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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JAMES N. HADEN, CLERK  
By: *[Signature]* Deputy Clerk

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

Civil Action No.

1:10-CV-3522

ELITE RESOURCES, LLC,  
ELITE3 HOLDING CORP.,  
PATRICIA DIANE GRUBER, and  
KADAR M. JOSEY,

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff, Securities and Exchange Commission (the "Commission"), files its complaint and alleges that:

OVERVIEW

1. This case concerns Patricia Diane Gruber ("Gruber"), Kadar M. Josey ("Josey"), and the companies they operate, Elite Resources, LLC ("Elite") and Elite3 Holding Corp. ("Elite3"). From at least April 8, 2010, to at least August 20,

2010, Defendants conducted a “Prime Bank” scheme that defrauded at least nine investors of approximately \$2.85 million.

2. Defendants represented that by investing with them, investors would obtain the right to draw upon bank issued guarantees worth millions of dollars without incurring a corresponding obligation to repay the withdrawn funds. In at least one case, Defendants represented that the investor would receive a 40,000% return on the investment.

3. In a two-page “Lease Agreement” between each investor and Elite or Elite3, Defendants made material misrepresentations that the investor’s funds would be used to purchase a bank guarantee and that those funds would be held in escrow until the guarantees were issued. No bank guarantees were obtained and investor funds were misappropriated.

4. Investment operations as described by Defendants that pay exorbitant returns with no risk do not exist. In fact, the only bank guarantee provided to an investor by Defendants, purportedly issued by Barclays Bank PLC (“Barclays”), was fictitious.

### **VIOLATIONS**

5. 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 5(a), (c), and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a), 77e(c) and 77 q(a)] and 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].

6. Additionally, Gruber and Josey 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 Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

### **JURISDICTION AND VENUE**

7. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] to enjoin 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.

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

9. 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 and made use of mail and means of instrumentality of interstate commerce to effect transactions, or to induce or to attempt to induce the purchase or sale of securities alleged in this complaint.

10. Certain of the transactions, acts, practices, and courses of business constituting violations of the Securities Act and the Exchange Act occurred in the Northern District of Georgia. In addition, Gruber and Josey reside in the Northern District of Georgia and directed the operations of Elite and Elite3 from the Northern District of Georgia.

11. Defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business alleged in this complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

**THE DEFENDANTS**

12. Patricia Diane Gruber, age 58 of Dunwoody, Georgia, is the managing member of Elite and the director of Elite3. She is a licensed personal trainer and sports nutritionist. Gruber signed agreements on behalf of Elite3.

13. Kada M. Josey, age 36, of Tucker, Georgia, is the secretary and chief financial officer of Elite and the secretary of Elite3.

14. Elite Resources LLC is a Georgia limited liability company formed in September 2009. Gruber is its managing member and Josey is its secretary and chief financial officer. Elite is not registered with the Commission in any capacity.

15. Elite3 Holding Corp. is purportedly a Grand Cayman Corporation with Gruber as its Director and Josey as its counsel and secretary. Elite3 is not registered with the Commission in any capacity.

**THE FRAUDULENT SCHEME**

16. From at least April 8, 2010 to at least August 20, 2010, Elite, Elite3 and their principals, Gruber and Josey, conducted a fraudulent scheme that defrauded at least nine investors throughout the country and Canada of \$2.85 million.

17. Pursuant to this fraudulent scheme, Defendants identified individuals who were struggling to find funding sources for construction and other projects. Defendants told those individuals that they could participate in a bank guarantee program by paying a fee ranging from \$200,000 to \$350,000.

18. In return for their investment and the work of Defendants, the investors could acquire a “non-recourse” bank guarantee issued by “Barclay [sic] Bank or other top 25 Bank” having a face value between \$100 million and \$150 million.

19. According to Defendants, once the investor received the bank guarantee, the investor would have access to funds in an amount up to the face value of the guarantee. Additionally, the investor would not have any obligation to repay any funds withdrawn from the guarantee. Defendants were to receive fees in the amount of 6% of the face value of the guarantee for arranging the transaction.

20. In conducting the offering, Defendants provided investors with very limited documentation. Defendants sought even less information from investors; basically, all that investors were required to provide was proof of their ability to pay the initial fees.

21. Defendants did not provide investors with audited financial statements or other documents sufficient to disclose to investors the true nature of the purported offering.

22. Defendants did not attempt to determine the sophistication or income of their investors. As a result, Defendants did not know that at least one of their investors, and likely the majority, if not all, of the investors, were non-accredited.

23. In connection with the offering of this bank guarantee, Defendants provided investors with a two page "Lease Agreement." The "Lease Agreements" were entered into by the investor and either Elite or Elite3. Either Gruber or Josey signed the "Lease Agreement" on behalf of the entity. The "Lease Agreement" contained two material misrepresentations.

### **Misappropriation of Investor Funds**

24. Though only two pages, the “Lease Agreement” executed by investors makes clear that Defendants were to use the investor funds to purchase a bank guarantee.

