

**COPY**

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SUPERIOR COURT  
BURLINGTON COUNTY

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SUPERIOR COURT OF NEW JERSEY  
BURLINGTON COUNTY  
CHANCERY DIVISION: GENERAL EQUITY  
DOCKET NO. BUR C-102-08

ANNE MILGRAM,  
Attorney General of New Jersey, on  
behalf of VINCENT J. OLIVA,  
Chief of the New Jersey Bureau  
of Securities,  
  
Plaintiff,  
  
v.  
  
MICHAEL R. SCIAN, JR.,  
individually,  
  
Defendant.

Civil Action

**VERIFIED COMPLAINT**

Anne Milgram, Attorney General of New Jersey, with offices located at 124 Halsey Street, Newark, New Jersey, on behalf of Plaintiff Vincent J. Oliva, Chief of the New Jersey Bureau of Securities ("Bureau Chief" or "Plaintiff"), having offices at 153 Halsey Street, City of Newark, County of Essex, State of New Jersey, by way of Verified Complaint against the above-named defendant says:

### JURISDICTION AND VENUE

1. The New Jersey Bureau of Securities (the "Bureau") is a state regulatory agency charged with the administration and enforcement of the New Jersey Uniform Securities Law (1997) N.J.S.A. 49:3-47 et seq. ("Securities Law").
2. Plaintiff brings this action pursuant to the Securities Law for violations of: N.J.S.A. 49:3-52(a) (employing any device, scheme or artifice to defraud); N.J.S.A. 49:3-52(b) (making materially false and misleading statements or omitting facts necessary to make the statements made not misleading); N.J.S.A. 49:3-52(c) (engaging in any act or practice, or course of business which would operate as a fraud or deceit upon any person in connection with the offer, sale or purchase of securities); and N.J.S.A. 49:3-60 (selling unregistered securities).
3. Jurisdiction is proper over defendant for violations of the Securities Law that are the subject of this Verified Complaint because each alleged violation originated from this State. Therefore, pursuant to N.J.S.A. 49:3-51, all sales and offers to sell securities originated from New Jersey, whether or not either party was then present in this State.
4. Venue is proper pursuant to R. 4:3-2(a) because it lies where the cause of action arose.

### PARTIES

5. Plaintiff is the principal executive of the New Jersey Bureau of Securities.
6. Defendant Michael R. Scian, Jr. ("Scian") is an individual who, upon information and belief, resides in Marlton a/k/a Evesham Township, New Jersey.
7. Defendant Scian sold unregistered securities to investors.
8. The funds raised by Scian from investors were used for Scian's personal benefit, without disclosing such use to investors at the time of the sale of the purported securities.
9. Defendant Scian has never been registered with the Bureau in any capacity.

### FACTUAL BACKGROUND

10. From approximately June 13, 2005, Defendant Scian offered and sold securities in the form of promissory notes.
11. The securities sold by Scian were: (a) not registered with the Bureau; (b) not federally covered; and (c) not exempt from registration.
12. The promissory notes were sold by Defendant Scian to at least five (5) investors who were New Jersey residents.
13. Defendant Scian raised at least \$200,000 from the sale of the promissory notes to the five (5) investors.
14. Scian falsely represented to the investors who invested with him that:

- a. All of the investors' funds would be used to trade daily in the securities markets;
  - b. The investors' funds were safe and guaranteed and the principal was not at risk because Scian would get out of the market each day and the investors' money was therefore liquid at the end of each day;
  - c. In the event of Scian's death, the investors' monies would be repaid by his estate from the payout of a \$500,000 life insurance policy from Lincoln Benefit Life Insurance Company;
  - d. Scian earned over \$250,000 one year from his day trading; and
  - e. Scian was earning over 100% return per month on his day trading.
15. In truth and in fact, Scian misappropriated a portion of the investor funds for his own personal use, and Scian suffered continuous losses in his trading using Terra Nova Trading L.L.C., a broker dealer where Scian maintained a trading account.

