

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

BENNY L. JUDAH and
EXCEL LEASE FUND, INC.

Defendants.

5-09CV0087-C

Civil Action No. _____

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows against Defendant Benny L. Judah (“Judah”) and Defendant Excel Lease Fund, Inc. (“Excel”) (collectively, “Defendants”), and would respectfully show the Court as follows:

SUMMARY

1. From January 2006 through at least March 2009, the Defendants engaged in a fraudulent offering of debenture securities issued by Excel. In offering materials, the Defendants represented that Excel sought to raise \$50 million to fund Excel’s equipment-leasing business, to fund Excel’s “investments,” and to retire debentures that Excel had issued earlier. In practice, however, Judah used offering proceeds in a manner grossly inconsistent with those representations. He lost at least \$5 million of the offering proceeds “day-trading” securities for Excel’s account. He also used investment proceeds to provide related-party loans to himself and to other businesses he controlled. In addition, the Defendants represented to investors, since January 2006, that Excel was operating profitably, when in fact it was not. Finally, the

Defendants grossly overstated the value of Excel's assets, claiming approximately \$15 million in fictitious leases.

2. By this conduct, Defendants have offered and sold securities in violation of the anti-fraud provisions of the federal securities laws, specifically Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and of Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

3. The Commission, in the interest of protecting the public from further such fraudulent activities and harm, brings this action seeking to permanently enjoin the Defendants from further violations of the federal securities laws. The Commission further seeks orders requiring the Defendants to disgorge their ill-gotten gains, plus prejudgment interest thereon, and to pay civil monetary penalties as allowed by law.

JURISDICTION AND VENUE

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

5. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78(aa)].

6. Defendants, directly or indirectly, made use of the means or instruments of transportation and communication, and the means or instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein. Certain of the transactions, acts, practices, and courses of business alleged herein took place in the Northern District of Texas.

DEFENDANTS

7. **Judah**, 50 years old, is a resident of Lubbock, Texas, and the president and sole owner of Excel. Judah is not registered with the Commission in any capacity. Judah is a recidivist securities-law violator, this Court having imposed an injunction against him in 2001 for violations of the securities-registration and anti-fraud provisions of the federal securities laws, specifically Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§77e(a), 77e(c), and 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and of Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder. *SEC v. Benny L. Judah and Excel Lease Fund, Inc.*, Civil Action No. 5:01-CV-045 (N.D. Tex., January 2001). In that case, the Court ordered Judah to pay a \$50,000 civil penalty.

8. **Excel** is a Texas corporation headquartered in Lubbock, Texas. It is the issuer of the debentures. Excel has never registered any securities offerings with the Commission. As of April 20, 2009, Excel had debentures issued and outstanding with a face value of approximately \$40 million held by approximately 240 investors, primarily located in the Lubbock area. Excel is likewise a recidivist securities-law violator, this Court having imposed an injunction against it in 2001 for violations of the securities-registration and anti-fraud provisions of the federal securities laws, specifically Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§77e(a), 77e(c), and 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and of Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder. *SEC v. Benny L. Judah and Excel Lease Fund, Inc.*, Civil Action No. 5:01-CV-045 (N.D. Tex., January 2001).

THE DEFENDANTS' INVESTMENT SCHEME

9. In January 2006, Excel, by and through its owner, Judah, initiated an unregistered offering of 10%, five-year debentures. In an Excel offering circular that Judah provided to

investors, the Defendants represented that Excel sought to raise up to \$50 million in the offering. In the same offering circular, the Defendants represented that the offering proceeds would be limited to three purposes: (1) to retire certain debentures that investors had purchased from Excel earlier; (2) to fund Excel's equipment-leasing business; and (3) to fund Excel's "investments." These representations were false and misleading. In reality, the Defendants did not limit the proceeds to those three uses.

10. Since January 2006 and through at least March 2009, Judah misappropriated a least \$5 million of the offering proceeds, placing these funds in an Excel securities brokerage account. There, he engaged in a so-called "day-trading" investment strategy whereby he lost all of the investor funds that he had misappropriated. Defendants did not disclose to investors or potential investors that offering proceeds would be used in this manner.

11. Judah also used millions of dollars of investor funds to provide undisclosed, related-party loans to himself and to other businesses he controlled, certain of which are now insolvent. During the offering, Excel had approximately \$20 million in such related-party loans outstanding. The Defendants omitted to disclose these related-party transactions.

12. To entice investors to purchase the debentures, the offering circular contained a glowing description of Excel's business. It stated that the company "historically averaged a 19.8% annual return on its portfolio of leases and other investments." It further stated that the company "is able to profitably operate on the margin difference between the average portfolio yield (19.8%) and the cost of funding (10%)." In reality, however, Excel was not operating profitably during the offering period.