25. Specifically, the section in the “Lease Agreement” entitled “Fee Amount” states that the fee paid by the investor is for “the issuance of an instrument.” The “Lease Agreement” uses the word “instrument” and the phrase “bank guarantee” interchangeably.

26. Rather than using investor funds to acquire a bank guarantee, Defendants used the funds for their own purposes. A review of the Elite bank accounts and accounts controlled by Gruber or Josey shows that of the \$2.85 million in investor funds, Gruber transferred approximately \$1.2 million to accounts controlled by her or Josey. In addition, Gruber wired \$550,000 to an account in Dubai.

27. To date, no investor has received a valid bank guarantee as a result of entering into the Lease Agreement with Defendants.



**Misrepresentation that Investor Funds  
Would be Held in an Escrow Account**

28. In the "Lease Agreement," Defendants also misrepresented that investor funds would be held in an escrow account until they acquired a bank guarantee.

29. Instead of placing investor funds in escrow, Defendants misappropriated investor funds upon receipt.

30. For example, on May 4, 2010, as instructed in the "Lease Agreement," an investor wired \$350,000 dollars to the "Elite Resources, LLC Holding Account." In a series of withdrawals on May 5 and May 6, 2010, Gruber drained the account of \$343,500. Of the \$343,500 in withdrawals, Gruber transferred \$25,000 to a promoter, made \$53,000 in counter debits, transferred \$102,000 to various other Elite accounts, and wired \$100,000 to an account in Dubai.

31. These transactions took place before Defendants acquired any bank guarantee for the investor and thus, were done in contravention of the representation made to the investors in the "Lease Agreement" that their funds would be held in escrow.

**The Bank Guarantees Offered by Defendants Were Fictitious**

32. When investor Philander K. Smartt demanded performance pursuant to the “Lease Agreement,” Defendants provided him with a document purporting to be a Barclays bank guarantee.

33. In fact, that document was not issued by Barclays.

34. Investment programs, like the one offered by Defendants, with guaranteed returns and no risk do not exist.

**COUNT I—FRAUD**

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

35. Paragraphs 1 through 34 are hereby re-alleged and are incorporated herein by reference.

36. From at least April 8, 2010, to at least August 20, 2010, Defendants, 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.

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

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

39. By reason of the foregoing, 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)]**

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

41. From at least April 8, 2010, to at least August 20, 2010, Defendants, 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.

42. By reason of the foregoing, 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]**

43. Paragraphs 1 through 34 are hereby re-alleged and are incorporated herein by reference.

44. From at least April 8, 2010, to at least August 20, 2010, Defendants, 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.

45. 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, Defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

46. By reason of the foregoing, 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—UNREGISTERED OFFERING OF SECURITIES**

**Violations of Sections 5(a) and 5(c) of the Securities Act  
[15 U.S.C. §§ 77e(a) and 77e(c)]**

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

48. No registration statement has been filed or is in effect with the Commission pursuant to the Securities Act and no exemption from registration exists with respect to the transactions described herein.

49. From at least April 8, 2010, to at least August 20, 2010, Defendants, singly and in concert, have:

- (a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise;

- (b) carried securities or caused such securities to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or for delivery after sale; and
- (c) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy securities, through the use or medium of any prospectus or otherwise,

without a registration statement having been filed with the Commission as to such securities.

50. By reason of the foregoing, Defendants, directly and indirectly, singly and in concert, have violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

**COUNT V — EFFECTING SECURITIES TRANSACTIONS FOR  
THE ACCOUNTS OF OTHERS WITHOUT BEING REGISTERED  
WITH THE COMMISSION AS A BROKER-DEALER**

**Violations of Section 15(a) of the Exchange Act  
[15 U.S.C. § 78o(a)]**

51. Paragraphs 1 through 34 are hereby restated and incorporated by reference.

52. From at least April 8, 2010, to at least August 20, 2010, Gruber and Josey have been using the mails and the means and instrumentalities of interstate commerce, to effect transactions in, or induce or attempt to induce the purchase or sale of securities, without registering with the Commission as a broker, as more particularly described above.

53. By reason of the transactions, acts, omissions, practices and courses of business set forth above, Gruber and Josey have violated Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

**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 Defendants named herein committed the violations alleged herein.

**II.**

A temporary restraining order, preliminary and permanent injunctions enjoining Defendants, their officers, agents, servants, employees, and attorneys from



violating, directly or indirectly, Sections 5(a), (c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c) and 77 q(a)] and 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], and enjoining Gruber and Josey, their agents, servants, employees, and attorneys from violating, directly or indirectly, Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

**III.**

An order freezing the assets of Defendants.

**IV.**

An order requiring an accounting by Defendants of the use of proceeds of the fraudulent conduct described in this Complaint and the disgorgement by Defendants of all ill-gotten gains or unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws.

**V.**

An order 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)] imposing civil penalties against Defendants.

**VI.**

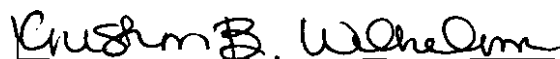
An order expediting discovery in this proceeding and prohibiting Defendants from destroying, altering or removing assets.

**VII.**

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: October 29, 2010

Respectfully submitted,



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