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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

JOHN H. ROGICKI,

Defendant.

17 Civ. ()
ECF Case

COMPLAINT

JURY TRIAL
DEMANDED

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against defendant John H. Rogicki (“Rogicki”), alleges as follows:

SUMMARY OF ALLEGATIONS

1. John H. Rogicki stole over \$9 million from a charity dedicated to the causes of improving education and healthcare. Rogicki was named President and trustee of that charity (the “Foundation”) by the trust and will of its founder, decedent Z (“Z”), after her passing in 2001. Rogicki had befriended Z when she was an elderly woman and served as executor of her estate.

2. In addition to serving as the President and trustee of the Foundation, Rogicki also served as its investment adviser, through Train, Babcock Advisors, LLC (“TBA”), a firm for which Rogicki was managing director and for which he served as chief compliance officer for many years. As investment adviser to the Foundation, Rogicki made all investment decisions for the Foundation, and directed purchases and sales of securities in the Foundation advisory account at TBA. Between 2004 and 2016, Rogicki carried out his fraud primarily by liquidating securities positions in the Foundation advisory account, and then misappropriating trading proceeds by wiring the proceeds to himself from the Foundation’s brokerage account to the account of the Z estate, which he controlled, then transferring that money to himself or accounts for his benefit. Rogicki made more than 200 of these fraudulent transactions over the course of those 12 years, totaling over \$9 million.

3. Rogicki’s fraud and betrayal of his client’s trust were anathema to his legal obligations and responsibilities as an investment adviser. Through this action, the Commission seeks redress for Rogicki’s violations of the federal securities laws.

VIOLATIONS

4. By virtue of the conduct alleged herein, Rogicki, directly or indirectly, singly or in concert, engaged in transactions, acts, practices and courses of business that constitute violations of Section 206(1) and Section 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-6(1) and 80b-6(2)] 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].

5. Unless Rogicki is permanently restrained and enjoined, he will again engage in the acts, practices, transactions and courses of business set forth in this Complaint and in acts,

practices, transactions and courses of business of similar type and object.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

6. The Commission brings this action pursuant to authority conferred by Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], seeking to restrain and permanently enjoin Rogicki from engaging in the acts, practices, transactions and courses of business alleged herein.

7. The Commission seeks a judgment permanently enjoining Rogicki from future violations of the Advisers Act provisions and the Exchange Act provisions that Rogicki violated as alleged in this Complaint, ordering Rogicki to disgorge his ill-gotten gains and to pay prejudgment interest thereon, and imposing civil money penalties pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Finally, the Commission seeks any other relief the Court may deem just and appropriate.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to Sections 209(d), 209(e), and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d), 80b-9(e), and 80b-14] and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa].

9. Venue is proper in this district pursuant to Section 214 of the Advisers Act [15 U.S.C. § 80b-14] and Section 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa]. Certain transactions, acts, practices, and courses of business constituting the violations alleged herein occurred within this district. For example, certain wire transactions that form the basis of violations alleged in this Complaint were routed to a financial institution in the borough of Manhattan in New York, New York.

10. In connection with the conduct alleged in this Complaint, Rogicki, directly or indirectly, made use of the mails or the means or instrumentalities of, interstate commerce.

DEFENDANT

11. **Rogicki**, age 67, resided in New York, NY at all times relevant to this action, but now resides in Little Silver, NJ, was employed by TBA as an investment adviser representative from 1990 until he resigned in January 2017 in connection with conduct alleged herein.

FACTS

12. Years ago, Rogicki was the financial adviser for Z's husband. He then became a friend and adviser to Z when she was an elderly woman in the 1990s. Rogicki connected Z to his trusts and estate lawyer, and utilizing that lawyer, Z executed a trust and will in 1998 that left Rogicki as trustee and executor, designating her estate to go into the Foundation, a non-profit organization dedicated to the causes of improving education and healthcare, which was funded by assets that had been gifted from the estate of Z. Z died in 2001 at the age of 97 and, shortly thereafter, Rogicki assumed his role as President and co-trustee of the Foundation and as executor of the estate of Z. At around the same time, Rogicki also became investment adviser to the Foundation when it opened a fee-based investment advisory account at TBA. Rogicki acted as the Foundation's designated financial advisor and had discretion over investment decisions in the advisory account. The Foundation opened and maintained its accounts at TBA on the basis that Rogicki would provide investment advice and manage its investments in exchange for a fee. Rogicki was compensated by TBA based on fees generated from accounts he served, including those of the Foundation.

13. As its investment adviser, Rogicki owed the Foundation an affirmative fiduciary duty of utmost good faith. In egregious violation of that duty, from at least 2004, Rogicki began misappropriating funds from the account overseen by TBA in the name of the Foundation.

14. Rogicki misappropriated these funds by liquidating positions in securities in the Foundation advisory account at TBA, then by initiating third-party wire transfers of trading proceeds from the account. Rogicki directed these third-party transfers to the checking account that had been established to maintain the assets of Z's estate. As executor of Z's estate, Rogicki had authority over the estate checking account. Rogicki utilized this authority to transfer the funds that had been moved from the Foundation advisory account to the checking account for Z's estate to his personal accounts. Rogicki then used this money to cover his personal expenses and fund his lavish lifestyle, and also helped purchase real estate for his children.

15. In total, over the course of approximately 12 years, Rogicki made more than 200 unauthorized wire transfers from the Foundation account, totaling more than \$9 million in funds.

FIRST CLAIM FOR RELIEF
(Violations of Sections 206(1) and 206(2) of the Advisers Act)

16. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 15 of this Complaint.

17. By engaging in the conduct described above, Rogicki, while acting as an investment adviser, by use of the means of and instrumentalities of interstate commerce or the mails, directly or indirectly:

- (a) employed devices, schemes, or artifices to defraud clients; and
- (b) engaged in transactions, practices, or courses of business which operate as a fraud or deceit upon clients.

18. By reason of the foregoing, Rogicki, directly or indirectly, singly or in concert, has violated, and unless enjoined, will continue to violate Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

SECOND CLAIM FOR RELIEF

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

19. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 15 of this Complaint.

20. By engaging in the conduct described above, Rogicki knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, or the facilities of a national securities exchange:

- (a) employed devices, schemes, or artifices to defraud;
- (b) made untrue statements of material facts or 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/or
- (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

21. By reason of the foregoing, Rogicki, 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].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court grant the following relief, in a Final Judgment:

I.

Finding that Rogicki violated the securities laws and rules promulgated thereunder as alleged against him herein;

II.

Permanently restraining and enjoining Rogicki, his agents, servants, employees and attorneys and all persons in active concert or participation with him, who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)] 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];

III.

Ordering Rogicki to disgorge all of the ill-gotten gains from the violations alleged in this complaint, and ordering him to pay prejudgment interest thereon;

IV.

Ordering Rogicki to pay civil money penalties 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)]; and

V.

Granting such other and further relief as this Court deems just and proper.

Dated: October 19, 2017
New York, New York

By:



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