

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

2007 DEC -6 AM 9:05

CASE NO.:

SECURITIES AND EXCHANGE COMMISSION, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TERRY E. PROVENCE and )  
 DT CAPITAL LLC, )  
 )  
 Defendants. )

CLARENCE  
CLERK U.S. DIST. CT.  
S.D. OF FL. - MIAMI  
**07-23167**  
CIV - COOKE  
MAGISTRATE JUDGE  
BROWN

COMPLAINT

Plaintiff Securities and Exchange Commission alleges:

INTRODUCTION

1. The Commission brings this action to stop Defendants Terry E. Provence and DT Capital LLC from violating the federal securities laws and dissipating investor assets generated from a fraudulent investment scheme. Starting no later than March 2007 and continuing to at least August 2007, Provence pitched a sham index options trading program to primarily inexperienced investors with false promises their principal would be safe. Provence created, controlled and used DT Capital as a vehicle to marshal investor funds and promote the options program.

2. To lure investors to the options program, Provence and DT Capital falsely touted that a major brokerage firm guaranteed the safety of investor principal, and that the actual options trader, Fredrick J. Kunen, was a licensed securities trader and director at the brokerage firm. Provence and DT Capital also falsely represented the options program had a successful ten-year track record and that investors could expect extraordinary returns.

3. Using these falsehoods to lure investors, Provence and DT Capital raised at least \$3.5 million from approximately 40 investors. These investors lost all or nearly all of their invested principal, and Provence and DT Capital profited by at least \$130,000.

4. By engaging in this conduct, Provence and DT Capital violated and, unless enjoined, are reasonably likely to continue to violate, Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77q(a)(1); Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5; and Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).

5. The Commission requests the Court to enter (1) an order of permanent injunction restraining and enjoining Provence and DT Capital from violating the federal securities laws, (2) an order directing the Defendants to disgorge all profits or proceeds they have received as a result of the acts and/or courses of conduct complained of, with prejudgment interest, and (3) an order directing the Defendants to pay civil money penalties.

6. In separately filed papers, the Commission also seeks immediate emergency relief, including an asset freeze, against Provence and DT Capital. Approximately \$322,000 in investor funds remain in five brokerage accounts Provence controls, which he is attempting to liquidate.

#### **DEFENDANTS AND RELATED PARTIES**

7. Provence, age 58, resides in Naples, Florida. He founded DT Capital and is its president and managing member.

8. DT Capital is a Florida limited liability company, headquartered in Naples, Florida. Provence created the company to manage investor funds in the options program. Provence's investors became members of DT Capital.

9. Kunen was the trader in the options program. He lived in Coconut Creek, Florida. Kunen died on July 11, 2007. On August 23, 2007, the Commission filed a civil action against the personal representative of Kunen's probate estate, seeking similar relief, including an asset freeze and the appointment of a Receiver over the estate. SEC v. Charles O. Morgan, Jr., as Personal Representative of the Estate of Frederick J. Kunen, Case No. 07-22204-CIV-GOLD (S.D. Fla.).

#### **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, 15 U.S.C. §§ 77t(b), 77t(d) and 77v(a); and Sections 21(d), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e) and 78aa.

11. This Court also has personal jurisdiction over the Defendants and venue is proper in the Southern District of Florida because many of Provence and DT Capital's acts and transactions constituting violations of the Securities and Exchange Acts occurred in the Southern District of Florida.

12. Kunen had a house and lived in Coconut Creek, and an office in Ft. Lauderdale, located in the Southern District of Florida, during the events alleged in this complaint. During this period, he and Provence entered into a profit-sharing agreement for the options program. The contract memorialized their relationship under the options program and contained a Broward County, Florida choice of venue. Kunen sent the contract to Provence through a mutual acquaintance. The mutual acquaintance lived in Deerfield Beach, Florida and had an office in Boca Raton, Florida, also in this District, during the events alleged in this complaint.

13. Provence executed and delivered the contract to Kunen via email through the same acquaintance. Kunen executed and sent the contract to Provence using the same process.

Provence knew Kunen lived and worked in this District before entering into the contract, and had spoken on the telephone and exchanged emails with Kunen.

