

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 05-21527-CIV-Moore/Garber

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.)
)
FOCUS FINANCIAL ASSOCIATES, INC.,)
FOCUS DEVELOPMENT CENTER, INC.,)
MAX FRANCOIS, AIBY PIERRE-LOUIS,)
and JEAN FRITZ MONTINARD,)
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Defendants.)
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COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission alleges:

INTRODUCTION

1. The Commission brings this action to restrain and permanently enjoin the Defendants from violating the antifraud provisions of the federal securities laws. Beginning in February 2002, Focus Financial Associates, Inc., Focus Development Center, Inc. (together, the “Focus Companies”), and their principals engaged in a Ponzi scheme that raised approximately \$6 million from more than 600 Haitian-Americans living in South Florida. The Focus Companies’ scheme centered around the offer and sale of twelve-month term notes. The Defendants made material misrepresentations and omissions in connection with the sale of these notes. They falsely touted their notes as a unique opportunity to make guaranteed annual returns in excess of 15%, and lied about creating jobs and investing in the Miami Haitian-American community. The Defendants also told prospective investors their principal was secure, their annual returns were

guaranteed, and they would repay the principal and interest from business profits. In truth, the majority of the businesses in which the Defendants invested were mismanaged, quickly failed, and generated no income with which to repay investors. Therefore, all interest payments the Defendants made to investors came from new investor funds. By July 2004, all but one of the Focus-affiliated businesses had failed, the Focus Companies were unable to continue making payments to investors, and their investment principal was gone.

DEFENDANTS

2. Focus Financial Associates, Inc. (“Focus Financial”), formed in January 2002, had its principal office in Miami, Florida. The State of Florida administratively dissolved Focus Financial in October 2004 for failure to file an annual report. Focus Financial sold the Focus Development notes to investors, collected investment funds from investors, and determined how to use investor capital

3. Focus Development Center, Inc. (“Focus Development”), formed in June 2001, is an active Florida corporation with its principal office in Miami, Florida. Focus Development was the corporate entity under which the Focus Companies and their principals issued the notes to investors. Focus Development also purportedly operated auto sales lots, auto repair shops and other business ventures.

4. Max Francois, 48, resides in Pembroke Pines, Florida. Since June 2001, Francois has been the founder, president, and day-to-day operational manager of Focus Development, and a director of Focus Financial since January 2002.

5. Aiby Pierre-Louis, 38, resides in Miami, Florida, and has been a director of Focus Financial since its creation in January 2002. Pierre-Louis served as primary fundraiser for the Focus Companies.

6. Jean Fritz Montinard, 36, was a resident of Miami, Florida until August 2004. Montinard has been a director of Focus Development since its creation in June 2001, and a director of Focus Financial since its creation in January 2002. His current whereabouts are unknown.

JURISDICTION AND VENUE

7. 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); and 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.

8. Venue is proper in the Southern District of Florida because the Defendants’ acts and transactions constituting violations of the Securities Act and the Exchange Act occurred here. In addition, the Focus Companies’ principal place of business was in the Southern District of Florida, and Defendants Francois, Pierre-Louis, and Montinard resided in South Florida during the events this Complaint describes.

9. Defendants, directly and indirectly, 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 SCHEME

A. The Focus Companies’ Securities Offering

10. Beginning in February 2002, Focus Development began issuing, and the Defendants began offering, twelve-month notes. They offered the notes to individuals in the South Florida Haitian-American community who had little or no investment experience. The

Defendants claimed the notes generated annual returns between 15% to 20%, with quarterly interest payments to investors, and the principal and remaining interest paid at the end of the annual term.

11. The Defendants' marketing campaign was primarily through word of mouth. For example, Montinard made presentations at Haitian-American church congregations in Miami where he promised prospective investors their principal was guaranteed and safe, and the funds would be used to develop Haitian-American businesses in Miami. The Defendants informed investors at these presentations that they made interest payments from profits of the funded businesses.

12. The Defendants also reached investors through a weekly talk-show presented on a local Haitian radio station, broadcasting in Creole and covering a large area of South Florida. During the programs, Francois, Montinard and Pierre-Louis reiterated the representations they made to the church congregations, stressing the safety and profitability of the investment, and the guaranteed return of up to 20%.

13. In their church and radio presentations, the Defendants told potential investors that the Focus Companies owned and operated many successful Haitian-American businesses, and stated their goal was to develop and expand these businesses to create jobs and provide a better community for South Florida Haitians. They further assured investors that all funds raised would be used to develop and expand these businesses, which operated under a "Focus" name, and included, among other things, an airline flying between Miami and Haiti, a tax return preparation service, a chiropractic center, a landscaping service, an auto dealership, and two auto repair shops.

