

JUDGE SCHEINDLIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

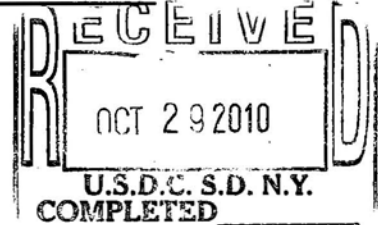
- v. -

JAMES D. STERLING,

Defendant.

No. 10 Civ. _____

COMPLAINT



Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendant James D. Sterling ("Sterling" or "Defendant"), alleges as follows:

SUMMARY OF ALLEGATIONS

1. This action involves the fraudulent purchase of stock in the public offerings of 51 banks that were converting from mutual to stock ownership. Sterling engaged in a scheme to defraud the banks and their depositors by secretly using his daughter as a nominee to acquire stock in those conversion offerings in contravention of the offering terms and applicable banking regulations. From January 2003 through October 2008, this scheme generated more than \$1.5 million in ill-gotten gains.

2. Sterling's scheme was designed to circumvent federal and state banking regulations that require banks to give their own depositors first priority to purchase stock ahead of other interested investors when converting from mutual to stock ownership. To ensure that only depositors benefit from their priority stock subscription rights, federal and state banking regulations prohibit depositors from transferring ownership of their subscription rights or from entering into any agreement regarding the sale or transfer of shares purchased in the offering.

These restrictions are set forth in the offering prospectus, and depositors are required to sign a stock order form certifying that they are purchasing the stock for their own account and that they have no agreement or understanding regarding the sale or transfer of any shares they receive. Banking regulations, as well as the offering terms in the prospectus, also restrict the amount of shares that an individual may acquire in an offering.

3. To benefit from the priority subscription rights available to depositors and evade the maximum purchase restrictions, Sterling opened numerous savings accounts at mutual savings banks anticipating that some would convert to stock ownership. When banks converted, Sterling funded his daughter's stock purchases. He also signed her name on stock order forms, falsely certifying that she was purchasing stock for her own account and had no arrangement to transfer the shares or their sale proceeds to anyone else. Sterling controlled the depositing and sales of the shares she received, and had the proceeds from these sales ultimately transferred to his own bank account.

4. In total, the scheme generated approximately \$1.5 million in ill-gotten gains for Sterling.

5. Sterling's scheme harmed the banks' legitimate depositors. Had the banks known about the unlawful transfer of subscription rights, they would have been able to take remedial steps to protect the rights of legitimate depositors. Most of the 51 public offerings at issue were oversubscribed, and Sterling's scheme thus limited the amount of stock available to legitimate depositors. Attached as Appendix A is a list identifying each of the 51 publicly-traded banks involved in this action, and the dates on which their conversion was completed via an initial public offering or on which a follow-on public offering was conducted.

6. By knowingly or recklessly engaging in the conduct described in this Complaint, Sterling violated, and unless restrained and enjoined will continue to violate, 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.

JURISDICTION AND VENUE

7. The Commission brings this action pursuant to the authority conferred by Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), and seeks to restrain and enjoin Sterling from engaging in the acts, practices, transactions and courses of business alleged herein.

8. In addition to injunctive relief, the Commission seeks a final judgment ordering Sterling to disgorge his ill-gotten gains and pay prejudgment interest thereon, and ordering Sterling to pay civil monetary penalties pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

9. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Sections 21 and 27 of the Exchange Act, 15 U.S.C. §§77u and 78aa. Certain of the acts and transactions constituting the violations alleged herein occurred within this District. Sterling also maintains his residence in this District and arranged the fraudulent stock purchases alleged herein substantially from his residence.

DEFENDANT

10. **James D. Sterling**, age 71, is, and at all relevant times was, a resident of New York, New York.

DEFENDANT'S FRAUDULENT CONDUCT

The Conversion Process

11. Savings and loan associations and savings banks are typically organized either as mutual associations or thrifts owned by depositors, or as capital stock companies owned by shareholders. When the conversion of a mutual thrift to stock ownership is approved, subscription rights to the stock offering are granted in tiers to defined groups of individuals with different levels of priority. The most typical tiers, in descending order of priority, are: (1) depositors who had accounts for at least a year before the offering; (2) bank employee benefit plans; (3) borrowers and others who held accounts for less than a year before the offering; and (4) if any shares remain available, members of the local community or, in a syndicated offering, other public investors. Federal and state banking laws prohibit depositors from transferring their subscription rights or entering into any arrangements or agreements for the transfer (or sale) of shares before they are issued. These prohibitions are set forth in the prospectus.