14. During their fraud, Provence routinely communicated by email and telephone with Kunen to exchange information about the options program. Under the terms of their contract, Kunen traded investor funds Provence provided him. Provence wired these funds to brokerage accounts Kunen accessed. Provence then emailed Kunen or Kunen's agent, notifying one of them he had funded a brokerage account, so Kunen could trade. After completing a trade, Kunen contacted Provence and requested his share of the purported profits. Provence then wired Kunen his requested share of profits from another account containing investor funds. All of these acts and transactions occurred while Kunen resided in the Southern District of Florida.

15. Provence and DT Capital, 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.

### **THE FRAUDULENT OPTIONS TRADING PROGRAM**

#### **A. Provence and Kunen Hatch their Scheme**

16. In the summer of 2006, Kunen, through a mutual acquaintance, introduced Provence to the options program. The acquaintance provided Provence with materials that described the options program, including a sample trading contract.

17. In January 2007, Kunen and the acquaintance discussed the options program and Kunen's background with Provence by telephone and email. They told Provence the investment principal was safe and the investment yielded 10% to 20% monthly returns. Kunen also represented he was an "SEC-licensed" trader and a director at Goldman Sachs and Company.

Kunen told Provence he resided in Coconut Creek, and had profitably traded index options for more than ten years.

18. Provence subsequently received approximately five pages of written materials from the mutual acquaintance, describing the options program as "[a]bsolutely NO RISK of Principal Invested." The materials Provence received included a two-page sample contract, a one-page description of the investment opportunity, a one-page *pro forma* statement that showed how an investment would increase in value each month for twelve months, and a one-page document with a general description of the program. The materials represented that a \$50,000 investment would yield a 42.7% return within six to seven weeks, and would balloon to \$445,798 in twelve months.

19. Using these papers, Provence then began preparing his own offering materials, corporate paperwork, and contracts necessary to promote the options program to potential investors.

20. In February 2007, Provence formed DT Capital for the sole purpose of receiving money from investors to fund the options program.

21. On or about March 2, 2007, Provence and Kunen entered into an "Agreement for Sharing of Profits for Index Option Credit Spread Trades," which memorialized their relationship. Provence and Kunen agreed Provence would recruit investors, solicit and obtain their money, and fund Kunen's trading. Under the contract, Kunen would keep 60% of the trading profits, and Provence, as president of DT Capital, would retain 40%.

**B. Kunen and Provence Operate the Options Program**

22. From at least March through July 2007, Kunen and Provence operated the options program. Each played a critical role in the scheme. Provence recruited investors, collected their money, transferred their funds to brokerage accounts for Kunen to trade, and communicated with

investors about the alleged trading results. Kunen accessed the brokerage accounts, traded investor funds, and communicated the purported trading results to Provence.

23. Targeting mainly individuals with little or no investment experience, Provence lured investors to join the options program by claiming Goldman Sachs guaranteed their principal, the investments were risk free, and investors only had to compensate Kunen and Provence a percentage of guaranteed profits they obtained from each options trade.

24. To attract investors, Provence prepared offering materials touting the program through DT Capital that augmented the materials Kunen had provided him. The DT Capital offering materials stated “[t]his is a no risk opportunity.” The offering materials further stated: “The security of Principal (both ‘original’ and ‘accumulated’) is guaranteed by the nature of the trade and the fact that the bulk of the profits are earned at the inception of the trade.”

25. The DT Capital offering materials purported to demonstrate how an investment appreciated with a 10% to 20% monthly return, and emphasized a trader with a ten-year track record of success managed the investment opportunity. Although the offering documents did not identify the trader or his firm, Provence told investors the trader was licensed and a director at Goldman Sachs.

26. To further entice investors, the DT Capital offering materials also touted Provence and his wife’s “combined almost 60 years of finance, management and general business experience including commercial and hard money lending, trading, consulting, and international business.”

27. Provence entered into separate profit-sharing arrangements with investors, under which he and investors would split his anticipated 40% share of profits from the options program.

28. To better market the options program to potential investors, Provence recruited other people, or "finders," to solicit investors. Provence communicated with his finders by telephone and email, and conducted strategy sessions with them on how to market the options program to investors.

29. Provence supplied his finders with offering documents to use as a template to create their own offering materials for investors. He often edited his finders' offering materials and PowerPoint presentation slides.

30. Provence also incorporated a company for a group of his finders that solicited investor funds for DT Capital. Provence received investor funds from the company and later deposited the money into a *brokerage account* used in the options program.