14. The Defendants instructed potential investors to contact Focus Financial's office to schedule an appointment. Pierre-Louis or Montinard then met with them and provided written offering materials which stated that the Focus Development notes generated annual returns, payable quarterly, of 15% to 20%. The offering materials contained an Investment Application which detailed the success of the Focus businesses, the investment experience and knowledge of its principals, the low risk of investment, and the community benefits of investing in the Focus business empire. The Defendants also required each investor to execute a note at the same time they made their investment.

**B. Material Misrepresentations and Omissions
in Connection with the Offer of the Focus Companies' Securities**

15. From at least February 2002 through September 2004, in connection with offering the Focus Development notes, the Defendants, together and individually, made material misrepresentations or omitted to disclose material information to prospective and established investors about the safety and profitability of the investment, and the use of investor proceeds.

1. Misrepresentations about Investment Returns

16. The Focus Companies' offering materials stated the notes generated annual returns of 15% to 20%. Francois, Pierre-Louis, and Montinard also made these representations to prospective and established investors throughout the investment period during their presentations at Haitian-American churches, on the radio, and during individual meetings.

17. These statements were patently false. None of the Focus Companies' businesses ever generated sufficient profits to pay any interest to investors during the entire investment period, much less 15-20%. To the contrary, most of the Focus businesses were either failing or had financially collapsed and could not generate income. In reality, all interest and principal payments made to investors came from new investor capital.

2. Misrepresentations about the Investments' Safety

18. The Focus Companies' offering materials additionally stated the invested principal was safe, and guaranteed investors would receive their entire principal back at the end of the 12-month term. Francois, Pierre-Louis, and Montinard also made these representations to prospective and established investors.

19. These statements were false. The Focus Companies' investment strategy, which consisted of funding businesses with few assets and negligible operating income, was actually fraught with investment risks. In addition, the Focus Companies' investments were unsecured. As a result, nothing protected investors from losing their entire principal investment.

3. Misrepresentations about the Use of Investor Funds

20. The Focus Companies' written investment materials informed investors the funds they contributed would be used to finance successful, Focus-affiliated businesses that would provide jobs for the Miami Haitian-American community. These materials additionally stated investment returns would be paid from the operating profits of these businesses. Francois, Pierre-Louis, and Montinard each made these representations in statements to prospective and established investors.

21. These representations were also false. While some investors' funds were used to fund the Focus Companies' related businesses, Defendants operated a Ponzi scheme with most of the money, using new investors' funds to make quarterly interest payments and repay the principal of prior investors. Moreover, Defendants failed to advise investors that the Focus Companies' businesses generated little or no operating income.

CLAIMS FOR RELIEF

COUNT I

Fraud In Violation Of Section 17(a)(1) Of The Securities Act

22. The Commission repeats and realleges paragraphs 1 through 21 of its Complaint.

23. The Defendants, 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, as described in this Complaint, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

24. By reason of the foregoing, the Defendants have violated Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a).

COUNT II

Fraud in Violation of Section 17(a)(2) and 17(a)(3) of the Securities Act

25. The Commission repeats and realleges paragraphs 1 through 21 of its Complaint.

26. The Defendants, 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, as described in this Complaint: (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 are now operating and will operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

27. By reason of the foregoing, the Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act,

15 U.S.C. §§ 77q(a)(2) and 77q(a)(3).

COUNT III

**Fraud In Violation Of Section 10(b) Of The Exchange Act
And Rule 10b-5 Promulgated Thereunder**

28. The Commission repeats and realleges paragraphs 1 through 21 of its Complaint.

29. The Defendants have 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 the securities, as described in this Complaint, 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.

30. By reason of the foregoing, the Defendants have violated Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. § 240.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Declaratory Relief

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

II.

Permanent Injunctive Relief

Issue a Permanent Injunction, restraining and enjoining the Defendants, their officers, principals, agents, servants, employees, and all persons in active concert or participation with it,

and each of them, from violating: (a) Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); and (b) Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. § 240.

III.

Accounting and Disgorgement

Issue an Order requiring the Defendants to provide a full accounting for, and to disgorge, all ill-gotten profits or proceeds they received, directly or indirectly, as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest.

IV.

Penalties

Issue an Order directing the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d): and Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d).

V.

Records Preservation

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

VI.

Further Relief

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

VII.

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 hereby be

