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**CV 08 3509**

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF NEW YORK**

**FEUERSTEIN, J.**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JEFFREY FISHMAN,

Defendant.

**WALL, M.J.**  
**COMPLAINANT**

Civil Action No. 08-3509

U.S. DISTRICT COURT E.D.N.Y.

AUG 27 2008

BROOKLYN OFFICE

Plaintiff Securities and Exchange Commission ("Commission"), for its complaint against defendant Jeffrey Fishman ("Fishman"), alleges as follows:

**SUMMARY**

1. This case involves two separate fraudulent schemes orchestrated by Fishman, formerly the president and chief executive officer of One Liberty Properties, Inc. ("OLP"), a publicly traded New York based real estate investment trust.

2. In the first scheme, Fishman misappropriated hundreds of thousands of dollars from Medemil LLC ("Medemil"), a company Fishman created to invest in foreign currency options. Between 2001 and 2005, Fishman raised approximately \$940,000 from seventeen individuals to invest in Medemil, including family, friends, and business

colleagues, and misappropriated at least \$609,000 of this amount, which he used to pay personal expenses and to gamble.

3. In order to conceal his misappropriation of Medemil funds, Fishman deliberately falsified account statements and other documents he provided to Medemil's investors and accountants. By 2005, all of the Medemil investors' funds had been dissipated as a result of Fishman's misconduct and through trading losses.

4. In the second scheme, Fishman extracted undisclosed kickbacks from two OLP business partners. In 2002 and 2003, Fishman demanded and received at least \$990,000 in illicit payments in exchange for providing OLP's commercial partners more favorable terms in business transactions involving OLP. Fishman never disclosed these payments and their relation to OLP's business transactions to OLP or to OLP's auditors. Consequently, OLP never disclosed these related party transactions in its financial statements, proxy statements, or registration statements filed with the Commission between 2002 and 2005.

5. By virtue of the conduct alleged herein, Fishman, directly or indirectly, has engaged in transactions, acts, practices and courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13a-14, and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.13a-14, and 240.13b2-2]; and pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Fishman is also liable for aiding and abetting OLP's violations of Sections 13(a), 13(b)(2)(B)(i), and 14(a) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(B)(i), and 78n(a)] and Rules 12b-20,

13a-1, 13a-13, and 14a-9 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13, and 240.14a-9].

6. Unless permanently restrained and enjoined, Fishman 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**

7. The Commission brings this action pursuant to 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 Fishman from engaging in the acts, practices, transactions and courses of business alleged herein. The Commission also seeks a final judgment: (a) ordering Fishman to disgorge the ill-gotten gains he received as a result of his violations, and pay prejudgment interest thereon; (b) ordering Fishman 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)]; and (c) prohibiting Fishman from acting as an officer or director of a public company pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)].

8. This Court has jurisdiction over this action under Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)] and Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78aa].

9. Venue is proper in this Court 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 alleged herein, which

constitute violations of the Securities Act and Exchange Act, occurred within the Eastern District of New York, including, among other things, conduct by Fishman while at OLP's offices in Great Neck, New York.

10. Fishman, directly or indirectly, made use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

### **THE DEFENDANT**

11. **Fishman**, age 49, resides in Bedford, New York. Fishman was the president and chief executive officer of OLP from 2002 until 2005, and the president and chief operating officer of OLP from December 1999 until December 2001. Fishman formed Medemil in 2001 and served as its general partner until 2005. During the relevant period, Fishman worked at OLP's office in Great Neck, New York. Fishman resigned from OLP in July 2005, following the discovery of the fraudulent financial dealings detailed herein.

### **RELEVANT ENTITIES**

12. **OLP** is a Maryland corporation with its principal place of business in Great Neck, New York. OLP owns and manages a portfolio of retail, industrial, office, movie theatres, and other properties under long-term leases. OLP's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange.

13. **Medemil** is a New York limited liability company that Fishman formed in 2001 and operated out of his OLP office in Great Neck, New York. Fishman served as

the general partner of Medemil. Fishman solicited investors in Medemil by representing that the partnership would invest in foreign currency markets.