31. Provence also spoke on teleconferences with prospective investors, in which he pitched the program and Kunen's background, embellishing some of the information he received from Kunen by stating, for example, that Goldman Sachs guaranteed investor principal.

32. To ensure he remained the main conduit of information between his investors and other finders, Provence hid Kunen's identity from them, thereby precluding finders and investors from conducting any due diligence on Kunen.

33. Once Provence successfully enticed investors to join the options program, he directed the investors to wire their investment funds to him directly or to a brokerage or bank account he controlled.

**C. Misrepresentations and Omissions in Connection with the Options Program**

34. In the process of soliciting investments, Provence distributed written materials containing false statements and material omissions to investors. Provence, on behalf of DT Capital, orally made these same false statements and omissions of material fact to investors.

1. Goldman Sachs Did Not Guarantee Investor Principal

35. Provence's written materials touted the options program as risk-free and a fully-secured investment conducted through a major U.S. securities firm. In addition, Provence told investors Goldman Sachs guaranteed their principal.

36. These statements were blatantly false, as Goldman Sachs never had anything to do with the options program. Goldman Sachs never guaranteed investor principal.

37. Provence had no reasonable basis to make these claims. He conducted no due diligence to verify whether the options program was risk-free, whether it was fully-secured, whether the investment was conducted through a major U.S. securities firm, or whether Goldman Sachs guaranteed investor principal.

38. Provence also knew or was reckless in not knowing the options program was full of risk. Investing in index options is, by its nature, risky and volatile. Thus, Provence could not reasonably have assured investors the options program was risk-free.

2. The Investment Could Not Generate a 10% or Greater Monthly Return

39. Provence told potential investors the options program yielded extraordinary returns—between 9.8% and 21.35% monthly—and that the trader had operated the program for ten years without incurring a loss.

40. Provence had no reasonable basis to make these claims. Provence conducted no due diligence to verify whether Kunen had actually made the returns he claimed, whether any investors had previously profited from Kunen's strategy, or even whether Kunen had actually operated the program for ten years.

41. These statements were false and misleading. Investing in index options is, by its nature, risky and volatile. Thus, Provence could not reasonably have assured investors of such astronomical returns. Furthermore, Kunen had been incarcerated within the previous ten years,



making it highly unrealistic that he operated the program as he claimed. On October 29, 2001, Kunen pled guilty to one count of securities fraud in connection with his participation in a Ponzi scheme. U.S. v. Frederick Kunen, Case No. 01-689-CR-MORENO. After serving a prison sentence in connection with his guilty plea, Kunen violated his probation in early 2004, and in August 2004 was sentenced to two years' imprisonment and re-incarcerated based on bank fraud charges.

### 3. Kunen's Background

42. Provence touted Kunen to investors as a successful, licensed securities trader who was a director at Goldman Sachs.

43. Provence had no basis to make these claims about Kunen. He did nothing to confirm whether Kunen had a securities license or any relationship to Goldman Sachs.

44. These statements were false and misleading because Kunen was neither a licensed trader nor a director at Goldman Sachs.

### D. Provence Fails to Conduct Any Due Diligence

45. Provence undertook no due diligence to evaluate the merits of the options program or to verify any of Kunen's claims or asserted background.

46. Even though Provence had red flags that should have led him to conclude information Kunen provided him about the options program was false, he parroted and embellished Kunen's claims to prospective investors. Even a minimal amount of due diligence by Provence would have exposed Kunen's proposed fraudulent scheme, or at a minimum raised serious concerns.

47. For example, Provence could have readily verified whether Kunen was associated with Goldman Sachs, and whether Kunen was a licensed trader. Kunen's contact information, a business address and phone numbers, were in South Florida and did not mention Goldman Sachs.

Had Provence conducted any research or even contacted Goldman Sachs he would have learned Kunen was neither licensed in the securities industry nor associated with Goldman Sachs. But he did none of these things.

48. Provence also could have easily determined from Goldman Sachs whether it guaranteed investor principal. Similarly, Provence could have sought to obtain trading records or independent confirmation of Kunen's supposed ten-year track record of successful trading in the options program. In fact, Provence never even visited Kunen's office to determine whether it existed.

#### **E. The Options Trading**

49. To conduct the trades under the options program, Provence and Kunen established online brokerage accounts under Provence's control and used investor money to fund the accounts.