**A. Investors H.W. and D.W.**

16. Investors H.W. and D.W., New Jersey residents, met Defendant Scian in 2005.
17. Defendant Scian falsely represented to H.W. and D.W. that:
- a. H.W. and D.W.'s principal was guaranteed by Scian; and

- b. H.W. and D.W.'s principal would never be at risk because Scian liquidated all of his positions at the end of each trading day.
18. On June 13, 2005, H.W., D.W. and Defendant Scian executed a promissory note in the amount of \$75,000 (the "June 13, 2005 Promissory Note").
19. The June 13, 2005 Promissory Note states, in pertinent part:
- For the value received, the undersigned hereby agrees and promises to pay to the order of D.W. and H.W., his/her heirs and or estate the sum of \$3375.00 [sic] per month. Payments will begin July 20, 2005 for the use of principal amount of \$75,000.00. Payments in the amount of \$3375.00 [sic] will continue to be made on the twentieth of each month.
- \* \* \*
- The payment schedule shall remain in effect for twelve months and then continue on a monthly basis until terminated by either party in writing with 30 days notice. Upon termination of this agreement the principal amount of \$75,000.00 shall be returned and this agreement will be considered terminated by both parties.
20. Subsequent to the first investment, Scian falsely represented to H.W. and D.W. that an additional \$25,000 investment would allow him to change his trading strategy.
21. On August 23, 2005, H.W. and D.W. invested an additional \$25,000 with Scian thereby increasing their total investment with Scian to \$100,000.
22. H.W., D.W. and Scian signed an addendum to the June 13, 2005 Promissory Note, which acknowledged the additional \$25,000

investment and stated that the new monthly payment to H.W. and D.W. was \$4,750.

23. Scian paid \$78,000 in monthly payments to H.W. and D.W.
24. In January 2007, H.W. and D.W. requested a return of their principal from Scian.
25. Defendant Scian failed to return H.W. and D.W.'s principal.
26. Scian did not keep H.W. and D.W.'s investment liquid at the end of each day as promised.
27. Scian falsely told H.W. and D.W. that he had lost their money on long term options.
28. In truth and in fact, Scian had used their money for his own personal use and to pay his existing investors and other creditors.
29. As of January 2007, H.W. and D.W. have not received a return of their principal, nor have they received any further monthly payments.
30. H.W. and D.W.'s total loss to date is \$22,000.

**B. Investors P.S. and T.S.**

31. At all relevant times, investors, P.S. and T.S. resided in New Jersey.
32. On or around September 24, 2005, P.S. and T.S. met Scian at a party.
33. Scian spoke to P.S. and T.S. about an investment opportunity and falsely represented to them that he was a day trader and

- his investments were then generating 30% returns for his clients.
34. Scian also told P.S. and T.S. that he was trading in the European market.
  35. Scian told P.S. and T.S. that their investment would be safe as he cashed out of the markets every night ensuring that nothing bad would happen due to overnight activities in other parts of the world.
  36. On November 4, 2005, P.S., T.S. and Scian signed a Promissory Note dated November 2, 2005, evidencing their investment with Scian of \$60,000.
  37. The promissory note stated, in pertinent part, that P.S. and T.S. would receive \$1,800 per month beginning December 9, 2005 for the use of P.S. and T.S.' principal amount of \$60,000, and the payment schedule was to remain in effect for twelve (12) months and then continue on a month to month basis until terminated by either party upon thirty (30) days written notice. Upon such termination, the principal amount of \$60,000 would be returned to P.S. and T.S.
  38. Scian paid P.S. and T.S. \$21,600 in total monthly payments.
  39. On October 30, 2006, after several monthly payments were late, P.S. and T.S. requested a return of their principal in writing to Scian.
  40. Scian failed to return the principal to P.S. and T.S.

41. Scian gave P.S. and T.S. a postdated check for \$63,600, which was returned twice for insufficient funds.

42. P.S. and T.S.' total loss to date is \$38,400.

**C. Investor S.B.**

43. At all relevant times, investor, S.B., resided in New Jersey.

44. S.B. knew Scian through coaching his daughter's soccer team.

45. Scian knew that S.B. was supporting his elderly father and offered to help S.B.

46. Scian told S.B. that he was day trading the EURO.

47. Scian falsely represented to S.B. that Scian earned over \$250,000 one year from his day trading.

48. Scian falsely represented to S.B. that Scian was earning over 100% return per month on his day trading.

49. Scian falsely represented to S.B. that Scian was doing so well in day trading, that Scian's trades were always liquid at the end of each day meaning he would not carry a trade overnight and if S.B. gave Scian \$10,000, Scian would return dividends in the amount of \$300 each month to S.B.

