th</sup> Victim Compensation Fund of 2001 (the "Fund"). Defendant Dunn, a broker formerly employed by MetLife Securities, Inc. ("MetLife"), was friends with the Customer and convinced her to invest her entire recovery with MetLife and allow him to manage the investment. Dunn then proceeded to betray the Customer's trust by engaging in a series of

material misrepresentations about the purchase and sale of securities in her account and other fraudulent acts aimed at swindling her out of a substantial portion of the compensation she received from the Fund.

2. Beginning in September 2005, Dunn misappropriated a total of \$248,000 from the Customer by fraudulently creating a joint account in both of their names, forging the Customer's signature on wire transfers from the joint account, and telling the Customer outrageous lies about the status of the Customer's securities investments to deceive the Customer into giving Dunn blank checks that he deposited into his own bank account. Although MetLife terminated Dunn in February 2007, Dunn continued to defraud the Customer for two more months by acting as if he was still employed as a broker at MetLife and deceiving the Customer into giving him additional blank checks.

3. By virtue of the foregoing conduct, Dunn, directly or indirectly, violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], 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]. Unless Dunn is permanently restrained and enjoined, he will again engage in the acts, practices, transactions and courses of business set forth in this complaint and in acts, practices, transactions and courses of business of similar type and object.

#### **JURISDICTION AND VENUE**

4. The Commission brings this action pursuant to the 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)], and seeks to restrain and enjoin Dunn from engaging in the acts, practices, transactions and courses of business alleged herein. The Commission also seeks a final judgment ordering Dunn to disgorge his ill-gotten gains and pay prejudgment interest thereon,

and ordering Dunn to pay civil monetary 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)(3)].

5. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d) and 77v(a)] and Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§78u(d) and 78aa]. Dunn, directly or indirectly, singly or in concert, made use of the means or instruments of transportation or communication in, and the means or instrumentality of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein. Many of these transactions and other acts occurred in the Eastern District of New York, where the MetLife office at which Dunn worked is located and where the Customer resides.

#### **THE DEFENDANT**

6. **Dunn**, age 28, resides in Colonia, New Jersey. From November 1998 to June 2003, and again from February 2004 to February 2007, Dunn was a registered representative associated with MetLife. During the relevant period, Dunn worked at a MetLife branch office in Brooklyn, New York. Dunn holds Series 6 and 63 licenses.

#### **RELEVANT ENTITY**

7. **MetLife** is a Delaware corporation with its principal place of business in New York, New York. MetLife is registered with the Commission as a broker-dealer pursuant to Section 15(b)(1) of the Exchange Act and as an investment adviser pursuant to Section 203(c) of the Investment Advisers Act of 1940. MetLife is a wholly-owned subsidiary of Metropolitan Life Insurance Co.

## **THE DEFENDANT'S FRAUDULENT CONDUCT**

### **Background**

8. The Customer's husband was a police officer with the Port Authority of New York and New Jersey. He died at the World Trade Center on September 11, 2001. In August 2004, the Customer received \$2 million from the Fund.

9. The Customer and Dunn grew up in the same neighborhood in Staten Island, New York and were family friends. The Customer was also close friends with Dunn's wife. The Customer was an unsophisticated and inexperienced investor, and she knew that Dunn was a broker at MetLife. As a result, the Customer sought Dunn's advice about what to do with the \$2 million recovery and placed her complete faith and trust in Dunn. The Customer told Dunn that she wanted to invest the money to pay for, among other things, her daughter's college fund. In September 2004, the Customer met with Dunn and Dunn's MetLife supervisor, who was also Dunn's cousin. Dunn persuaded the Customer to invest the entire \$2 million recovery with MetLife.

### **Dunn's Theft Of The Customer's Money**

10. On Dunn's advice, the Customer initially purchased \$1,250,000 worth of shares in various tax-exempt mutual funds through her MetLife brokerage account and used the remaining \$750,000 to purchase a MetLife annuity contract. Shortly thereafter, Dunn told the Customer to discard the monthly account statements she received from MetLife because, as he told her, they were too difficult for her to understand. Dunn also told the Customer that if she ever had any questions concerning her accounts, she should call Dunn directly on his cell phone.

### **Fraudulent Brokerage Commissions**

11. Dunn first defrauded the Customer by making misrepresentations that enabled him to generate brokerage commissions on unnecessary trades. In or about September 2005 -- one year after the Customer opened her brokerage account -- Dunn told the Customer that some of the mutual fund shares held in the Customer's account had "capped out" in value and would therefore not generate any additional investment returns. This statement was false. At Dunn's behest, the Customer agreed to sell mutual fund shares, totaling \$771,138 in value, so that Dunn could supposedly "reinvest" the proceeds in higher yielding securities. In fact, Dunn simply had the money transferred to the Customer's annuity account. As a result of this transfer, Dunn was paid a \$23,157 brokerage commission out of the Customer's brokerage account.

