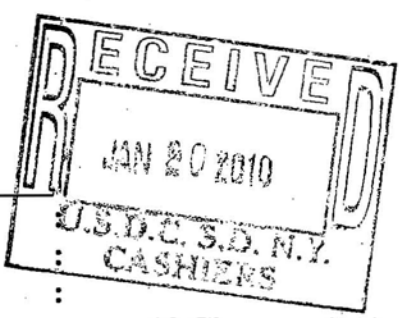


JUDGE CROTTY

10 CIV 0469

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

10 Civ. ____ ()

against-

COMPLAINT

BERNARD DANIEL BRAVER,

Defendant.

Plaintiff Securities and Exchange Commission for its complaint against Bernard Daniel

Braver alleges as follows:

SUMMARY

1. This action arises out of Braver's fraudulent activities as a salesman for Rabinovich & Associates, LP, an unregistered investment company and broker-dealer (sometimes referred to hereafter as the "Fund" or the "firm") that operated out of a storefront boiler room in Brooklyn, New York. From at least November 2003 through November 2007, the Fund's principals, Alex Rabinovich and Joseph Lovaglio, and Braver and other salesmen, raised at least \$2,767,811 from at least 169 investors nationwide, including senior citizens and retirees,

through the sale of limited partnership interests in the Fund and, in a few instances, other securities. Braver raised at least \$157,000 of that.

2. Rabinovich, Lovaglio, Braver, and the Fund's other salesmen solicited and obtained investments through a variety of false and misleading statements about the Fund's performance and track record, the firm's purported Wall Street location, the background of Alex Rabinovich, and the firm's purported status as a registered and insured broker-dealer. These fraudulent statements were made in phone conversations and meetings with prospective investors, and via the firm's website, Fund promotional materials, salesmen's business cards, and account statements sent to investors.

3. The limited partnership interests in Rabinovich & Associates offered and sold by Braver were securities within the meaning of Section 2(1) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77b(1), and Section 3(a)(10) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78c(a)(10).

4. In addition to fraudulently inducing investments in the Fund, Braver also operated as an unregistered broker-dealer and offered and sold securities in an unregistered offering.

5. Through this conduct, detailed below, Braver violated Sections 5(a), 5(c) and 17(a) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c) and 77q(a), Sections 10(b) and 15(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78o(a), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5

6. By this action, the Commission seeks: (a) permanent injunctive relief; (b) disgorgement and prejudgment interest; (c) civil penalties; and (d) such further relief as the Court may deem appropriate.

JURISDICTION AND VENUE

7. The Commission brings this action pursuant to authority conferred by Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b) and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d). This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act, and 15 U.S.C. § 77v(a), Sections 21(d), 21(e) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 77u(e) and 78aa.

8. Venue lies in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa. Certain of the transactions, acts, practices and courses of business constituting the violations alleged herein occurred within the Southern District of New York.

9. Defendant, directly or indirectly, made use of the means or instrumentalities of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

DEFENDANT

10. **Bernard Daniel Braver, a/k/a Daniel Bernard Braver**, age 30, resides in Brooklyn, New York, and was a salesman at Rabinovich & Associates from October 2006 to November 2007. Before he joined Rabinovich & Associates, Braver had worked as a trainee at a registered broker-dealer and obtained his Series 7 and 63 licenses.

RELATED PERSONS

11. **Rabinovich & Associates, LP** was an unregistered entity located in Brooklyn, New York. It was never registered in any capacity with the Commission, the Financial Industry Regulatory Authority, Inc. (“FINRA”), or the New York Stock Exchange (“NYSE”). On November 26, 2007, the Commission filed an emergency action against Rabinovich & Associates, Alex Rabinovich and Lovaglio, SEC v. Rabinovich & Associates, L.P., et al., 07 CV 10547 (GEL) (S.D.N.Y.), and obtained an asset freeze and other emergency relief. See SEC Litigation Release No. 20372 (November 27, 2007), <http://www.sec.gov/litigation/litreleases/2007/lr20372.htm>. Shortly thereafter, the firm ceased doing business.