50. In May 2005, S.B. invested \$20,000 with Scian upon the promise that Scian would make monthly return payments to S.B. in the amount of \$600, with the principal to be returned after twelve (12) months.

51. On February 2, 2006, S.B. and Scian signed a Promissory Note, evidencing S.B.'s second investment with Scian of \$40,000.

52. The promissory note stated, in pertinent part, that S.B. would receive \$1,200 per month beginning March 15, 2006, except for a prorated payment of \$420 to be made on February 15, 2006, for the use of S.B.'s principal amount of \$40,000, and the payment schedule was to remain in effect for twelve (12) months and then continue on a month to month basis until terminated by either party upon thirty (30) days notice. Upon such termination, the principal amount of \$40,000 would be returned to S.B.
53. Scian paid S.B. \$19,830 in total monthly interest payments.
54. Despite repeated demands for the monthly payments and return of the principal by S.B. to Scian, Scian failed to pay S.B.
55. Scian falsely told S.B. that he lost the money on long term oil options. In truth and in fact, Scian used the money for his personal use and to repay his existing investors and other creditors.
56. Scian failed to disclose to S.B. that he would purportedly use S.B.'s money on long term oil options.
57. S.B.'s total loss to date is \$20,170.

**RETURN OF PRINCIPAL FROM LIFE INSURANCE POLICY**

58. In the promissory notes signed by the H.W., D.W., P.S., T.S. and S.B., Scian promised that he would keep sufficient life insurance coverage in order to repay the investors in the event of his death.

59. Specifically, Scian guaranteed that his estate would repay the investors' full principal from the payout of a \$500,000 Lincoln Benefit Life ("Lincoln") insurance policy.
60. Scian failed to disclose to the investors that his estate was not a named beneficiary of the Lincoln policy.
61. Instead, Scian's wife, Kimberly Scian, was listed as the sole primary beneficiary of said policy.
62. Since Kimberly Scian was the sole primary beneficiary, the Lincoln policy was fictitious collateral.
63. Scian's Lincoln Benefit Life insurance policy lapsed on August 27, 2006.

#### **USE OF INVESTOR FUNDS**

64. Scian used a portion of the investors' money to make payments to existing investors and his other creditors, as well as, for his personal use.
65. H.W. and D.W.'s \$75,000 principal was deposited into Scian's Commerce Bank account xxxx5428 on June 15, 2005, bringing Scian's account balance to \$77,268.35.
66. H.W. and D.W.'s \$75,000 was used, in part, by Scian as follows:
  - a. \$35,000 wired to Scian's account at Terra Nova Trading L.L.C. on June 17, 2005;
  - b. \$5,000 used to open Scian's account xxxx2603 at Commerce Bank on June 20, 2005;

- c. \$5,338.33 to pay Scian's American Express invoice on June 20, 2005;
  - d. \$1,500 to Scian's brother on June 22, 2005, for repayment of a personal loan;
  - e. \$1,115.90 to Volvo Financial for a car payment on June 28, 2005;
  - f. \$1,174.14 to World Savings Mortgage Company on June 28, 2005;
  - g. \$5,000 to Collectible Corners on June 30, 2005.
67. On or about November 4, 2005, Scian deposited P.S. and T.S.' \$60,000 principal check into Scian's Commerce Bank account xxxx5428.
68. The money in Scian's Commerce Bank account xxxx5428 was used, in part, as follows:
- a. \$6,000 check payable to Scian on November 4, 2005;
  - b. \$10,500 wire transferred to Terra Nova Trading L.L.C. on November 7, 2005;
  - c. \$1,200 check payable to C.M. on November 7, 2005, for repayment of a personal loan;
  - d. \$2,455 to pay Scian's American Express invoice on November 7, 2005;
  - e. \$175 to Comcast Cable on November 7, 2005;
  - f. \$25,500 to B.C. on November 8, 2005, to repay a personal loan;