## FACTS

### **A. Fishman's Misappropriation of Medemil Investor Funds**

14. Beginning in 2001, Fishman raised approximately \$940,000 from seventeen individuals to invest in Medemil, including family, friends, and business colleagues (the "Investors"). Fishman represented to the Investors that Medemil would engage in foreign currency trading under the direction and management of a third party investment adviser (the "Adviser"). The Medemil Operating Agreement, which was provided to, and executed by, the individual Medemil investors, similarly represented that Medemil would primarily invest in foreign currency markets.

15. Around March 2001, Fishman opened a brokerage account in Medemil's name at a broker-dealer (the "Medemil Account"). As Medemil's general partner, Fishman had signatory authority over, and controlled, the Medemil Account. In March and April of 2001, funds from fifteen investors were deposited in the Medemil Account, and the Adviser began trading foreign currency options for Medemil shortly thereafter.

16. Within a few months, Fishman began illicitly withdrawing funds from the Medemil Account, and used those funds to pay his personal expenses and to gamble. From 2001 through January 2005, Fishman unlawfully withdrew at least \$609,000 from the Medemil Account.

17. In order to conceal his looting of the Medemil Account, Fishman sent false account statements and other documents to the Investors. The false account statements showed that the investments were profitable and account balances were

increasing when in fact Fishman had been illegally withdrawing funds from the Medemil Account and the account balances were decreasing. Fishman also provided false account statements and other documents to Medemil's accountants, knowing that the accountants would rely on those documents to prepare, among other things, K-1 tax forms for the Investors.

18. Fishman also concealed his misappropriation of Investor funds by misrepresenting to the Adviser that certain Investors had withdrawn some of their investments, when in fact Fishman had withdrawn the funds for his own use. At one point, Fishman misrepresented to the Adviser that all of the Investors had withdrawn their investments, thereby precluding the Medemil Account from any trading for a period of time.

19. In 2004, Fishman solicited two new Medemil investors while he continued to loot the Medemil Account. Fishman sent these investors the same Medemil Operating Agreement, which represented that Medemil would primarily invest in foreign currency markets, he sent the original investors. The new investors deposited funds in the Medemil Account in approximately July 2004.

20. Fishman continued to make illegal withdrawals from the Medemil Account, and by July 2005 all of the Investors' funds had been dissipated as a result of Fishman's misappropriations and through trading losses.

**B. The Receipt of Undisclosed Kickbacks from OLP's Commercial Partners**

21. Between August 2002 and August 2003, Fishman extracted at least \$990,000 in undisclosed kickbacks from two OLP commercial partners. Fishman never disclosed his receipt of these payments to OLP, or to OLP's auditors or audit committee.

22. In August 2002, Fishman demanded and received an illicit payment of \$450,000 from an OLP tenant ("Businessman A") in connection with a sale/leaseback transaction between OLP and Businessman A's company. OLP, led by Fishman, purchased a movie theatre owned by Businessman A's company in Brooklyn, New York, for \$9.5 million through a joint venture and then leased the theatre back to Businessman A's company to operate the facility. In exchange for Businessman A's \$450,000 payment to him, Fishman, on behalf of OLP, agreed to lease terms less favorable to OLP, namely requiring a smaller security deposit at the time of the closing in 2002.

23. In connection with the 2002 sale/leaseback transaction, Fishman also demanded and received a stream of additional payments from Businessman A totaling \$140,000: \$15,000 in December 2002, \$75,000 in February 2003, and \$50,000 in May 2003 (made in two separate \$25,000 payments).

24. In February 2003, Fishman also demanded and received a \$250,000 kickback from Businessman A in connection with OLP's 2003 purchase of a property in Monroe, New York owned by Businessman A's company.

25. In August 2003, Fishman demanded and received an illicit payment of \$150,000 from a company controlled by a second OLP commercial partner ("Businessman B"). Unbeknownst to OLP, Fishman demanded and received this \$150,000 kickback from Businessman B's company in connection with a transaction for an OLP subsidiary to purchase a Los Angeles, California, commercial office and production studio building for approximately \$21,500,000. OLP and Businessman B's company each acquired a 50% interest in the property.