12. **Alex Rabinovich** was the general partner of Rabinovich & Associates and controlled its operations.

13. **Joseph Lovaglio** was the managing director and head of sales for Rabinovich & Associates.

FACTS

Rabinovich & Associates

14. Rabinovich & Associates held itself out as an “independent investment company” and a broker-dealer “whose affiliates offer[ed] a broad array of financial products and services,” with an office on Wall Street. According to the Rabinovich & Associates limited partnership agreement, the Fund was “organized to acquire for investment the securities . . . of any recognized stock exchange company . . . to realize the value of such Securities by managing the

same for the mutual benefit of the [general partner and the investors].”

15. In fact, the firm was a boiler room operating out of an unmarked storefront in the Gravesend/Sheepshead Bay section of Brooklyn. The main room in this storefront had five desks, with a telephone and a U.S. time zone map at each desk. Hundreds of lead cards with names and contact information were strewn on the desks, along with scripts for use by the salesmen when calling prospective investors and a “do-not-call” list. A large bulletin board along one wall of the room listed approximately ten reasons for a person to invest with Rabinovich & Associates, including “recession proof,” “50/50 profit sharing” and “quarterly dividends.” The bulletin board also stated the number of “points” for various numbers of “leads” (e.g., “1 lead = 1 point”, “2 leads = 5 points”).

16. Among the Fund’s main selling points were the purported experience of Alex Rabinovich and the Fund’s purported track record. The firm’s website and promotional materials sent to prospective investors recounted the firm’s purported “experience and success with institutional clients” and “successful relationships maintained with multi-million dollar clients,” and stated that the Fund had achieved a 123.90% return in 2004, an 84.20% return in 2005, and a 54.70% return in 2006. Similarly exaggerated returns were reported on account statements sent to investors.

17. These performance claims were false. Contrary to the representations in the website, promotional materials, and account statements, the Fund lost money in every quarter of its existence. Moreover, there were no institutional investors in the Fund and the firm never had any multi-million dollar clients.

18. The website, promotional materials, account statements, and salesmen's business cards also stated, falsely, that the firm was located on Wall Street, and account statements provided to investors falsely represented that the firm was a member of the NASD, the NYSE, and the Securities Investor Protection Corporation ("SIPC").

19. In addition, although the Fund bore Rabinovich's name, and via the website and other representations, touted his purported securities industry experience, neither the website nor any other offering or promotional materials disclosed that in July 2004, Rabinovich had been barred by the National Association of Securities Dealers ("NASD"), the predecessor to FINRA, from associating with any NASD-member broker-dealer, and investors were not otherwise informed of that fact.

Braver's Role in the Fund's Fraud

20. Braver joined the firm as a salesman in October, 2006, and worked there until the Commission filed its complaint in SEC v. Rabinovich & Associates, L.P., et al. in late November, 2007.

21. Braver solicited investments in the Fund through cold-calls, follow-up calls to investors he had previously induced to invest in the Fund, and meetings with investors and prospective investors that he and Lovaglio conducted on fundraising trips they took to Tennessee, Massachusetts and Vermont. In his solicitations, Braver misrepresented the Fund's track record and performance and the location of its offices, and touted Rabinovich's purported trading acumen while failing to disclose Rabinovich's disciplinary history. For example:

- Braver falsely represented to prospective investors that the Fund never had a losing quarter and that the Fund was able to achieve positive returns in both bull

and bear markets because of Rabinovich's short-selling strategies.

- Braver referred prospective investors to the Fund's website, which contained false performance figures and extolled Rabinovich's experience, but failed to disclose Rabinovich's disciplinary history.
- Braver provided Fund investors with documents, including account statements, that contained false performance figures for the Fund. Each month, after account statements reporting false returns were sent to investors, Braver called the investors he had solicited to discuss their purported returns. After these calls, some if not all of the investors continued to reinvest their purported profits in the Fund, and some of them invested additional monies.
- Braver provided several investors with his business card, which set forth a Wall Street address for Rabinovich & Associates, and sent letters to investors on stationery that also bore a Wall Street address. In fact, the firm's purported Wall Street office was only a commercial mail-drop.