13. The Excel offering circular also contained false and misleading financial statements. These financial statements reflected that, as of year-end 2004, Excel had loans outstanding to

other Judah-controlled companies of approximately \$967,000. In reality, as of year-end 2004, Excel had loans of more than \$3.5 million outstanding to Judah-related entities.

14. Finally, the Defendants also grossly overstated the value of the of Excel's assets during the offering. According to the offering circular, Excel had a "portfolio in excess of \$45 million consisting of some 4500 leases and notes receivable." In reality, leases valued at approximately \$15 million in the portfolio were fictitious.

FIRST CLAIM

Violations of Section 17(a) of the Securities Act

15. Plaintiff Commission repeats and incorporates paragraphs 1 through 13 of this Complaint by reference as if set forth *verbatim*.

16. The Defendants, directly or indirectly, singly or in concert with others, in the offer or sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes, and artifices to defraud; (b) obtained money or property by means of untrue statements of a material fact and omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices, and courses of business which operate or would operate as a fraud and deceit upon the purchasers.

17. As a part of and in furtherance of their scheme, the Defendants, directly and indirectly, prepared, disseminated, or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which 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, including, but not limited to, those set forth in Paragraphs 1 through 13, above.

18. With respect to violations of Sections 17(a)(2) and (3) of the Securities Act, the Defendants were negligent in their actions regarding the representations and omissions alleged herein. With respect to violations of Section 17(a)(1) of the Securities Act, the Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

19. By reason of the foregoing, the Defendants have violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM

Violations of Section 10(b) of the Exchange Act and Rule 10b-5

20. Plaintiff Commission repeats and incorporates paragraphs 1 through 13 of this Complaint by reference as if set forth *verbatim*.

21. The Defendants, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of a material fact and omitted to state a material fact 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 operate or would operate as a fraud and deceit upon purchasers, prospective purchasers, and any other persons.

22. As a part of and in furtherance of their scheme, the Defendants, directly and indirectly, prepared, disseminated, or used contracts, written offering documents, promotional materials,

investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which 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, including, but not limited to, those set forth in Paragraphs 1 through 13 above.

23. The Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

24. By reason of the foregoing, the Defendants violated and, unless 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].

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

I.

Permanently enjoin Defendants from violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

II.

Order the Defendants to disgorge an amount equal to the funds and benefits obtained illegally as a result of the violations alleged, plus prejudgment interest on that amount.

III.

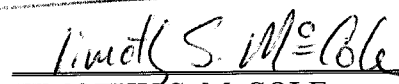
Order the Defendants to pay civil monetary penalties in an amount determined as appropriate by the Court pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] for the violations alleged herein.

IV.

Order such further relief as this Court may deem just and proper.

Dated this 21st Day of April 2009.

Respectfully submitted,


TIMOTHY S. McCOLE
Mississippi Bar No. 10628
United States Securities and
Exchange Commission
Fort Worth Regional Office
801 Cherry Street, Suite 1900
Fort Worth, Texas 76102
(817) 978-6453
(817) 978-2700 (facsimile)
mccolet@sec.gov

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Defendants

BENNY L. JUDAH and EXCEL LEASE FUND, INC.

5-09CV0087-C

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant: _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEY (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Timothy S. McCole
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, Texas 76102
Telephone: (817) 978-6453

ATTORNEYS (IF KNOWN)
Michael H. Carper
1102 Main St.
Lubbock, TX 79401
Counsel for Defendants

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

- | | | | | | |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | PTF <input type="checkbox"/> 1 | PTF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 | PTF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Other Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 156 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copy rights <input type="checkbox"/> 830 Patient <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395FF) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Acts <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights		

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (Specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judge

VI. CAUSE OF ACTION CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING (DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY):

Brief Description of cause:

17(a) of the Securities Act of 1933, [15 U.S.C. §§ 77q(a)]; and Section 10(b) of the Securities Exchange Act of 1934, [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND YES NO

VIII. RELATED CASE(S) (See Instructions): U.S. Commodity Futures Trading Commission v. CRW Management LP and Ray M. White, defendants, Christopher R. White and Hurricane Motorsports, LLC, Relief Defendants

IF ANY

JUDGE _____

DOCKET NUMBER _____

DATE

April 21, 2009

SIGNATURE OF ATTORNEY OF RECORD

Timothy S. McCole

FOR OFFICE USE ONLY

Receipt # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____