- g. \$3,000 to Scian's brother on November 8, 2005, for repayment of a personal loan;
  - h. \$1,250.95 to World Savings Mortgage Company on November 15, 2005.
69. Investor S.B.'s \$40,000 principal was deposited into Scian's Commerce Bank account xxxx2603 on February 3, 2006.
70. The following activity thereafter occurred in Scian's Commerce Bank account xxxx2603:
- a. \$20,000 wired to Terra Nova Trading L.L.C. on February 3, 2006;
  - b. \$4,750 check written to H.W. and D.W. on February 3, 2006, representing the interest on their investment;
  - c. \$3,000 to S.S. to repay a personal loan on February 7, 2006;
  - d. \$1,980 to S.S. to repay a personal loan on February 7, 2006;
  - e. \$400 to Scian on February 7, 2006;
  - f. \$1,800 to P.S. and T.S. on February 14, 2006, representing the interest on their investment;
  - g. \$1,000 to Scian on February 16, 2006;
  - h. \$720 to S.B. on February 22, 2006, to represent the interest on his investment.
71. Scian failed to disclose to investors that their money would be used to pay personal expenses.

**COUNT I**

**EMPLOYING ANY DEVICE, SCHEME OR ARTIFICE TO DEFRAUD**

**N.J.S.A. 49:3-52(a)**

72. Plaintiff repeats the allegations in the preceding paragraphs as if fully set forth herein.
73. Defendant Scian employed a scheme to defraud investors by engaging in the conduct described in this Verified Complaint. Defendants' scheme included, but was not limited to:
- a. misrepresenting the nature and success of his day trading activity;
  - b. guaranteeing the performance and risk of the purported investment;
  - c. failing to return investor funds; and
  - d. misappropriating investor funds for his personal benefit and use.
74. Each violation of N.J.S.A. 49:3-52(a) upon each investor was a separate violation of that statute and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

**COUNT II**

**MAKING MATERIALLY FALSE AND MISLEADING STATEMENTS AND/OR**

**OMITTING MATERIAL FACTS**

**N.J.S.A. 49:3-52(b)**

75. Plaintiff repeats the allegations in the preceding paragraphs as if fully set forth herein.

76. Defendant Scian directly and/or indirectly, made materially false and misleading statements or omitted material facts to investors in connection with the offer and sale of securities.

77. Among the misleading statements were:

- a. all of the investors' funds would be used to trade daily in the securities markets;
- b. the investors' funds were safe and guaranteed the principal was not at risk because Scian would get out of the market each day and the investor money was therefore liquid at the end of each day;
- c. in the event of Scian's death, the investors' principals would be repaid by his estate from the payout of a \$500,000 life insurance policy from Lincoln Benefit Life Insurance Company;
- d. Scian earned over \$250,000 one year from his day trading; and
- e. Scian was earning over 100% return on his day trading.

78. Among the omitted material facts were:

- a. that investor funds would be used for payment of Scian's personal expenses;
- b. Scian's day trading resulted in losses and not profits;
- c. Scian used new investor funds to pay monthly payments to existing investors and to pay his other creditors;
- d. Scian's estate was not a named beneficiary of the Lincoln

Benefit Life insurance policy, which would have enabled the estate to repay investors' monies in the event of Scian's death; and

- e. Scian's wife, Kimberly Scian, was the sole primary beneficiary of said policy and was not legally obligated to repay the investors' monies if Scian died;
79. Each omission or materially false or misleading statement made was in violation of N.J.S.A. 49:3-52(b).
80. Each violation of N.J.S.A. 49:3-52(b) by Scian upon each investor was a separate violation of that statute and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

### COUNT III

**ENGAGING IN ANY ACT OR PRACTICE WHICH WOULD OPERATE  
AS A FRAUD OR DECEIT UPON ANY PERSON IN CONNECTION  
WITH THE OFFER, SALE OR PURCHASE OF SECURITIES  
N.J.S.A. 49:3-52(c)**

81. Plaintiff repeats the allegations in the preceding paragraphs as if fully set forth herein.
82. Defendant Scian's practice of, among other things, misrepresenting the nature and solvency of his trading activities, and failing to return investor funds while misappropriating investor funds for personal benefit and use, operated as a fraud or deceit upon the investors and others, in violation of N.J.S.A. 49:3-52(c).