12. Mutual to stock conversion offerings have proven to be lucrative investment opportunities, as the stocks often trade in the immediate aftermarket at prices that represent a substantial premium over the offering price. As a result, depositors as a whole often wind up subscribing for more shares than the bank intends to issue. When a conversion offering is oversubscribed, some eligible depositors wind up receiving only a fraction of the shares they requested, and some depositors may receive none at all. Most of the 51 offerings at issue were oversubscribed, and legitimate depositors were therefore injured as a result of Sterling's conduct.

Sterling's Fraudulent Scheme

13. Sterling opened savings accounts at numerous mutual banks, anticipating that some would convert to stock ownership. Because some of the banks did not accept deposits

from non-resident individuals, and even fewer accepted deposits by mail, Sterling hired in-state attorneys to open accounts for him and his daughter. While these attorneys served as joint account owners with Sterling, custodians for his daughter, or trustees of trusts in his or her benefit, Sterling funded and controlled the accounts. When any of the mutual banks at which he controlled accounts initiated a conversion offering, Sterling submitted stock order forms and subscription agreements for his daughter, and, in most instances, himself. In doing so, Sterling sought either the maximum number of shares offered to each depositor, or an amount that, when combined with his and his daughter's orders, exceeded the individual maximum.

14. Sterling signed his daughter's name on all stock order forms appearing in her name, falsely certifying that, as required by law and the offering terms, she was purchasing shares for her own account and had not entered into any prior arrangements for the transfer of the shares or the proceeds of any subsequent sale. Sterling also determined the number of shares she would subscribe to under her name and mailed her order forms to banks. He included with those forms checks drawn either from his checking account, or checks in his daughter's name drawn from a checking account that he jointly owned and controlled, executing her signature on those checks.

15. In some instances, where the forms required that depositors disclose the orders of their "associates" or persons with whom they were "acting in concert," Sterling failed to disclose the arrangements he had with his daughter.

16. After the stock was issued by the banks, on some occasions, Sterling deposited the shares into his daughter's brokerage accounts or brokerage accounts he jointly owned with her. He funded and controlled these brokerage accounts and determined when to sell the shares (often soon after the offerings). Sterling arranged for the proceeds initially to be wired to a checking account he

jointly owned with his daughter, and then immediately transferred those proceeds to his own bank account.

17. On other occasions, Sterling arranged for his daughter's shares to be directly deposited into his brokerage accounts, and he kept all of the sale proceeds. To accomplish this, in some instances, Sterling submitted to the bank's transfer agent documents on which he signed his daughter's name, requesting that it cancel the original stock certificate issued in her name and issue a new certificate in his name.

18. In other instances, Sterling submitted to his brokerage firms stock certificates and notarized stock transfer forms, on which he signed his daughter's name, to assign himself his daughter's shares.

19. Sterling arranged for those stock transfer forms to be falsely notarized.

Examples Of Defendant's Scheme

20. At all times, Sterling acted intentionally, or at a minimum, recklessly, in arranging the fraudulent stock purchase described below. His conduct in connection with two mutual to stock conversions in particular illustrate in more detail how the scheme worked:

TFS Financial Corp.

21. In February 2007, Third Federal Savings and Loan Association of Cleveland, a federally-chartered savings and loan association, mailed its account holders a package concerning the minority stock offering of its parent, TFS Financial Corp. ("TFS"), a federally-chartered mid-tier stock holding company.

22. TFS's common stock is currently registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the NASDAQ Stock Market under the symbol TFSL.

23. The package included prospectuses and stock order forms for account holders to use to subscribe to the offering. The account holders were required to complete the order forms, sign them, and submit them to the bank with payment for the full number of shares for which they subscribed. The order form also required the subscriber to disclose whether “any associates or persons acting in concert with” the subscriber had also submitted orders for shares.

24. Directly above the signature line on each stock order form was an acknowledgment that stated:

Federal regulations prohibit any person from transferring, or entering into any agreement, directly or indirectly, to transfer the legal or beneficial ownership of subscription rights or the underlying securities to the account of another. Third Federal Savings and Loan Association of Cleveland, TFS Financial Corporation and Third Federal Savings and Loan Association of Cleveland, MHC will pursue any and all legal and equitable remedies in the event they become aware of the transfer of subscription rights and will not honor orders known by them to involve such transfer. **Under penalty of perjury, I certify that I am purchasing shares solely for my account and that there is no agreement or understanding regarding the sale or transfer of such shares, or my right to subscribe for shares** (emphasis added).

25. As set forth in the prospectus and the stock order form, individual account holders could subscribe for a maximum of 50,000 shares of common stock and “no person by himself, or with an associate or group of persons acting in concert” could purchase more than 75,000 shares. TFS defined “associate” to include anyone “who is related by blood or marriage” to, and lives in the same house as, the depositor. The term “acting in concert” was defined as “the knowing participation in a joint activity or interdependent conscious parallel action towards a common goal, whether or not pursuant to an express agreement.”

