

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

2008 MAY 22 P 3:01

SECURITIES AND EXCHANGE
COMMISSION,

BY _____

Plaintiff,

v.

LANDOAK SECURITIES, LLC
("LANDOAK");
PATRICK L. MARTIN ("MARTIN"); and
MICHAEL A. ATKINS ("ATKINS")

Defendants

CIVIL ACTION FILE NO.

3:08-CV-209

Phillips/Guyton

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

The Plaintiff, Securities and Exchange Commission ("Commission" or "Plaintiff"), files this complaint (the "Complaint") and alleges the following:

SUMMARY

1. Plaintiff brings this action to enjoin violations of the federal securities laws, to obtain disgorgement plus prejudgment interest; and to pursue civil penalties against Defendants LandOak Securities, LLC ("LandOak Securities"), a Knoxville, Tennessee based investment advisor and broker-dealer registered with the Commission, and its current and former owners, Patrick L. Martin ("Martin") and Michael A. Atkins ("Atkins") (together, "Defendants").

2. Between July 1997 and July 1998, Martin and Atkins sold investors approximately \$3.6 million in promissory notes and membership interests in LandOak

Mortgage (“LandOak Mortgage”), a Tennessee limited liability company founded and controlled by Martin and Atkins. More than a third of LandOak Mortgage investors were LandOak Securities advisory clients, who together invested a total of \$1.8 million in Mortgage.

3. LandOak Mortgage then loaned the raised funds to LandOak Development Company, LLC (“LandOak Development”), another Tennessee limited liability company, which was at that time controlled and partially owned by Martin and Atkins.

4. Between July 2002 and January 2003, Martin and Atkins misappropriated, diverted, or misused approximately \$2.8 million from LandOak Mortgage.

5. In July 2002, Martin and Atkins misappropriated \$1,545,000 from LandOak Mortgage’s bank account and diverted the funds to Atmospheric Glow Technologies, Inc. (“AGT”), a publicly traded company.

6. Both Martin and Atkins owned a substantial interest in AGT, and both were members of AGT’s Board of Directors.

7. In August 2002 and January 2003, Martin and Atkins misappropriated another \$525,000 from LandOak Mortgage, which they used to settle two separate lawsuits pending against them individually.

8. Later, still in January 2003, Martin misappropriated another \$770,000 from LandOak Mortgage’s bank account. Martin paid \$400,000 of the \$770,000 to Atkins. Though Martin has characterized the \$770,000 as a “loan” to himself, he has never repaid any of the funds to LandOak Mortgage.

9. LandOak Securities and Martin failed to maintain certain books and records required of investment advisors registered with the Commission, and also made false statements and material omissions in LandOak Securities' Forms ADV and amendments filed with the Commission.

JURISDICTION AND VENUE

10. The Commission brings this action pursuant to Sections 209(d) and 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(d)-(e)] to enjoin the Defendants from engaging in the transactions, acts, practices and courses of business alleged in this Complaint, and transactions, acts, practices and courses of business of similar purport and object, for disgorgement of illegally obtained funds plus prejudgment interest and other equitable relief, and for civil money penalties.

11. This Court has jurisdiction over this action pursuant to Section 214 of the Advisers Act [15 U.S.C. 80b-14].

12. The Defendants, directly and indirectly, have made use of the mails and the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

13. Venue lies in this Court pursuant to Section 214 of the Advisers Act [15 U.S.C. §80b-14] because certain of the transactions, acts, practices and courses of business constituting violations of the Advisers Act have occurred within the Eastern District of Tennessee. Among other things, LandOak Securities maintains its principal place of business and Martin resides in the Eastern District of Tennessee.

THE DEFENDANTS

14. **LandOak Securities, LLC**, a Tennessee limited liability company, has been registered with the Commission since 2000 as an investment adviser, pursuant to Section 203 of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. § 80b-3]. Previously, LandOak Securities was registered with the Commission as an investment adviser from 1996 to 1997. From 1998 to 2000, LandOak Securities was registered with the State of Tennessee as an investment adviser. At the time of the offering, LandOak Securities had written advisory agreements with at least ten of the thirteen LandOak Mortgage investors who were advisory clients. Since 1996, LandOak Securities has also been registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934.

