

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

SHELBY DEAN MARTIN, D. MARTIN
ENTERPRISES, INC. and DM VENTURES,
LLC,

Defendants.

FILED
CHARLOTTE, NC

MAR 06 2009

U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

Civil Action No.

5:09 cv 22

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff, Securities and Exchange Commission ("Commission"), alleges, that:

OVERVIEW

1. This matter involves a Ponzi scheme orchestrated by Shelby Dean Martin ("Martin"), D. Martin Enterprises, Inc. ("DM Enterprises") and DM Ventures, LLC ("DM Ventures"). Martin controls DM Enterprises, a North Carolina corporation, and DM Ventures, formerly registered as a Nevada limited

liability corporation which had its registration revoked in April 2005. Martin operates as an unregistered investment adviser.

2. Since at least 1998, Martin has raised more than \$10 million from over 150 investors through a variety of false and misleading statements. Martin told most investors that he was going to invest their funds in private companies to take them public. To other investors, Martin explained that their money was going to be used to provide working capital to companies in financial trouble. Martin also told a few investors that their funds would be used to purchase stock in various companies. Martin gave the investors notes that promised to pay investors a rate between 15% and 50% per year. The notes, which promised the return of principal at the end of the term, were usually for a period of six or twelve months.

3. Contrary to Martin's claims to investors, Martin did not invest much of the money in companies as he claimed. Instead, he diverted substantial investor funds for his personal use and used new investor funds to pay returns to existing investors.

VIOLATIONS

4. Defendants have engaged, and unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations of Sections 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]. Defendant Martin has engaged and unless enjoined will engage in acts and practices that constitute violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”)[15 U.S.C. 80b-6(1) and(2)].

JURISDICTION AND VENUE

5. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v], Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] and Sections 209 and 214 of the Advisers Act [15 U.S.C. 80b-9, 80b-14], 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 civil penalties and for other equitable relief.

6. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act [15 U.S.C. 77v], Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa] and and Section 214 of the Advisers Act [15 U.S.C. 80b-14].

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

8. Certain of the transactions, acts, practices, and courses of business constituting violations of the Securities Act, the Exchange Act and the Advisers Act occurred in the Western District of North Carolina. In addition, defendant Martin resides in the Western District of North Carolina. Defendants DM Enterprises and DM Ventures maintain offices in the Western District of North Carolina.

DEFENDANTS

9. **Shelby Dean Martin**, 71 years of age, resides in Mooresville, North Carolina. Martin has served as president of DM Enterprises since its inception in 1985 and as the managing member of DM Ventures.

10. **D. Martin Enterprises, Inc.** is a North Carolina corporation formed in 1985 that has its principal place of business in Mooresville, NC. DM Enterprises has never been registered with the Commission in any capacity.

11. **DM Ventures, LLC** is an entity that was formerly registered in the State of Nevada as a limited liability company with its principal place of business in Mooresville, NC. DM Ventures' registration was revoked as of April 1, 2005. DM Ventures has never been registered by the Commission in any capacity.

THE FRAUDULENT SCHEME

12. Since at least 1998, Martin, operating through DM Enterprises and DM Ventures, has raised at least \$10 million from more than 150 investors located in North Carolina and in several other states.

13. In most cases, Martin sold investors promissory notes with terms of six or twelve months that paid interest rates ranging from 15% to 50%.

14. Martin told most of his investors that he was going to invest their funds in private companies that he would take public, which would enhance returns to investors. Martin told other investors that their money would be used to provide working capital to companies in financial trouble. With others, Martin

claimed investor money would be used to purchase stock. In a few instances, Martin simply obtained investor money without telling them how he would achieve the returns he promised.

15. Generally, Martin told investors that they would not lose their principal investment and they would receive anywhere from a 15% to 50% rate of return on their investment. Martin personally guaranteed the promissory notes he gave investors and, in several instances, told investors that their principal was insured. In a few instances, the promissory notes given to investors were made in the name of DM Enterprises.

16. Martin met most investors through word of mouth. He often told them that he was in the business of taking companies public. In that regard, Martin wrote to investors on occasion updating the status of their investments on DM Enterprises letterhead.

17. In one instance, Martin told an investor that the money would be used to provide working capital for a company. Subsequently, in March 2001, the investor wrote DM Ventures a check which Martin deposited into his bank account.

18. Subsequently, the investor again invested with Martin and was told he was providing working capital for the same company and wrote a second check to DM Ventures.

19. When the investor did not receive the promised returns on his investment, Martin agreed to give the investor a promissory note in the amount of \$200,000, which he personally guaranteed. This note promised a 25% return and had a twelve-month term.

