

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CASE NO.

**HKW TRADING, LLC, HOWARD
WAXENBERG TRADING, L.L.C., and
DOWNING & ASSOCIATES TECHNICAL
ANALYSIS, n/k/a THE ESTATE OF
HOWARD WAXENBERG,**

Defendants,

**HKW TRADING FUND I LLC and THE
ESTATE OF HOWARD WAXENBERG,**

Relief Defendants.

_____ /

COMPLAINT

Plaintiff Securities and Exchange Commission (the “Commission”) alleges and states as follows:

1. This Complaint arises out of a Ponzi scheme orchestrated by Howard Waxenberg, who committed suicide on May 15, 2005. Waxenberg carried out this scheme through his control of Downing & Associates Technical Analysis (“Downing”), an unincorporated entity, Howard Waxenberg Trading, L.L.C. (“Waxenberg Trading”), and HKW Trading LLC (“HKW Trading”) (collectively “Defendants”).

2. Beginning no later than 1990 through May 2005, Defendants raised more than \$70 million by offering and selling securities to approximately 200 investors. Defendants

diverted or misappropriated investors' funds to Relief Defendants HKW Trading Fund I LLC ("HKW Fund") and the Estate of Howard Waxenberg ("Estate of Waxenberg") (collectively "Relief Defendants").

3. Defendants represented to investors that they were running a successful day-trading operation generating 20% annualized returns. However, the truth was vastly different than the rosy picture Defendants painted. In reality, investors' returns were not 20% per year, because, among other reasons, their funds were being invested in low-yield money-market funds, which were not generating 20% annualized returns. Defendants also sent fictitious account statements to investors that materially overstated the value of individual investors' accounts. In addition, due to this fraudulent scheme, Waxenberg took more than \$1.6 million of investors' monies for his personal use.

4. After Waxenberg's suicide, it is unclear who, if anyone, is in control of Downing, HKW Trading, HKW Fund and Waxenberg Trading. HKW Fund and Waxenberg Trading still hold millions of investors' monies. The SEC files this emergency action, among other reasons, to protect the investors' assets, and to ensure an orderly and equitable distribution of the remaining assets.

DEFENDANTS

5. HKW Trading is a Delaware LLC, incorporated in May 2003, with its principal place of business at 3639 Cortez Road in Bradenton, Florida. Waxenberg owned, controlled and was the sole manager of HKW Trading. Waxenberg used HKW Trading as an unregistered investment adviser to manage HKW Fund.

6. The Commission brings this case against Downing n/k/a the Estate of Howard Waxenberg, any successor-in-interest, any personal representative or executor of Downing, or

any other representative or successor. Downing, conducted business under a fictitious business name registered with the State of California in 1990. Downing was an unregistered investment adviser, which transacted business in California and Florida. Until at least January 2003, Waxenberg used Downing as a vehicle through which he deposited investors' funds.

7. Waxenberg Trading is a California LLC, incorporated in January 2000. Waxenberg Trading is an unregistered investment adviser, which transacted business in California and Florida. Investors' funds were managed and invested by Waxenberg Trading.

RELIEF DEFENDANTS

8. HKW Fund is a Delaware LLC, incorporated during May 2003, with its principal place of business at 3639 Cortez Road in Bradenton, Florida. HKW Fund is a hedge fund structured to engage in securities and commodities investment transactions. HKW Trading managed and controlled HKW Fund.

9. The Commission brings this case against the Estate of Waxenberg, any successor-in-interest, any personal representative or executor of the Estate of Waxenberg, or any other representative or successor. The Estate of Waxenberg came into existence as a result of Waxenberg's death on May 15, 2005. Waxenberg conducted business under the name of Downing and was the sole owner, manager and control person of Waxenberg Trading and HKW Trading. On April 3, 1987, Waxenberg received a censure, a \$15,000 fine and a bar from association with any member of the National Association of Securities Dealers for defrauding his employer to avoid margin requirements by falsifying order tickets in options trading for his own account.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§ 77t(b), 77t(d) and 77v(a); Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d), 78u(e) and 78aa; and Section 214 of the Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. § 80b-14.

11. This Court has personal jurisdiction over Defendants and Relief Defendants and venue is proper in the Middle District of Florida, because their principal place of business is located in the Middle District of Florida. In addition, the acts and transactions constituting violations of the Securities Act, Exchange Act and Advisers Act by the Defendants occurred in the Middle District of Florida.

12. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business set forth in this Complaint.

FACTUAL BACKGROUND

13. From at least 1990 through May 2005, Defendants raised more than \$70 million from nearly 200 investors. Defendants pooled investors’ funds into common accounts held in the name of Defendants Downing and Waxenberg Trading and Relief Defendant HKW Fund. Defendants charged a management fee based on the amount of assets under management and a percentage of the profits generated.

