

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>FRED J. JOSEPH, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>SEAN MICHAEL MUELLER, MUELLER CAPITAL MANAGEMENT, LLC, and MUELLER OVER UNDER FUND, LP,</p> <p>Defendants.</p>	<p>EFILED Document CO Denver County District Court 2nd JD Filing Date: Apr 23 2010 4:18PM MDT Filing ID: 30756416 Review Clerk: Stacy Shaul</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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<p>COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF</p>	

Plaintiff, Fred J. Joseph, Securities Commissioner for the State of Colorado (the “Commissioner”), by and through his counsel, the Colorado Attorney General, and for his Complaint against the defendants, alleges as follows:

JURISDICTION

1. Plaintiff Fred J. Joseph is the Securities Commissioner for the State of Colorado (the “Commissioner”) and is authorized, pursuant to § 11-51-703, C.R.S. to administer all provisions of the Colorado Securities Act (the “Act”). Pursuant to § 11-51-

602, the Commissioner is authorized to bring this action against the Defendant and to seek temporary, preliminary injunctive relief and other equitable relief against the Defendant upon sufficient evidence that the Defendant has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Act. The Commissioner reserves the right to amend and modify this Complaint as additional information becomes available through his ongoing oversight of this matter.

2. Venue is proper pursuant to § 11-51-602(1) in the district court for the city and county of Denver, Colorado.

DEFENDANTS

3. Defendant Sean Michael Mueller (“Mueller”) is an adult male individual whose last known address is 5400 Park Terrace 8-103, Greenwood Village, Colorado 80111, and last known business address is 6400 South Fiddlers Green, Greenwood Village, Colorado 80111.

4. Defendant Mueller Capital Management, LLC (“MCM”) is a limited liability company organized under the laws of the state of Delaware. MCM operates and conducts its business in the state of Colorado, and has a last known business address of 6400 South Fiddlers Green, Suite 1900, Greenwood Village, Colorado 80111. Mueller is the managing director for MCM.

5. Defendant Mueller Over Under Fund, LP (the “Fund”) is a limited partnership hedge fund organized under the laws of the state of Delaware. The Fund operates and conducts its business in the state of Colorado, and has a last known business address of 6400 South Fiddlers Green, Suite 1900, Greenwood Village, Colorado 80111. MCM is the general partner and investment adviser to the Fund.

MATERIAL ALLEGATIONS

6. The Fund is a hedge fund operated and controlled by Mueller and MCM in the state of Colorado. Beginning in September, 2002, and continuing until the present, the Fund received millions of dollars from investors in and from the state of Colorado.

7. As set forth in the Fund’s Private Placement Memorandum (“PPM”), the primary business operation is the appreciation of capital, primarily through the purchase and sale of equity securities utilizing various ‘hedging’ techniques and short term investments (holding the investment for as little as a few minutes). As a part of the investing strategy, the Defendants were to employ various strategies, such as investing long (investment in stocks for companies perceived as undervalued), investing short (investing in stocks for companies

perceived as overvalued), using puts (contracts to sell at a certain price) and calls (contracts to buy at a certain price), as well as leveraged or margin investing.

8. According to the PPM, the Fund was offering up to \$100,000,000.00 in limited partnership interests. To be compensated for their efforts, the investors in the Fund were required to pay a 1% annual fee (payable monthly) for management of the Fund, and MCM was entitled to receive a 20% fee on any profits earned by the fund.

9. The limited partnership interests are securities as that term is defined pursuant to § 11-51-201, C.R.S. in that they are “investment contracts,” in that they are an investment in a common enterprise that is premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.

10. In October of 2009, one of the brokerage firms through which the Defendants conducted securities transactions noticed a sudden change in Mueller’s trading habits along with continued investor withdrawals and contributions. When the firm questioned Mueller about the sudden change, Mueller told the firm that his investment strategy had changed and that he was moving his accounts to other firms that would support his new strategy. Mueller refused to disclose balances in the new accounts that would support the pending partner withdrawals. At the time, Mueller closed his account and withdrew over \$1 million.

11. On April 22, 2010, Mueller sent e-mails to clients of the Defendants indicating that they would be able to ‘refile’ tax returns to get back taxes that have been previously paid, and that they would be able to “recover a good amount of money” by redoing the taxes.

12. On April 23, 2010, the Colorado Division of Securities (“Division”) received information indicating that Mueller attempted to take his own life on April 22, 2010. This information was ultimately confirmed by the Greenwood Village Police Department.

13. The following constitutes the known scheme to defraud investors:

- a. Investor A was an investor in the Fund in 2008 and 2009. At regular intervals during the course of the investment, Investor A received monthly statements indicating that the investment was earning 1 to 2 percent in monthly gains. On April 22, 2010, the Defendants revealed to all investors that what was reported as profits were actually losses suffered by the fund.

FIRST CLAIM FOR RELIEF
(Securities Fraud)

13. Paragraphs 1 through 12 are incorporated herein by reference.

14. In connection with the offer, sale, or purchase of securities in Colorado, Mueller, MCM and the Fund directly or indirectly:

- a. employed a device, scheme, or artifice to defraud;
- b. made untrue statements of material fact or omitted to state a material fact necessary to make the statement made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in transactions, acts, practices, or courses of business that operated or would operate as a fraud or deceit.

all in violation of § 11-51-501(1), C.R.S.

15. The Defendants offered or sold securities by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading (the buyers not knowing of the untruths or omissions), and therefore Defendants are liable to the Commissioner for damages under § 11-51-604(4), C.R.S., by operation of § 11-51-602(2), C.R.S., based on violations of § 11-51-501(1)(b), C.R.S.

16. Each Defendant is jointly and severally liable to the Commissioner for damages, interest, costs, and reasonable attorneys fees, pursuant to §§ 11-51- 604(4), and (5)(c), C.R.S. based on violations of § 11-51-501, C.R.S., and restitution, rescission, disgorgement, and equitable relief on behalf of all persons injured by the acts and practices described in this claim for relief pursuant to § 11-51-602(2), and the Commissioner is further entitled to a temporary and permanent injunction against each of the Defendants, their officers, directors, agents, servants, employees, and successors; any person who directly or indirectly, through one or more intermediaries, controlled or is controlled by or is under common control with any of the Defendants, and all those who acted in concert participation with any of the Defendants pursuant to § 11-51-602, C.R.S., based on violations of § 11-51-501, C.R.S., enjoining the conduct alleged above.

WHEREFORE, Plaintiff prays for relief as follows:

1. For preliminary and permanent injunctive relief against the Defendants Sean Michael Mueller, Mueller Capital Management, LLC, and Mueller Over Under Fund, LP, enjoining them from any violation of the Act and ordering the non-destruction of records.

2. For a judgment in an amount to be determined at trial against each Defendant, jointly and severally, for restitution, disgorgement, and other equitable relief pursuant to § 11-51-602(2), C.R.S. and for damages, rescission, interest, costs, reasonable attorney fees, and such other legal and equitable relief as the Court deems appropriate, pursuant to §§ 11-51-602(2) and 604, C.R.S., all on behalf of persons injured by the acts and practices of all Defendants violations of the Colorado Securities Act.

3. For an Order imposing a constructive trust on the fraudulently obtained funds held by each Defendant, or any entity controlled by them, and to order these Defendants to account for and disgorge all funds fraudulently obtained by them from the investors and transferred to them.

4. For such other and further relief as the court deems just and proper.

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