26. Fishman concealed Businessman B's payment from OLP by routing the payment through Businessman A.

27. During the relevant period, Fishman never disclosed to OLP, or OLP's auditors or audit committee, the illicit payments he received from Businessman A or Businessman B. In fact, in 2004, Fishman affirmatively denied receiving any payments from Businessman A when confronted by an OLP in-house attorney – who was also an OLP officer – who had been informed by Businessman A about Businessman A's \$450,000 payment to Fishman.

28. In total, Fishman received at least \$990,000 in illicit payments in 2002 and 2003. The illicit payments exceeded Fishman's disclosed OLP compensation by 131% and 121% for those years.

**C. The Failure to Disclose Related Party Transactions in OLP's Public Filings**

29. The payments made to Fishman by OLP's commercial partners were related party transactions that were required to be disclosed pursuant to Commission regulations and Generally Accepted Accounting Principles.

30. As the president and chief executive officer of OLP, Fishman approved drafts of OLP's public filings, had the authority to request changes, and signed the final Forms 10-K and 10-Q that OLP filed with the Commission between 2002 and 2005. Fishman knew or recklessly disregarded that the related party transactions were not disclosed in OLP's public filings. Fishman also was responsible for making representations to OLP's auditors concerning OLP's consolidated financial statements, including, among other things, representations that related party transactions were properly recorded or disclosed in the financial statements.



31. Prior to Fishman's resignation from OLP in 2005, none of OLP's public filings disclosed the payments made to Fishman by OLP's commercial partners. Specifically, OLP failed to disclose the related party transactions in several filings with the Commission, including OLP's proxy statements and Forms 10-Q and 10-K for the years 2002 and 2003, its Form S-8 filed on July 15, 2003, and its Rule 424(b) prospectus supplement filed on October 5, 2003, through which OLP offered 3.25 million shares of its common stock for sale to the public. OLP's registration statements also incorporated by reference the following filings that omitted the related party transactions: 1) OLP's Form 10-K for the fiscal year ended December 31, 2002, filed on March 27, 2003; 2) OLP's Form 10-Q for the three months ended March 31, 2003, filed on May 13, 2003; and 3) OLP's Form 10-Q for the three months ended June 30, 2003, filed on August 12, 2003.

32. OLP's proxy statements also provided false and misleading disclosures concerning the related party transactions by omitting to disclose them. For example, the "Certain Relationships and Related Transactions" section of OLP's proxy statement, which was incorporated by reference in OLP's 2002 Form 10-K, identified various related party transactions and relationships, including loans made to Fishman by OLP, and Fishman's wife's ownership of a 5% equity interest in a company in which OLP owned a 95% interest. The filing, however, failed to disclose the related party transactions between Fishman and Businessman A.

33. As the president and chief executive officer of OLP, Fishman signed auditor representation letters that he knew, or was reckless in not knowing, would be

provided to OLP's auditors and that included, among other things, omissions and misrepresentations concerning OLP's transactions with related parties.

34. Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, Fishman also signed certifications for eleven Forms 10-Q and 10-K filed between 2002 and 2005, including false certifications that Fishman had disclosed to OLP's auditors and audit committee "any fraud, whether or not material, that involves management or other employees who have a significant role in [OLP]'s internal controls" over financial reporting. None of these filings disclosed Fishman's illicit receipt of payments from Businessman A and Businessman B, and resulted in material omissions in OLP's public filings.

#### **FIRST CLAIM FOR RELIEF**

##### **Violations of Sections 17(a) of the Securities Act**

35. The Commission realleges and incorporates Paragraphs 1 through 34 by reference as if fully set forth herein.

36. Fishman, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce, or by the use of the mails, knowingly or recklessly, has: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact, or 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; or (c) engaged in acts, transactions, practices or courses of business which operated or would have operated as a fraud or deceit upon purchasers of securities.

37. By reason of the foregoing, Fishman, directly or indirectly, has violated, and unless enjoined will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**SECOND CLAIM FOR RELIEF**

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

38. The Commission realleges and incorporates Paragraphs 1 through 37 by reference as if fully set forth herein.

39. Fishman, directly or indirectly, by use of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of securities, knowingly or recklessly, has: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact, or omitted to state material facts necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaged in transactions, acts, practices and courses of business which operated or would have operated as a fraud or deceit upon any person.