14. Defendants orally and in writing represented to investors that they were day-trading their investments in options and futures indexes. HKW Trading caused Relief Defendant

HKW Fund to issue a private placement memorandum (“PPM”), in which it was represented that the fund would obtain capital appreciation by following a technical trading strategy and effecting intra-day trades in securities and futures contracts.

15. Defendants regularly communicated with investors about the status of their accounts through quarterly account statements.

THE FRAUDULENT SCHEME

A. Material Misrepresentations Regarding the Rate of Investors’ Returns

16. Beginning no later than 2002 through at least January 2005, Defendants materially overstated investors’ actual rate of return. Defendants falsely claimed to investors they were earning a quarterly net investment return of approximately 5% or approximately 20% annually. Investors received quarterly account statements that consistently had positive performance returns and no losses. The quarterly net increase in the value of each investor’s account was classified as “net earnings” and Defendants paid “interest” to investors that purportedly represented the investment returns generated.

17. The fraudulently overstated returns duped investors into purchasing more securities from Defendants. In addition, HKW Trading allowed some investors to purchase more securities by reinvesting their “net earnings” or quarterly “interest” payment into HKW Fund. These overstated rates of return allowed Defendants to raise tens of millions of dollars.

18. Contrary to their claims, Defendants did not generate 20% annual returns, or 5% quarterly returns. At best, the bank and brokerage account records of Downing and Waxenberg Trading and Relief Defendant HKW Fund show that the investments made by them generated little returns. In addition, a copy found in Defendants’ files of a certified independent auditor’s report for HKW Fund for the period July 1, 2004 through December 31, 2004 (“Audited

Financial Statement”), highlights that HKW Fund’s rate of return was negative 3.41% during this six-month period or a negative 6.7% annualized. Yet, Defendants reported to investors that their accounts always increased in value. Defendants also specifically represented to investors that during the same six-months their account values increased by approximately 10% or about 20% annualized. Accordingly, Defendants knew, or were extremely reckless in not knowing, that the rate of return they reported to investors was materially overstated.

19. Investors’ assets were invested in securities that could not generate the 20% annual returns Defendants claimed. The vast majority of investors’ assets were placed in low-yield money-market funds, which were not generating 20% annual returns. Therefore, Defendants knew, or were extremely reckless in not knowing, their claims of 20% annualized returns were false.

20. Defendants ran a Ponzi scheme, since they were paying investors with new investors’ capital, not actual earnings.

21. Investors received false IRS Form 1099s that showed payments of interest or earnings. Accordingly, investors would have inadvertently paid excess taxes on what they believed to be interest or earnings, but in actuality were likely a return of principal.

B. Material Misrepresentations About the Value of Investors’ Assets

22. Defendants routinely sent investors account statements that grossly overstated the value of investors’ assets. As discussed above, investors who received quarterly checks for the payment of earnings or interest were actually receiving a return of principal or invested capital. Defendants should have reduced the value of investors’ assets by approximately 20% per year; instead, they falsely reported to investors that their account values were not diminishing.

23. Defendants' misrepresentations are demonstrated by the huge differences between the Audited Financial Statement and the false quarterly account statements disseminated to investors. The Audited Financial Statement for the period ending December 31, 2004, reports that HKW Fund had just \$5.8 million in members' capital; however, the account statements sent to investors paint a materially different picture, since Defendants reported at least four times this amount to investors. For example, by reviewing just seven of the quarterly account statements that investors in HKW Fund received for the period ending December 31, 2004, these seven investors' accounts were worth approximately \$25.6 million, an overstatement of \$19.8 million compared to the Audited Financial Statement. Accordingly, Defendants knew, or were extremely reckless in not knowing, they were materially overstating the amount of assets they had under management.

C. Defendants and Relief Defendants Received Ill-Gotten Gains

24. Defendants and Waxenberg charged management or performance fees based on the false account values. Since the returns were fabricated, Defendants and Waxenberg received unlawful compensation in the form of management fees and performance fees. In fact, Waxenberg paid himself more than \$1.6 million in ill-gotten gains from investors' monies. For example, on April 14, 2004 Waxenberg transferred \$1 million of investors' funds held by Downing to a checking account held in his name. In addition, Relief Defendants received ill-gotten gains from Defendants' fraudulent scheme by, among other things, receiving tens of millions of dollars of investors' funds.

D. Emergency Relief is Needed to Protect Investors from Further Losses

25. After Waxenberg's suicide, it is unclear who, if anyone, is in control of Downing, HKW Trading, HKW Fund and Waxenberg Trading, which collectively still hold

more than \$3.8 million of investors' monies. The SEC files this emergency action, among other reasons, to protect the investors' assets from further dissipation and looting, and to ensure an orderly and equitable distribution of the remaining assets.