### **Forged Wire Transfer Instructions**

12. In January 2006, Dunn made further misrepresentations to the Customer in order to steal her money. First, Dunn claimed that the Customer's brokerage account needed a "turnaround," which purportedly involved the Customer selling securities in her account and using the proceeds to make a "disbursement." These representations were false, as the so-called "turnaround" described by Dunn had no legitimate purpose or meaning in the brokerage business. Based on Dunn's false statement and at Dunn's direction, the Customer sold mutual fund shares valued at \$281,709. Dunn then directed the Customer to give Dunn a \$250,000 check, payable to MetLife, representing most of the proceeds of the sale. Dunn falsely represented to the Customer that the check would be used to purchase new securities for the Customer. The Customer trusted Dunn and complied with these directions.

13. Without the Customer's knowledge, Dunn instead used the \$250,000 check to open a "joint" brokerage account in Dunn's and the Customer's names at MetLife. Dunn forged

the Customer's signature on the account opening documents, and to avoid detection, Dunn used his mother's home address in Staten Island as the address of record on the joint account. Dunn also made himself the registered representative on the account. In addition to being unauthorized by the Customer, Dunn's opening of this account also violated a MetLife policy prohibiting a registered representative from having a joint account with his or her customer.

14. After opening the joint account, Dunn forged the Customer's signature on two wire transfer requests in order to move money from the joint account to Dunn's personal bank account. On March 14, 2006, Dunn faxed instructions to MetLife to wire \$50,000 from the joint account to Dunn's personal bank account. In addition to forging the Customer's signature on the instructions, Dunn falsely stated in the wire transfer instructions that the transfer needed to be "process[ed] ASAP as there is a family emergency." Dunn also directed the recipient of the wire transfer instructions to call Dunn's personal cell phone if there were any questions concerning the wire transfer request.

15. To process a withdrawal from a joint account, MetLife policy required that the authenticity of both account holders' signatures be certified in a manner akin to notarization and commercially known as "Medallion Guaranteed." Although the wire instructions faxed by Dunn on March 14 bear only one Medallion Guaranteed stamp, which was performed at Dunn's bank, the stamp was placed just below and slightly to the right of Dunn's signature. The placement of the stamp enabled Dunn to sign the Customer's name to the right of his own signature and falsely make it appear that the single Medallion Guaranteed stamp is centered below, and thus applies to, both signatures. MetLife processed this forged wire transfer request, enabling Dunn to steal \$50,000 from the Customer.

16. On March 26, 2006, Dunn attempted to wire an additional \$100,000 from the joint account to his own personal bank account in the same manner. Once again, Dunn forged the Customer's signature on the wire transfer instructions, asked MetLife to process the transfer "ASAP," listed his personal cell phone number for contact information, and had his own bank provide a Medallion Guaranteed stamp for his signature. This time, however, the Medallion Guaranteed stamp was placed to the left of Dunn's signature. Therefore, when Dunn forged the Customer's signature to the right of his own signature, he was unable to make it appear that the stamp applied to both signatures.

17. Due to suspicions arising from the appearance of the subsequent addition of a second signature, MetLife's compliance department blocked this wire transfer and opened an investigation. A MetLife compliance officer was told by the employee at Dunn's bank who had provided the Medallion Guaranteed stamp that only Dunn's signature had been on the wire instruction when it was stamped. When confronted by the MetLife compliance officer with the fact that only Dunn's signature appeared on the wire instructions when the bank applied the stamp, Dunn lied repeatedly to the compliance officer. Dunn falsely stated that the Customer knew that Dunn planned to withdraw the money from their joint account and falsely insisted that the Customer's signature was genuine.

18. Dunn also told a series of lies to the MetLife compliance officer about the source of the funds in the joint account. Dunn falsely stated that he and the Customer opened the joint account with the proceeds from a real estate joint venture in which the two of them had invested while the Customer's husband was still alive. Dunn also falsely stated that the account was funded by the Customer as partial repayment of a loan that Dunn had made to the Customer's husband. Although MetLife disallowed the \$100,000 wire transfer and froze the joint account,

no one from MetLife ever contacted the Customer to confirm the truth of Dunn's statements and Dunn continued as the registered representative on the Customer's MetLife accounts for almost another year.

**Misappropriation Of Other Mutual Fund Sales Proceeds**

19. Despite having been confronted and questioned by the compliance department, Dunn continued to defraud the Customer and misappropriate her assets. In April 2006, Dunn again falsely told the Customer that the value of certain mutual fund shares held in the Customer's account were "capped out," and that she therefore needed to sell those shares, whose value was approximately \$100,000, and use the proceeds to purchase other securities. Based on Dunn's misrepresentations, the Customer authorized Dunn to sell those mutual fund shares and followed Dunn's instructions on what to do with the sale proceeds. In April 2006, Dunn instructed the Customer to give him a signed check for \$25,000 with the payee line left blank. Dunn falsely represented to the Customer that he would use the check to purchase other securities for the Customer. Instead, Dunn wrote his own name in as the payee on the check and deposited the check into his own bank account.