26. Sterling submitted three order forms in March 2007: one for a trust in his name for 50,000 shares, another for a trust in his wife’s name for 25,000 shares, and one for his daughter for 50,000 shares.

27. Sterling's form and his wife's form both disclosed that they were "associates" and "acting in concert," but neither disclosed the daughter's order of 50,000 shares. The daughter's order form similarly failed to disclose the orders of Sterling and his wife.

28. These stock order forms were materially false and misleading as they did not disclose Sterling's control and funding of his daughter's order, and the arrangement that transferred her shares, or the proceeds from their sale, to Sterling.

29. Sterling signed his daughter's name on her order form, falsely certifying that the stock order was only for her own account, and that there was no agreement or understanding regarding any further sale or transfer of the stock.

30. That certification was materially false because Sterling's daughter's stock order was funded by Sterling, and the shares were being requested for Sterling's own benefit.

31. Sterling also executed his daughter's signature on the \$500,000 check in her name that accompanied the order. Sterling was the source of those funds.

32. Sterling's daughter's order included a letter to the bank purporting to be from her, with her name, college mailing address, and cellular telephone number in the header. The letter stated, "I, [Sterling's daughter's full name], am now 21 years old and have authority over my account [at Third Federal] Enclosed is documentation for proof of birth date." Sterling signed his daughter's name on the letter.

33. This letter was materially false because Sterling controlled his daughter's account, funded her stock purchase, and the shares were requested for his own benefit.

34. Because the offering was oversubscribed and their account balances were not large enough to qualify for a full allocation, Sterling and his wife received less than the ordered amount of shares – 18,750 and 9,375 shares, respectively.

35. Sterling's daughter received the full amount of her order, 50,000 shares, because her savings account balance was large enough to qualify for a full allocation.

36. Sterling signed his daughter's name on her stock certificate and directed that her shares be deposited into a brokerage account that he jointly owned with her. This account was controlled and funded by Sterling, who prepared, and signed his daughter's name on, all the account opening documents.

37. Sterling sold all 50,000 shares from this joint account on May 4, 2007 for a profit of \$110,650. On May 7, 2007, Sterling arranged for the proceeds of the sale to be wired to a checking account he jointly owned with his daughter. He then immediately transferred the proceeds to his personal checking account.

Wauwatosa Holdings, Inc.

38. In August 2005, Wauwatosa Savings Bank, a Wisconsin-chartered savings bank, mailed its account holders a package concerning the minority stock offering of its parent, Wauwatosa Holdings, Inc. ("Wauwatosa"), a Wisconsin-chartered mid-tier stock holding company.

39. Wauwatosa's common stock is currently registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the NASDAQ Stock Market under the symbol WSBF.

40. The package included prospectuses and stock order forms for account holders to use to subscribe to the offering. The account holders were required to complete the order forms, sign them, and submit them to the bank with payment for the full number of shares for which they subscribed.

41. Directly above the signature line on each stock order form was an acknowledgment that stated, in regular and bold text:

By signing below . . . I also certify that this stock order is for my account and there is no agreement or understanding regarding any further sale or transfer of these shares. **Federal regulations prohibit any person from transferring or entering into any agreement directly or indirectly to transfer the legal or beneficial ownership of subscription rights, or the underlying securities to the account of another. Under penalty of perjury, I certify that I am purchasing shares solely for my account and that there is no agreement or understanding regarding the sale or transfer of such shares, or my rights to subscribe for shares.** Wauwatosa Holdings, Inc. will pursue any and all legal and equitable remedies in the event it becomes aware of the transfer or subscription rights and will not honor orders known by it to involve such transfer.

42. Sterling submitted an order for himself and for his daughter for 12,944 and 17,056 shares, respectively. Both orders were accompanied by checks drawn from Sterling's checking account and signed by him.

43. Sterling signed his daughter's name on her order form, falsely certifying that the stock order was only for her own account, and that there was no agreement or understanding regarding any further sale or transfer of the stock.

44. That certification was materially false because Sterling's daughter's stock order was funded by Sterling, and the shares were being requested for Sterling's own benefit.

45. Because the offering was oversubscribed and their account balances were not large enough to qualify for a full allocation, Sterling and his daughter received less than the full amount of their orders – 2,437 and 3,027 shares, respectively.

46. Sterling deposited all 5,464 shares into his brokerage account. Although the daughter's stock certificate was registered in her name, Sterling was able to deposit the shares into his own account by submitting to his broker the stock certificate and a notarized stock transfer form. Sterling signed his daughter's name on the stock certificate and transfer form.