40. The misstatements and omissions of fact detailed in Paragraphs 1 through 39 were material.

41. By reason of the foregoing, Fishman, directly or indirectly, has violated, and unless enjoined will again 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].

### **THIRD CLAIM FOR RELIEF**

#### **Violations of Section 13(b)(5) of the Exchange Act**

42. The Commission realleges and incorporates Paragraphs 1 through 41 by reference as if fully set forth herein.

43. Fishman knowingly circumvented or knowingly failed to implement a system of internal accounting controls or knowingly falsified, directly or indirectly, or caused to be falsified books, records or accounts described in Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

44. By engaging in the conduct alleged above, Fishman, directly or indirectly, has violated, and unless enjoined will again violate, Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

### **FOURTH CLAIM FOR RELIEF**

#### **Violations of Exchange Act Rule 13b2-2**

45. The Commission realleges and incorporates Paragraphs 1 through 44 by reference as if fully set forth herein.

46. Fishman directly or indirectly: (a) made, or caused to be made, materially false or misleading statements, or (b) omitted to state, or caused others to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, to an accountant in connection with an audit, review or examination of financial statements or the preparation or filing of a document or report required to be filed with the Commission.

47. By engaging in the conduct alleged above, Fishman, directly or indirectly, has violated, and unless enjoined will again violate, Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

### **FIFTH CLAIM FOR RELIEF**

#### **Violations of Exchange Act Rule 13a-14**

48. The Commission realleges and incorporates Paragraphs 1 through 47 by reference as if fully set forth herein.

49. In the manner described in Paragraphs 1 through 48, Fishman, directly or indirectly, falsely signed certifications indicating that he had personally reviewed periodic reports containing financial statements which an issuer filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and that, based on his knowledge, (a) these reports did not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report; and (b) that information contained in these reports fairly presented, in all material respects, the financial condition and results of the issuer's operations.

50. By engaging in the conduct alleged above, Fishman violated, and unless enjoined will again violate, Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14].

### **SIXTH CLAIM FOR RELIEF**

#### **Aiding and Abetting OLP's Violations of Sections 13(a), 13(b)(2)(B)(i), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 and 14a-9 Thereunder**

51. The Commission realleges and incorporates Paragraphs 1 through 50 by reference as if fully set forth herein.

52. OLP failed to file factually accurate annual and quarterly reports with the Commission, and failed to provide, in addition to the information expressly required to be included in a statement or report filed with the Commission, such further material

information as was necessary to make the required statements, in the light of the circumstances under which they were made, not misleading.

53. By reason of the foregoing, OLP violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13].

54. OLP failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were executed in accordance with management's general or specific authorization.

55. By reason of the foregoing, OLP violated Section 13(b)(2)(B)(i) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)(i)].

56. OLP, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, solicited proxies, consents or authorization in respect of its securities that contained statements which, in the light of the circumstances under which they were made, were false or misleading with respect to material facts, or omitted to state material facts necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which became false or misleading.

57. By reason of the foregoing, OLP violated Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9].

58. Pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Fishman aided and abetted OLP's violations of Sections 13(a), 13(b)(2)(B)(i) and 14(a) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(B)(i) and 78n(a)] and Rules 12b-

20, 13a-1, 13a-13 and 14a-9 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13 and 240.14a-9], and unless enjoined, will again aid and abet violations of these provisions of the Exchange Act and the Rules thereunder. Fishman knowingly provided substantial assistance to OLP by, among other things, engaging in the conduct alleged in Paragraphs 1 through 57.

### **PRAYER FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests that this Court issue a Final Judgment:

#### **I.**

Permanently restraining and enjoining Fishman, and 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, from violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13a-14, and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.13a-14, and 240.13b2-2]; and from aiding and abetting violations of Sections 13(a), 13(b)(2)(B)(i), and 14(a) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(B)(i), and 78n(a)] and Rules 12b-20, 13a-1, 13a-13, and 14a-9 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13, and 240.14a-9];

#### **II.**

Ordering Fishman to disgorge any and all ill-gotten gains he received as a result of his violations of the federal securities laws, and to pay prejudgment interest thereon;

**III.**

Ordering Fishman to pay 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)(3)];

**IV.**


Permanently barring Fishman from serving as an officer or director of a public company pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)]; and

**V.**

Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
August 27, 2008

By



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