20. Dunn misappropriated the remainder of the \$100,000 in sale proceeds in the same manner. In May 2006, Dunn again instructed the Customer to give him a signed check for \$25,000 with the payee line left blank. Dunn again falsely represented to the Customer that he would use the check to purchase other securities for the Customer. Instead, Dunn again wrote his own name in as the payee on the check and deposited the check into his own bank account. In June 2006, Dunn instructed the Customer to give him a signed check for \$50,000 with the payee line left blank. Dunn again falsely represented to the Customer that he would use the



check to purchase other securities for the Customer. Instead, Dunn again wrote his own name in as the payee on the check and deposited the check into his own bank account.

21. In August 2006, Dunn misled the Customer into selling additional mutual fund shares valued at \$99,985 and again misappropriated the sale proceeds. As before, Dunn falsely represented that the value of certain of the mutual fund shares held in the Customer's account were "capped out," and that the Customer therefore needed to sell those shares and use the proceeds to purchase other securities. Based on Dunn's misrepresentations, the Customer authorized Dunn to sell those mutual fund shares and again followed Dunn's instructions on what to do with the sale proceeds. On October 4, 2006, Dunn instructed the Customer to give him a signed check for \$50,000 with the payee line left blank. Dunn again falsely represented to the Customer that he would use the check to purchase other securities for the Customer. Instead, Dunn again wrote his own name in as the payee on the check and deposited the check into his own bank account.

22. On February 16, 2007, MetLife terminated Dunn for "endorsing" the Customer's signature on the March 26, 2006, wire transfer instructions. Dunn nevertheless continued to hold himself out to the Customer as a registered representative employed at MetLife. At the end of February 2007, Dunn instructed the Customer to give him a check for \$10,000 with the payee line left blank. Yet again, Dunn falsely represented to the Customer that he would use the check to purchase other securities for the Customer. The Customer gave Dunn a \$10,000 check dated February 26, 2007, and Dunn again wrote his own name in as the payee on the check and deposited the check into his own bank account.

23. In all, from April 2006 through February 2007, Dunn misappropriated a total of \$160,000 from the Customer in this manner.

### **The Phony "Processing Fee"**

24. In or about April 2007, Dunn defrauded the Customer out of an additional \$15,000 by falsely claiming that the Customer needed to pay MetLife a "processing fee." The Customer had informed Dunn that she needed to withdraw \$200,000 from her brokerage account for a down payment on a new home. Rather than admit that he had been fired and risk exposing his prior fraud, Dunn stalled the Customer for several weeks. Dunn eventually told the Customer that she would first have to pay MetLife a \$15,000 "processing fee" that would later be refunded to her. As in the past, Dunn instructed the Customer to give him a signed check with the payee line left blank. Dunn wrote his own name in as the payee on the \$15,000 check and deposited the check into his own bank account. When the Customer did not receive the \$200,000 after paying the phony "processing fee," she contacted MetLife directly and learned for the first time that Dunn had been fired two months earlier.

### **CLAIM FOR RELIEF**

#### **Violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

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

26. Dunn directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or by the use of the mails, or of the facilities of a national securities exchange, in the offer or sale and in connection with the purchase or sale of securities, knowingly or recklessly, has (a) employed devices, schemes and artifices to defraud; (b) obtained money or property by means of, or otherwise made, untrue statements of material fact, or has omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they

were made, not misleading; and (c) engaged in acts, transactions, practices and courses of business which operated or would have operated as a fraud or deceit upon purchasers of securities and upon other persons.

27. As part and in furtherance of the fraudulent schemes and other violative conduct described above, Dunn, directly or indirectly, singly or in concert, employed the deceptive devices, schemes, artifices, contrivances, acts, transactions, practices and courses of business and made the misrepresentations and/or omitted to state the facts alleged above in paragraphs 1-3 and 8-24.

28. The false and misleading statements and omissions made by Dunn, more fully described above in paragraphs 1-3 and 8-24, were material.

29. Dunn knew, or was reckless in not knowing, that these material misrepresentations and omissions, more fully described above in paragraphs 1-3 and 8-24, were false or misleading, and Dunn otherwise acted with the requisite scienter by knowingly or recklessly engaging in the conduct described above in paragraphs 1-3 and 8-24.

30. By reason of the acts, statements, omissions, practices, and courses of business alleged herein, Dunn, singly or in concert, directly or indirectly, violated, and unless enjoined will again 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 thereunder [17 C.F.R. § 240.10b-5].

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Commission respectfully requests that this Court enter a Final Judgment:

I.

Permanently enjoining and restraining Dunn, his agents, servants, employees and attorneys and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating, directly or indirectly 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] thereunder.

II.

Ordering Dunn to disgorge the ill-gotten gains he received from the violations alleged herein, and to pay prejudgment interest thereon.

III.

Ordering Dunn to pay civil monetary 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)(3)].

IV.

Granting such other and further relief as this Court deems appropriate.

Dated: New York, New York  
October 4, 2007

By:



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