CLAIMS FOR RELIEF

COUNT I

FRAUD IN VIOLATION OF SECTION 10(B) OF THE EXCHANGE ACT AND RULE 10B-5 THEREUNDER

26. The Commission repeats and realleges Paragraphs 1 through 25 of this Complaint as if fully set forth herein.

27. Since a date unknown but since at least 2002, Defendants Downing, Waxenberg Trading and HKW Trading, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of securities, have been knowingly, willfully or recklessly: (a) employing devices, schemes or artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaging in acts, practices and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

28. By reason of the foregoing, Defendants Downing, Waxenberg Trading and HKW Trading have, directly or indirectly, violated Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

29. Unless enjoined, Defendants Waxenberg Trading and HKW Trading will continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

COUNT II

FRAUD IN VIOLATION OF SECTION 17(A)(1) OF THE SECURITIES ACT

30. The Commission repeats and realleges Paragraphs 1 through 25 of this Complaint as if fully set forth herein.

31. Since a date unknown but since at least 2002, Defendants Downing, Waxenberg Trading and HKW Trading, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, have been knowingly, willfully or recklessly employing devices, schemes or artifices to defraud.

32. By reason of the foregoing, Defendants Downing, Waxenberg Trading and HKW Trading, directly and indirectly, have violated Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

33. Unless enjoined, Defendants Waxenberg Trading and HKW Trading will continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

COUNT III

FRAUD IN VIOLATION OF SECTIONS 17(A)(2) and 17(A)(3) OF THE SECURITIES ACT

34. The Commission repeats and realleges Paragraphs 1 through 25 of its Complaint as if fully set forth herein.

35. Since a date unknown but since at least 2002, Defendants Downing, Waxenberg Trading and HKW Trading, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities, have been: (a) obtaining money or property by means of untrue statements

of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (b) engaging in transactions, practices and courses of business which are now operating and will operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

36. By reason of the foregoing, Defendants Downing, Waxenberg Trading and HKW Trading, directly and indirectly, have violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2) and 77q(a)(3).

37. Unless enjoined, Defendants Waxenberg Trading and HKW Trading 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 IV

FRAUD IN VIOLATION OF SECTIONS 206(1) and 206(2) OF THE ADVISERS ACT

38. The Commission repeats and realleges Paragraphs 1 through 25 of this Complaint as if fully set forth herein.

39. Since a date unknown but since at least 2002, Defendants Downing, Waxenberg Trading and HKW Trading, by use of the mails, and the means and instrumentality of interstate commerce, directly or indirectly, have knowingly, willfully or recklessly: (i) employed devices, schemes or artifices to defraud their clients or prospective clients; and (ii) engaged in transactions, practices and courses of business which have operated as a fraud or deceit upon their clients or prospective clients.

40. By reason of the foregoing, Defendants Downing, Waxenberg Trading and HKW Trading, directly or indirectly, have violated Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

41. Unless enjoined, Defendants Waxenberg Trading and HKW Trading will continue to violate Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Declaratory Relief

Declare, determine and find that Defendants Downing, Waxenberg Trading and HKW Trading committed the violations of the federal securities laws alleged in this Complaint.

II.

Permanent Injunctive Relief

Issue a Permanent Injunction, restraining and enjoining Defendants Waxenberg Trading and HKW Trading, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating 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; Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1); Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2) and 77q(a)(3); and Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

III.

Asset Freeze, Accounting and Prevention of Document Destruction

Issue an Order: (1) freezing the assets of Defendants Downing, Waxenberg Trading and HKW Trading and Relief Defendants HKW Fund and the Estate of Waxenberg, until further Order of the Court; (2) preventing Defendants Downing, Waxenberg Trading and HKW Trading and Relief Defendants HKW Fund and the Estate of Waxenberg from the destruction or

alteration of documents, and requiring Relief Defendant the Estate of Waxenberg to file with this Court, within twenty days, a sworn written accounting of all assets.

IV.

Appointment of Receiver and Expedited Discovery

Issue an Order appointing a Receiver over the assets of Defendants Waxenberg Trading and HKW Trading and Relief Defendant HKW Fund to marshal and safeguard all of said assets, to perform any other duties the Court deems appropriate, and to prepare a report to the Court and the Commission detailing the activities of these companies, and the whereabouts of investor funds, and allow the parties to begin discovery on an expedited basis.

V.

Disgorgement

Issue an Order requiring Defendants Downing, Waxenberg Trading and HKW Trading and Relief Defendants HKW Fund and the Estate of Waxenberg to disgorge all ill-gotten profits or proceeds that they have received as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest as to Defendants Downing, Waxenberg Trading and HKW Trading and Relief Defendant the Estate of Waxenberg.

VI.

Penalties

Issue an Order directing Defendants Downing, Waxenberg Trading and HKW Trading to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3) and pursuant to Section 209(e) of the Advisers Act, 15 U.S.C. §§ 80b-9.

VII.

Further Relief

Grant such other and further relief as may be necessary and appropriate.

VIII.

Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

June 9, 2005

By: _____

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