47. Sterling arranged for the stock transfer form to be falsely notarized.

48. Sterling sold all 5,464 shares in mid-October 2005 and instructed that the proceeds be wired to his personal checking account. His ill-gotten gains from the fraudulently purchased Wauwatosa stock were approximately \$4,934.

CLAIM FOR RELIEF

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

49. The Commission repeats and realleges the allegations contained in paragraphs 1 through 48, inclusive, by reference as if fully set forth herein.

50. Sterling, by engaging in the conduct described above, knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by use of the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

- (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 acts, practices and courses of business which operated or would have operated as a fraud or deceit upon any person in connection with the purchase or sale of any security.

51. By engaging in the forgoing conduct, Sterling violated 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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully requests that this Court enter a Final Judgment:

I.

Permanently restraining and enjoining Sterling from violating, directly or indirectly, 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.

II.

Ordering Sterling to disgorge the ill-gotten gains he received from the violations alleged herein, and to pay prejudgment interest thereon.

III.

Ordering Sterling to pay civil monetary penalties pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

IV.

Granting such other and further relief as to this Court deems appropriate.

Respectfully submitted,



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Dated: October 29, 2010

Appendix A

<u>Bank</u>	<u>Conversion Date</u>
Sound Federal Bancorp, Inc. (SFBS)	1/7/2003
Provident Financial Services (PFS)	1/16/2003
Jefferson Bancshares Inc. (JFBI)	7/2/2003
Northwest Bancorp, Inc. (NWSB)	8/25/2003
American Bancorp of NJ (ABNJ)	10/3/2003
Flatbush Federal Bancorp Inc. (FLTBS)	10/20/2003
Rainier Pacific Financial Group (RPFGB)	10/21/2003
Bank Mutual Corp. (BKMUB)	10/30/2003
KNBT Bancorp, Inc. (KNBT)	11/3/2003
Cheviot Financial Corp (CHEV)	1/6/2004
Provident New York Bancorp (PBNY)	1/15/2004
Synergy Financial Group, Inc. (SYNF)	1/21/2004
Clifton Savings Bancorp Inc. (CSBK)	3/4/2004
K-Fed Bancorp (KFED)	3/31/2004
NewAlliance Bancshares Inc. (NAL)	4/2/2004
Naugatuck Valley Financial Corp (NVSL)	10/1/2004
SI Financial Group (SIFI)	10/1/2004
Atlantic Coast Federal Corporation (ACFC)	10/5/2004
Home Federal Bancorp Inc. (HOME)	12/7/2004
Abington Community Bancorp, Inc. (ABBC)	12/17/2004
Ocean Shore Holding (OSHC)	12/22/2004
Kearny Financial Corp (KRNY)	2/24/2005
Brooklyn Federal Bancorp, Inc. (BFSB)	4/6/2005
Hudson City Bancorp (HCBK)	6/7/2005
BankFinancial Corp. (BFIN)	6/24/2005
Heritage Financial Group (HBOS)	6/30/2005
United Financial Bancorp Inc. (UBNK)	7/13/2005
Wauwatosa Holdings Inc. (WAUW)	10/5/2005
American Bancorp of NJ (ABNJ)	10/6/2005
Investors Bancorp Inc. (ISBC)	10/12/2005
New England Bancshares (NEBS)	12/29/2005
Legacy Bancorp Inc. (LEGC)	10/26/2005
Lake Shore Bancorp Inc. (LSBK)	4/4/2006
North East Community Bancorp (NECB)	7/6/2006
Roma Financial Corp. (ROMA)	7/12/2006
Chicopee Bancorp Inc. (CBNK)	7/20/2006
Liberty Bancorp, Inc. (LBCP)	7/20/2006
Fox Chase Bancorp, Inc. (FXCB)	10/2/2006
Viewpoint Financial Group (VPFG)	10/3/2006
MSB Financial Corp. (MSBF)	1/5/2007
Westfield Financial Inc. (WFD)	1/4/2007
Polonia Bancorp (PBCP)	1/16/2007
Hampden Bancorp Inc. (HBNK)	1/17/2007

CMS Bancorp, Inc. (CMSB)	4/4/2007
TFS Financial Corp. (TFSL)	4/23/2007
Louisiana Bancorp, Inc. (LABC)	7/10/2007
Northfield Bancorp, Inc. (NFBK)	11/8/2007
First Advantage Bancorp (FABK)	11/30/2007
United Financial Bancorp, Inc. (UBNK)	12/4/2007
Home Federal Bancorp, Inc. (HOME)	12/20/2007
Home Bancorp, Inc. (HBCP)	10/3/2008