50. First, Kunen opened a brokerage account in Provence's name at E\*Trade Financial Corp. Provence received and deposited investor funds in the E\*Trade account, and allowed Kunen complete access to the money to trade. Provence eventually opened other brokerage accounts, some in DT Capital's name and some in his own, granting Kunen similar trading access.

51. After Provence funded a brokerage account with investor proceeds, Kunen used the login information he received from Provence to access the accounts and trade investor funds in index options. Kunen typically made two transactions of Standard & Poor's 500 Index ("S&P 500 Index") options in the brokerage account to create a temporary, illusory credit.

52. The first part of Kunen's trading involved the purchase of call option contracts that entitled him, on behalf of the investor, to acquire shares of the S&P 500 Index at a certain price. This stated price, or "strike price," gave Kunen, on behalf of the investor, the right to buy

the shares at a certain price when he exercised the option contracts. The option contracts expired on a certain date after the day of purchase.

53. The second part of Kunen's trading involved the sale of a different option contract that had to be covered in the future on or before the contract expired at a certain strike price. Until Kunen purchased matching option contracts to cover the sale, it was impossible to determine whether the transaction was profitable. In other words, the actual loss or profit from Kunen's trading of each options contract could not be determined until Kunen purchased matching option contracts to cover the sale or it became unnecessary to cover the sale because the contracts were worthless.

54. To account for Kunen's options trading, the brokerage firms created an immediate, temporary credit in the investor's brokerage account after the first trading. This temporary credit was illusory because no profit or loss could be realized until the option contracts Kunen sold were covered by an offsetting purchase or they expired worthless and the option contracts Kunen bought were sold or expired worthless.

55. Kunen took advantage of this temporary illusory credit. After each initial trade, he contacted Provence and informed him he had completed his transaction and that it had resulted in a profit. In reality, no such profit existed because Kunen's buy and sell positions were still pending, and no realized profit could have occurred until Kunen made offsetting transactions or the option contracts expired worthless.

56. However, as part of their trading and profit-sharing arrangement, Kunen required Provence to wire Kunen's share of the investment profits shortly after the initial trading. So in each instance after Kunen contacted him, Provence withdrew Kunen's share of the purported profits from investor funds and wired them to a bank account Kunen specified. Simultaneously,

Provence withdrew his share or a portion of his share of the purported profits from investor funds.

57. At the same time he was withdrawing his purported profits from the trades, Provence received each brokerage account's monthly statement, which showed Kunen's trading resulting in massive losses. Provence also had online access to the brokerage statements that contained this information. Therefore, Provence knew or was reckless in not knowing the temporary illusory credits were unrealized and no profits occurred from Kunen's trading.

58. Provence lied to investors about the temporary credit and failed to advise them of their losses. Rather than provide investors with the actual brokerage account statements which showed the losses, Provence created false statements of return for investors, printed on DT Capital letterhead, which failed to show the true brokerage account activity. By failing to show the illusory, temporary nature of the trading profits, as well as the trading losses, Provence's DT Capital statements misrepresented investor earnings in the brokerage accounts.

59. Investors had no input in the investment decisions and no role in the management or operation of the options program. They had no control over their funds, relying entirely on Provence to oversee the accounts, to facilitate payment of the purported profits, and to keep them apprised of their investment performance.

60. In almost all cases, the options trading program resulted in massive investor losses.

#### **F. Provence Perpetuates the Fraud**

61. As Kunen began conducting trades on behalf of Provence's investors, the options program experienced a myriad of difficulties, including investment losses. Provence withheld this information from investors to keep their funds in the options program and to encourage them to

commit more funds to the program. Through his misconduct, Provence was able to continue the fraudulent scheme even after Kunen's death in July 2007.

62. At various times in April 2007, E\*Trade began placing restrictions on the wire activity in Provence's brokerage accounts and made inquiries regarding his account activity. In response to E\*Trade's initial inquiries regarding third-party wires into his accounts, Provence represented he had "personal accounting reasons for keeping [his] funds in multiple accounts, just as [he is] involved as a principal in multiple businesses (domestic and international)." He failed to reveal to E\*Trade he was pooling money from investors that another individual, Kunen, was trading. In contrast, Provence told investors another lie—the initial account restrictions occurred because an investor had made an inquiry regarding one of the accounts.

63. In August 2007, Provence claimed to investors he was unaware of the E\*Trade accounts' balances, and the accounts had incurred massive losses. In fact, as early as April 2007, Provence knew the accounts had sustained massive losses.