15. **Patrick L. Martin**, 55, of Knoxville Tennessee, is currently the sole owner and principal operator of LandOak Securities. From 1996 through the present, Martin has been associated with LandOak Securities in its capacity as an investment adviser and has been a registered representative of LandOak Securities in its capacity as a broker-dealer. Since May 1999, Martin has been a member of the Board of Directors of AGT, and he is currently its Chairman. Martin beneficially owns approximately 21 million shares of AGT common stock, representing 9% of its outstanding shares.

16. **Michael A. Atkins**, 47, of Greensboro, Georgia, was a partial owner of LandOak Securities from 1996 until October 2006. For at least that same time period, Atkins was associated with LandOak Securities in its capacity as an investment adviser and was a registered representative of LandOak Securities in its capacity as a broker-dealer. Atkins was also a director of AGT from May 1999 until early 2004. Atkins

beneficially owns approximately 18 million shares of AGT common stock, representing 8% of that company's outstanding shares.

FACTS

A. THE LANDOAK MORTGAGE PRIVATE PLACEMENT OFFERING

17. From 1997 through 1998, Martin and Atkins, through LandOak Mortgage, sold approximately \$3.6 million of promissory notes and membership interests in a private placement offering to approximately thirty-five investors.

18. Thirteen of the investors, who invested a total of \$1.8 million in LandOak Mortgage, were also LandOak Securities advisory clients. Of those thirteen, at least nine held accounts advised by Martin or Adkins.

19. Martin, Atkins, and LandOak Securities owed a fiduciary duty to these thirteen advisory client investors.

20. At least ten of these thirteen investors were LandOak Securities advisory clients at the time they invested in either the promissory notes or membership interests. LandOak Securities, Martin, and Atkins advised these clients to invest in the securities offered by LandOak Mortgage.

21. Initially, investors in LandOak Mortgage were provided with a July 14, 1997 Private Placement Memorandum ("PPM"), which contained various representations to them about the uses that would be made of their funds.

22. According to the PPM, LandOak Mortgage would loan the investor funds raised in the private placement to LandOak Development, which in turn would use the funds to purchase and develop commercial property located in Knoxville, Tennessee (the "Property").

23. The PPM stated that, for each \$10,000 invested in LandOak Mortgage, the investor would purchase one membership interest. According to the PPM, purchasers of membership interests would be admitted as Members of LandOak Mortgage upon the closing of the offering.

24. The PPM contained sections disclosing "Sources and Estimated Uses of Funds," "Compensation and Fees" and "Conflicts of Interest and Indemnification." However, nowhere in these sections (or anywhere else in the PPM) were investors warned that their assets or the assets of LandOak Mortgage would be diverted by Martin, Atkins, or AGT for their own purposes.

25. The PPM provided that the LandOak Mortgage Offering would terminate on July 13, 1998.

26. On October 27, 1997, LandOak Development issued Martin a promissory note in the amount of \$2,008,598.91, at a fixed rate of six percent interest. The note was signed by Martin, both on his own behalf and as chief manager of LandOak Development.

27. Before the termination date of July 13, 1998 provided for in the PPM passed, an April 30, 1998 Supplement to the PPM ("PPM Supplement") was issued.

28. The PPM Supplement recited that \$2,311,000 of membership interests in LandOak Mortgage had been sold at of the April 30, 1998 date of the PPM Supplement.

29. The PPM Supplement also recited that Martin had loaned LandOak Development \$2,008,000 at a rate of six percent, and disclosed that LandOak Mortgage anticipated a portion of the proceeds from sales of securities would be used to repay the loan from Mr. Martin.

30. The PPM Supplement extended the termination date of the LandOak Mortgage offering to July 9, 1999, and set forth three new investment options, all classes of promissory notes, for investors wishing to buy LandOak Mortgage securities. The notes offered returns from 7 to 10%, payable semi-annually, with maturities from three to seven years. Both the membership interests and the promissory notes are identified as securities in the PPM and/or the PPM Supplement.