22. Braver either knew, or was reckless in not knowing, that the representations he made about the Fund's purported returns, claimed investment strategy, and Wall Street offices were false. Braver was aware that Rabinovich had been the subject of disciplinary proceedings, and knew that Rabinovich had forfeited his license to sell securities several years before Braver joined the firm, but did not disclose these facts to prospective investors and investors notwithstanding Rabinovich's key role in the management of the firm.

23. Investors solicited by Braver invested at least \$157,000 in the Fund.

24. Braver received approximately \$49,800 in salary and commissions in connection with his fraudulent offer and sale of interests in the Fund.

FIRST CLAIM FOR RELIEF

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

25. The Commission repeats and realleges the allegations contained in paragraphs 1 through 24 by reference as if fully set forth herein.

26. Braver, directly and indirectly, knowingly or recklessly, by the use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or by the use of the mails, in the offer or sale, and in connection with the purchase or sale, of securities: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of, or otherwise made untrue statements of material fact, or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, acts, practices and courses of business which operated or would operate as a fraud or deceit upon purchasers of securities or other persons.

27. By reason of the acts, omissions, practices, and courses of business set forth in this complaint, Braver violated Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), 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.

SECOND CLAIM FOR RELIEF

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

28. The Commission realleges and incorporates paragraphs 1 through 24 by reference as if fully set forth herein.

29. No registration statement was ever filed with the Commission or in effect with respect to the interests in the Fund offered and sold by Braver and no exemption from registration was available.

30. Braver, directly or indirectly: (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; or carried securities or caused such securities to be carried through the mails or in interstate commerce, by means or instruments of transportation, for the purpose of sale or for delivery after sale; and (b) 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, through the use or medium of any prospectus or otherwise, securities without a registration statement having been filed or being in effect with the Commission as to such securities.

31. By reason of the foregoing, Braver violated Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

THIRD CLAIM FOR RELIEF

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

32. The Commission realleges and incorporates paragraphs 1 through 24 by reference as if fully set forth herein.

33. Braver was engaged in soliciting purchases of, and effecting transactions in, securities issued by Rabinovich & Associates, and received compensation based on those transactions. Neither Rabinovich & Associates, Rabinovich, nor Lovaglio was registered as a broker or dealer, and Braver was not an associated person of a registered broker or dealer at the time he solicited and effected transactions in securities of the Fund.

34. By engaging in the conduct described above, directly or indirectly, Braver, by use of the mails and the means or instrumentalities of interstate commerce, while acting as a broker and while engaged in the business of effecting transactions in securities for the accounts of others otherwise than through a national securities exchange, effected transactions in, or induced or attempted to induce the purchase or sale of securities (other than an exempted security or commercial paper, banker's acceptances, or commercial bills) without registering as a broker or dealer in accordance with Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b).

35. By engaging in the conduct described above, Braver violated Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully requests that the Court:

1. Enter a final judgment:
 - (A) Permanently restraining and enjoining Braver, his officers, agents, servants, employees, attorneys in-fact, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Sections 5(a), 5(c) and 17(a) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c)

and 77q(a), and Sections 10(b) and 15(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78o(a), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5;

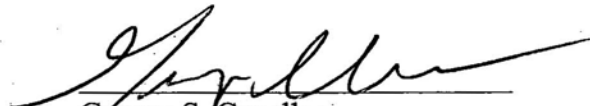
(B) Directing Braver to disgorge his ill-gotten gains from the violative conduct alleged in this complaint, and to pay prejudgment interest thereon;

(C) Directing Braver 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

2. Such other and further relief as the Court deems appropriate.

Dated: January 18, 2010
New York, New York

Respectfully submitted,



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