64. With difficulties mounting at E\*Trade, Provence continued the scheme by opening brokerage accounts to hold investor funds at TD Ameritrade, Inc., and eventually at optionsXpress, Inc. Kunen's trading activity in those accounts resulted in losses at both firms. Nevertheless, Provence reported investment profits to investors in those transactions.

65. Provence also knew Kunen's trades in those other accounts resulted in losses soon after the trades were completed. For example, in April 2007, Kunen effected a trade in an Ameritrade account Provence opened. Once the position was closed, the supposedly profitable trade resulted in a loss of approximately \$230,000 of investor principal. Provence received the brokerage statement showing the loss, and no other activity occurred in the account until Provence liquidated the funds on June 22.

66. Provence told investors in late June there appeared to be a discrepancy in his Ameritrade account, but their principal was safe. In reality, Provence knew or was reckless in not knowing by late June that Kunen's trading in the Ameritrade account had resulted in the loss of investor principal.

67. Similarly, in July 2007, Provence learned an optionsXpress account he controlled sustained trading losses in excess of \$600,000. Yet, in August 2007, after Kunen's death, Provence advised investors they received a 3.95% return from the optionsXpress trading activity.

**G. Provence's Association with DT Capital as an Unregistered Broker-Dealer**

68. During the relevant time period, DT Capital engaged in activities, identified in paragraphs 69 through 72 of this complaint, which made it an unregistered broker-dealer. Through this unregistered broker-dealer, Provence engaged in illegal activity, identified in paragraphs 69 through 72 of this complaint, while associated with DT Capital.

69. Provence solicited investors to invest in the options trading program through DT Capital's offering materials by: (a) directly soliciting investors to enter into profit-sharing agreements for the options program, which entitled Provence and DT Capital to a transaction-based fee, (b) engaging unregistered finders to solicit investors for the options program, and (c) creating DT Capital offering materials touting the trader's investment experience, "no risk opportunity" and "security in principal."

70. Furthermore, Provence and DT Capital earned transaction-based compensation because under the terms of the agreement with Kunen they kept 40% of purported profits from the options trading program. Pursuant to the DT Capital offering materials, Provence and DT Capital split this anticipated profit with investors.

71. Provence and DT Capital also regularly participated in securities transactions at other key points in the chain of distribution by directing investors to send their funds to him and

DT Capital. Provence then transmitted investor funds to Kunen to trade. Provence processed and accounted for investor payments prior to sending the money to Kunen. Provence also created false statements of return for investors, printed on DT Capital letterhead.

72. Neither Provence nor DT Capital is registered with the Commission as a broker, dealer, or in any other capacity.

**COUNT I**

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

73. The Commission repeats and realleges Paragraphs 1 through 72 of this complaint as if fully set forth herein.

74. From at least March through at least until August 2007, Provence and DT Capital 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, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

75. By reason of the foregoing, Provence and DT Capital directly and indirectly, violated Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

**COUNT II**

**FRAUD IN VIOLATION OF  
SECTIONS 17(a)(2) AND 17(a)(3) OF THE SECURITIES ACT**

76. The Commission repeats and realleges Paragraphs 1 through 72 of this complaint as if fully set forth herein.

77. From at least March through at least until August 2007, Provence and DT Capital 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: (a) obtained 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) engaged in transactions, practices and courses of business which have operated as a fraud or deceit upon purchasers of such securities.

78. By reason of the foregoing, Provence and DT Capital directly and indirectly, violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77(q)(a)(2) and 77(q)(a)(3).

### **COUNT III**

#### **FRAUD IN VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 PROMULGATED THEREUNDER**

79. The Commission repeats and realleges Paragraphs 1 through 72 of this complaint as if fully set forth herein.

80. From at least March through at least until August 2007, Provence and DT Capital 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, knowingly, willfully or recklessly: (a) employed devices, schemes or 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 the light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices and courses of business which have operated as a fraud upon the purchasers of such securities.

81. By reason of the foregoing, Provence and DT Capital 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.



**COUNT IV**

**VIOLATIONS OF SECTION 15(a)(1) OF THE EXCHANGE ACT**

82. The Commission repeats and realleges Paragraphs 1 through 72 of this complaint as if fully set forth herein.

83. From at least March through at least until August 2007, DT Capital directly or indirectly, by the use of the mails or means or instrumentalities of interstate commerce, while acting as a broker or dealer, and Provence, while associating with DT Capital, engaged in the business of effecting transactions in securities for the accounts of others, effected transactions in securities, or induced or attempted to induce the purchase and sale of securities, without DT Capital registering as a broker-dealer in accordance with Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b).