31. The PPM Supplement stated that it should be read in conjunction with the PPM.

32. The PPM Supplement stated that the investors who had purchased membership interests in LandOak Mortgage prior to the issuance of the PPM Supplement could exchange those membership interests at any time prior to July 13, 1998 for the Class A, B, or C promissory notes described in the PPM Supplement.

33. The PPM Supplement also allowed investors who had previously purchased membership interests in LandOak Mortgage to continue to hold their membership interests, without exchanging them for promissory notes. Additionally, the PPM Supplement stated that LandOak Mortgage would continue to offer Membership Interests going forward.

34. On information and belief, four investors retained their Membership Interests in lieu of exchanging them for promissory notes.

35. The PPM Supplement stated that Membership Interest investors were entitled to receive a pro rata portion of 50% of any net proceeds derived from a sale or refinancing of four of the seven lots comprising the Property.

36. The PPM Supplement provided that Class C note investors, in addition to their promised interest payments, would share in any appreciation in value of four of the seven lots comprising the Property.

37. LandOak Mortgage loaned to LandOak Development approximately \$3.4 million of the \$3.6 million raised (after a 6% placement fee was paid to LandOak Securities) in three installments between October 1997 and July 1998.

38. Subsequently, LandOak Development repaid in full the \$2,008,598.91 that had been loaned to it by Martin in the October 27, 1997 promissory note, with interest. On information and belief, LandOak Development repaid the entire amount of the \$2,008,598.91 loan from Martin before 2000.

39. In return, for the three infusions of cash from LandOak Mortgage, LandOak Development provided LandOak Mortgage with three separate promissory notes, all due in full by October 2004. According to the PPM, LandOak Development could prepay the loan, in whole or in part, at any time, and LandOak Mortgage would use the proceeds from loan repayments to make distributions to investors in membership interests on a *pro rata* basis.

40. LandOak Development eventually repaid all three promissory notes to LandOak Mortgage in full, although its final note payment of \$609,000, made in April 2007, was two and a half years late.

B. THE MISAPPROPRIATION OF OVER \$2.8 MILLION OF FUNDS DUE TO LANDOAK MORTGAGE INVESTORS

41. Between July 2002 and January 2003, Martin and Atkins misappropriated a total of at least \$2.8 million from LandOak Mortgage.

42. First, in July 2002, Martin and Atkins took \$1,545,000 from LandOak Mortgage's bank account, and diverted the funds to AGT. This occurred just days after LandOak Mortgage had received a \$2.1 million note pre-payment from LandOak Development, which had refinanced the Property with bank loans. In accordance with the terms of the PPM and PPM Supplement, the entire \$2.1 loan repayment should have been distributed to LandOak Mortgage members and one class of note holders.

43. Martin and Atkins had personally guaranteed certain debt obligations of AGT. On information and belief, some or all of the \$1,545,000 diverted from LandOak Mortgage to AGT was used to satisfy these obligations. On information and belief, AGT subsequently repaid all or part of the \$1,545,000 payment by issuing shares of AGT and paying cash either to Martin directly or to Lanrick Group, Inc., a Tennessee corporation solely owned by Martin.

44. Neither Martin nor Atkins ever returned any portion of the \$1,545,000 they had diverted to AGT to LandOak Mortgage.

45. Second, in August 2002 and January 2003, Martin and Atkins misappropriated another \$525,000 to settle lawsuits pending against them. The lawsuits were unrelated to Mortgage.

46. Specifically, in August 2002, Martin and Atkins misappropriated \$225,000 in LandOak Mortgage funds, in the form of a bank check drawn on LandOak

Mortgage's checking account, and paid those funds to an investor who was a plaintiff in a lawsuit pending against the two of them individually.

47. On or about January 30, 2003, Martin and Atkins misappropriated an additional \$300,000 from LandOak Mortgage, using the funds to pay a settlement to seven investors who were plaintiffs in another pending lawsuit against the two of them individually.

48. None of the investors who received the funds misappropriated from LandOak Mortgage in August 2002 or January 2003 was a LandOak Mortgage investor, and LandOak Mortgage was not a defendant in either lawsuit.