20. In total, the investor gave Martin a total of \$700,000, most of which has never been repaid.

21. Another investor met Martin through a mutual friend and between the years of 1998 and 2003 invested more than \$450,000 in a series of transactions where Martin gave him promissory notes purporting to pay a 20% annual return. Martin told the investor that Martin would personally guarantee the investment and the investor's principal would be insured. While Martin guaranteed the investor a 20% annual return, he did not explain to the investor how the return would be generated.

22. Martin told a least one other investor that the investors funds would be used to provide working capital to a company. Between 2000 and 2008, the investor made a series of investments with Martin totaling \$1,185,000, which Martin guaranteed would pay 25% per year. In one instance in 2004, Martin told the investor he would be investing in a profitable company, when, in fact, the company disclosed in its public filings that it had lost more than \$2 million in that year.

23. Martin pooled investor funds in the bank accounts of DM Enterprises and DM Ventures and used those funds as they were received from later investors to pay the returns he promised to earlier investors.

MISREPRESENTATIONS

24. Martin falsely told investors that their funds would be invested with companies when, in fact, he used the funds he received from investors to finance his life style and to pay Ponzi returns to earlier investors.

25. Martin failed to tell investors that:

- a. he was not investing their money as he claimed in taking companies public or to provide working capital for companies;

- b. that he was using funds from later investors to pay returns to earlier investors; and
- c. that he was using investor funds for his personal benefit.

COUNT I—FRAUD

**Violations of Section 17(a)(1) of the Securities Act
[15 U.S.C. § 77q(a)(1)]**

26. Paragraphs 1 through 25 are hereby realleged and are incorporated herein by reference.

27. From at least 1998 through the present, the defendants Martin, DM Enterprises and DM Ventures, in the offer and sale of the securities described herein, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above.

28. Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

29. While engaging in the course of conduct described above, the defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

30. By reason of the foregoing, the defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II—FRAUD

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act[15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

31. Paragraphs 1 through 25 are hereby realleged and are incorporated herein by reference.

32. From at least 1998 through the present, the defendants Martin, DM Enterprises and DM Ventures, in the offer and sale of the securities described herein, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

a. obtained money and property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the

statements made, in light of the circumstances under which they were made, not misleading; and

b. engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

33. By reason of the foregoing, the defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT III—FRAUD

Violations of 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]

34. Paragraphs 1 through 25 are hereby realleged and are incorporated herein by reference.

36. From at least 1998 through the present, the defendants Martin, DM Enterprises and DM Ventures, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- a. employed devices, schemes, and artifices to defraud;
- b. made untrue statements of material facts and 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; and
- c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

37. The defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, the defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

38. By reason of the foregoing, the defendants, directly and indirectly, have 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].

COUNT IV—FRAUD

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

39. Paragraphs 1 through 25 are hereby realleged and are incorporated herein by reference.

40. From at least as early 1998 through the present, defendant Martin, acting as an investment adviser, using the mails and the means and instrumentalities of interstate commerce, directly and indirectly, employed devices, schemes and artifices to defraud one or more advisory clients and/or prospective clients.

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

42. By reason of the foregoing, defendant Martin, directly and indirectly, has violated, and unless enjoined, will continue to violate Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)].

COUNT V—FRAUD

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

43. Paragraphs 1 through 25 are hereby realleged and are incorporated herein by reference.

44. From at least as early as 1998 through the present, defendant Martin, acting as an investment adviser, by the use of the mails and the means and instrumentalities of interstate commerce, directly and indirectly, engaged in transactions, practices, and courses of business which would and did operate as a fraud and deceit on one or more advisory clients and/or prospective clients.

45. By reason of the foregoing, defendant Martin, directly and indirectly, has 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)].

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.

A temporary restraining order, preliminary and 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, 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] promulgated thereunder, and enjoining Martin from violating Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. 80b-6(1) and 80b-6(2)].

III.

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

IV.

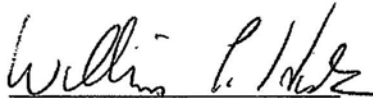
An order pursuant to Section 20(d) of the Securities Act [15 U.S.C. 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. 78u(d)(3)] and, as against defendant Martin, Section 209(e) of the Advisers Act [15 U.S.C. 80b-9(e)] imposing civil penalties against the defendants.

V.

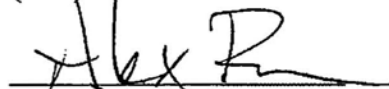
Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

Dated: March 5, 2009

Respectfully submitted,



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