84. By reason of the foregoing, Provence and DT Capital directly and indirectly, have violated and, unless enjoined, will continue to violate Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1).

**RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests that the Court:

**I. Declaratory Relief**

Declare, determine and find that Provence and DT Capital committed the violations of the federal securities laws alleged in this complaint.

**II. Preliminary Injunction and Permanent Injunction**

Issue a Preliminary Injunction and Permanent Injunction, restraining and enjoining Provence and DT Capital, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); Section 10(b) and Rule 10b-5 of the Exchange Act, 15

U.S.C. § 78j(b); and Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a)(1), as indicated above.

### **III. Disgorgement**

Issue an Order requiring Provence and DT Capital to disgorge all ill-gotten profits or proceeds received as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest.

### **IV. Asset Freeze and Accounting**

Issue an Order freezing the assets of Provence and DT Capital until further Order of the Court, and requiring from Defendants Provence and DT Capital a document sworn to before a notary public setting forth all assets (whether real or personal) and accounts (including, but not limited to, bank accounts, savings accounts, securities or brokerage accounts, and deposits of any kind) in which Provence and/or DT Capital (whether solely or jointly), directly or indirectly (including through a corporation, trust or partnership), either has an interest or over which Provence and/or DT Capital has the power or right to exercise control.

### **V. Records Preservation**

Issue an Order requiring Provence and DT Capital to preserve any records related to the subject matter of this lawsuit that are in their custody, possession or control.

### **VI. Penalties**

Issue an Order directing Provence and DT Capital 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. § 78u(d); and Section 209(e) of the Advisers Act, 15 U.S.C. §§ 80b-9(e).

### **VII. Further Relief**

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

**VIII. Retention of Jurisdiction**

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

Respectfully submitted,

December 6, 2007

By:



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JS 44 (Rev. 11/05)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

**I. (a) PLAINTIFFS**  
 Securities and Exchange Commission

**(b) County of Residence of First Listed Plaintiff** \_\_\_\_\_  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c) Attorney's (Firm Name, Address, and Telephone Number)**  
 Roger Cruz, Esq. (305) 982-6379  
 Securities and Exchange Commission  
 801 Brickell Avenue, Suite 1800, Miami, FL 33131

**DEFENDANTS** **07-23167**  
 Terry E. Provence and DT Capital LLC  
**CIV - COOKE**  
 Collier

County of Residence of First Listed Defendant \_\_\_\_\_  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED. **MAGISTRATE JUDGE**

Attorneys (If Known) **BROWN**  
 Allan M. Lerner, Esq. (954) 563-8111, Allan M. Lerner, PA, 2688 E. Oakland Park Blvd., Ft. Lauderdale, FL 33306

(d) Check County Where Action Arose:  MIAMI-DADE  MONROE  BROWARD  PALM BEACH  MARTIN  ST. LUCIE  INDIAN RIVER  OKEECHOBEE HIGHLANDS

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

*DADE-07-23167-CV-COOKE-BROWN*

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated in this State of Business In this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated in Another State of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign National	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 LSC 341b <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor-Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding  2 Removed from State Court  3 Re-filed- (see VI below)  4 Reinstated or Reopened  5 Transferred from another district (specify)  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judgment

**VI. RELATED/RE-FILED CASE(S).** (See instructions second page): a) Re-filed Case  YES  NO b) Related Cases  YES  NO

JUDGE Alan S. Gold DOCKET NUMBER 07-CIV-22204

**VII. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):  
 15 U.S.C. § 77q(a)(1); 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5; 15 U.S.C. §§ 77q(a)(2) and 77q(a)(3) and 15 U.S.C. § 78n(a)(1). Violations of the federal securities laws.

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

**VIII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMANDS** Disg., Prel. & Perm. Inj. **JURY DEMAND:**  Yes  No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE SIGNATURE OF ATTORNEY OF RECORD DATE December 6, 2007

**FOR OFFICE USE ONLY**

AMOUNT \_\_\_\_\_ RECEIPT # \_\_\_\_\_ IFP \_\_\_\_\_