49. One day later, on or about January 31, 2003, Martin misappropriated another \$770,000 from LandOak Mortgage's bank account, characterizing the transfer as a "loan" to himself. Martin paid \$400,000 of the loan proceeds to Atkins. The \$770,000 was never repaid to LandOak Mortgage.

50. While nineteen of the thirty-five LandOak Mortgage investors were paid in full by April 2007, the remaining sixteen investors are currently owed approximately \$1.8 million in principal. Eleven of these investors, collectively owed approximately \$1.3 million in principal, are investment advisory clients of LandOak Securities, Martin, and Atkins. The eleven investors who are also investment advisory clients are also owed accrued interest, as well as additional funds related to any increase in value of four of the seven lots.

C. FALSE FILINGS

51. LandOak Securities and Martin made false statements on LandOak Securities' Forms ADV, which were signed by Martin.

52. For example, in the Form ADV signed by Martin and filed with the Commission on May 9, 2000, LandOak Securities and Martin, Part 1, Items 9.A. and 9.B., LandOak Securities and Martin falsely stated that it or a related person did not have custody of any of its advisory clients' cash notwithstanding that Martin and his administrative assistant handled cash disbursements from the LandOak Mortgage on behalf of certain LandOak Securities clients. Martin and his administrative assistant paid principal and semi-annual interest payments to LandOak Mortgage investors from either LandOak Mortgage's bank account, the bank account of the Lanrick Group, Inc. (which is wholly owned by Martin), or with cashier's checks purchased with LandOak Mortgage funds.

53. Additionally, in the Annual Amendments to Form ADV including those filed on April 10, 2003 and October 12, 2006, LandOak Securities and Martin answered "No" to Item 7.B, which asked whether LandOak Securities or any related person [such as Martin] was "a general partner in an investment-related limited partnership or manager of an investment-related limited liability company." This answer was untrue because, at the time he signed the relevant Forms ADV, Martin, a related person of LandOak Securities, was a manager of LandOak Mortgage, an investment-related limited liability company.

54. In Form ADV, Part II, dated October 12, 2006, LandOak Securities and Martin failed to disclose conflicts of interest relating to LandOak Mortgage.

55. LandOak Securities failed to have a qualified custodian maintain client funds, maintain separate ledger accounts for each advisory client, and maintain records of the location of all securities in which any client had an interest.

56. LandOak Securities failed to have an annual examination by an independent accountant or otherwise comply with the custody rules.

57. The Defendants never reported the above violations of law to the Commission or any other law enforcement or regulatory agency. In March 2007, staff accountants from the Atlanta Regional Office of the U.S. Securities and Exchange Commission began an unannounced examination of LandOak Securities, which uncovered certain irregularities and eventually led to the filing of this Complaint.

D. SUMMARY

58. LandOak Securities, Martin, and Atkins owed a fiduciary duty to all LandOak Mortgage investors who were also advisory clients of LandOak Securities.

59. LandOak Securities, Martin, and Atkins violated this fiduciary duty by failing to disclose their conflicts of interest to their advisory clients, and by misappropriating or diverting LandOak Mortgage funds for purposes of their own which were different than the uses investors had been told in the PPM their funds would be put to.

60. On information and belief, LandOak, Martin, and Atkins did not notify LandOak Mortgage members and promissory note holders of the misappropriations, diversions, or misuses of funds described above.

COUNT I

**Violations of Section 206(1) of the Advisers Act
[15 U.S.C. § 80b-6(1)]**

61. Paragraphs 1 through 60 are hereby realleged and are incorporated herein by reference.

62. From in or about July 2002 through January 2003, Defendants LandOak Securities, Martin, and Atkins, acting as investment advisers, by use of the mails and/or the means and instrumentalities of interstate commerce, directly and indirectly, employed devices, schemes, and artifices to defraud one or more advisory clients or prospective clients.

63. Defendants LandOak Securities, Martin, and Atkins knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud. In engaging in such conduct, Defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud with a severe reckless disregard for the truth.

64. By reason of the foregoing, Defendants LandOak Securities, Martin, and Atkins, directly or indirectly, have violated, and unless enjoined, will continue to violate and aid and abet violations of Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)].