83. Each violation of N.J.S.A. 49:3-52(c) by Scian upon each investor was a separate violation of that statute and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

**COUNT IV**

**SELLING OF UNREGISTERED SECURITIES**  
**IN VIOLATION OF N.J.S.A. 49:3-60**

84. Plaintiff repeats the allegations in the preceding paragraphs as if fully set forth herein.
85. Defendant Scian sold securities that were not registered with the Bureau.
86. The securities sold by Defendant Scian were not federally covered securities.
87. The securities sold by Defendant Scian were not exempt from registration.
88. The securities were required to be registered with the Bureau pursuant to N.J.S.A. 49:3-60.
89. Each sale of unregistered securities constitutes a separate violation of N.J.S.A. 49:3-60 and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff petitions this Court for an order:

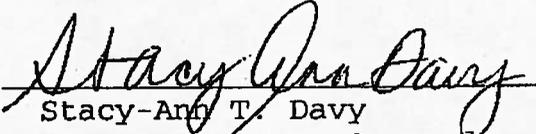
- a. Finding that defendant Scian engaged in the acts and practices alleged above;
- b. Finding that such acts and practices constituted violations of the Securities Law;
- c. Enjoining defendant Scian from violating the Securities Law in any manner;
- d. Enjoining the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement or distribution from or within New Jersey of any securities by or on behalf of defendant Scian;
- e. Enjoining defendant Scian and each and every person who receives actual or constructive notice of this order, from destroying or concealing any books, records and documents relating in any way to the business, financial and personal affairs of Scian;
- f. Directing the defendant Scian to pay restitution to the investors for losses incurred by the investors who invested with Scian;
- g. Assessing defendant Scian a civil monetary penalty for each incident of violating the Securities Law in accordance with N.J.S.A. 49:3-70.1;
- h. Requiring defendant Scian to disgorge all profits and/or

funds gained through violations of the Securities Law;  
and

- i. Granting such other relief as the interests of justice may require.

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY

By:

  
Stacy-Anne T. Davy  
Deputy Attorney General

Dated:

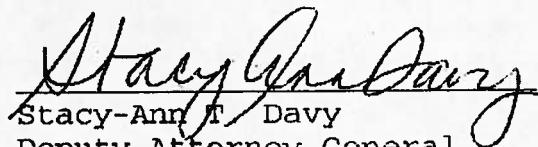
*August 21, 2008*

**RULE 4:5-1 CERTIFICATION**

Pursuant to Rule 4:5-1, the undersigned certifies that the matter in controversy is not the subject of any other pending or contemplated action.

I certify that the foregoing statements made by me are true. I am aware that if any of those statements are wilfully false, I am subject to punishment.

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY

By:   
Stacy-Ann T. Davy  
Deputy Attorney General

Dated: *August 21, 2008*

**DESIGNATION OF TRIAL COUNSEL**

Deputy Attorney General Stacy-Ann T. Davy is hereby designated as trial counsel for this matter.

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY

By:

  
Stacy-Ann T. Davy  
Deputy Attorney General

Dated:

*August 21, 2008*

**VERIFICATION**

**RUDOLPH G. BASSMAN**, of full age, certifies as follows:

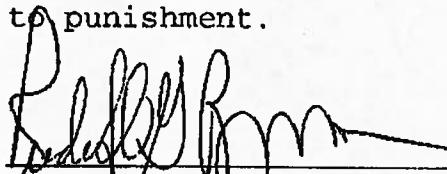
1. I am an Investigator with the New Jersey Bureau of Securities.

2. I have read this Verified Complaint and verify that the information contained in this Verified Complaint is true and correct to the best of my knowledge, information and belief based upon the Bureau of Securities' investigation.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

8/20/08



\_\_\_\_\_  
RUDOLPH G. BASSMAN  
INVESTIGATOR  
NEW JERSEY BUREAU OF SECURITIES