COUNT II

Violations of Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)]

65. Paragraphs 1 through 60 are hereby realleged and are incorporated herein by reference.

66. From in or about July 2002 through January 2003, Defendants LandOak Securities, Martin, and Atkins, by use of the mails and/or the means and instrumentalities of interstate commerce, directly or indirectly, engaged in one or more transactions, practices, or courses of business which operated as a fraud or deceit upon one or more advisory clients or prospective clients.

67. Defendants LandOak Securities, Martin, and Atkins knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud. In engaging in such conduct, Defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud with a severe reckless disregard for the truth.

68. By reason of the foregoing, Defendants LandOak Securities, Martin, and Atkins, directly and indirectly, have violated, and unless enjoined, will continue to violate and aid and abet violations of Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)].

COUNT III

Violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 Thereunder [15 U.S.C. § 80b-6(4) and 17 C.F.R. § 275.206(4)-2]

69. Paragraphs 1 through 60 are hereby realleged and are incorporated herein by reference.

70. From in or about July 2002 through January 2003, LandOak Securities and Martin, acting as investment advisers, by use of the mails and/or the means and instrumentalities of interstate commerce, directly and indirectly, engaged in acts, practices, and courses of business which were fraudulent, deceptive or manipulative, as those terms have been defined by Commission rules and regulations, by taking custody or possession of client funds or securities without following required procedures.

71. By reason of the foregoing, LandOak Securities and Martin, directly and indirectly, have violated, and unless enjoined, will continue to violate and aid and abet violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-2 thereunder [17 C.F.R. § 275.206(4)-2].

COUNT IV

**Violations of Section 207 of the Advisers Act
[15 U.S.C. § 80b-7]**

72. Paragraphs 1 through 60 are hereby realleged and are incorporated herein by reference.

73. From at least on or about May 2000 through the present, LandOak Securities and Martin, willfully made one or more untrue statements of material fact in a registration application or report filed with the Commission under Section 203 or 204 of the Advisers Act [15 U.S.C. §§ 80b-3 or 80b-4] or willfully omitted to state in any such application or report any material fact which was required to be stated therein.

74. By reason of the foregoing, LandOak Securities and Martin, have violated, and unless enjoined, will continue to violate Section 207 of the Advisers Act [15 U.S.C. § 80b-7].

COUNT V

**Violations of Section 204 of the Advisers Act and Rule 204-2 thereunder
[15 U.S.C. § 80b-4 and 17 C.F.R. § 275.204-2]**

75. Paragraphs 1 through 60 are hereby realleged and are incorporated herein by reference.

76. From at least July 2002 through the present, LandOak Securities and Martin, acting as investment advisers and making use of the mails and/or the means and instrumentalities of interstate commerce in connection with their business as investment advisers, failed to make or keep for the prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, has prescribed as necessary or appropriate in the public interest or for the protection of investors.

77. By reason of the foregoing, LandOak Securities and Martin, directly and indirectly, have violated, and unless enjoined, will continue to violate and aid and abet violations of Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rule 204-2 thereunder [17 C.F.R. § 275.204-2].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully prays for:

I.

Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that the Defendants named herein committed the violations alleged herein.

II.

Permanent injunctions enjoining the Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, by personal service or otherwise, and each of them, whether as principals or as aiders and abettors, from violating, directly or indirectly, Sections 204, 206(1), 206(2), 206(4), and 207 of the Advisers Act [15 U.S.C. §§ 80b-4, 6(1), 6(2), 6(4), and 7], and Rules 204-2 and 206(4)-2, thereunder [17 C.F.R. §§ 275.204-2 and 206(4)-2].

III.

An order requiring the disgorgement of all ill gotten gains or unjust enrichment by Defendants, with prejudgment interest, to effect the remedial purposes of the federal securities laws.

IV.

An order pursuant to Section 203(e) of the Advisers Act [15 U.S.C. § 80b-3] imposing civil penalties against the Defendants.

VI.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

Dated: May 21, 2008

Respectfully submitted,

*by Alana R. Black
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