

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Douglas McKelvey,

Defendant.

Civil Action No. 4:23-cv-564

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against Defendant Douglas McKelvey (“McKelvey” or “Defendant”), alleges as follows:

SUMMARY

1. From approximately June 2013 through February 2022, McKelvey engaged in a fraudulent scheme through which he misappropriated more than \$1.7 million from accounts of two elderly relatives (“Customer A” and “Customer B,” and collectively the “Customers”) while he served as their financial advisor at a large financial institution registered with the Commission as a broker-dealer and investment adviser (“Financial Institution A”).

2. McKelvey carried out his scheme by initiating fraudulent disbursements of funds from the Customers’ accounts at Financial Institution A to make credit card payments on credit cards used by McKelvey and/or his wife to pay their personal expenses (the “Credit Card Payments”). Initially, between 2013 and 2014, McKelvey primarily caused unauthorized checks to be issued from Customer A’s accounts at Financial Institution A to make the Credit Card Payments. Between 2015 and 2022, McKelvey made the Credit Card Payments by initiating unauthorized ACH

transactions through the credit card companies that withdrew the funds from the Customers' accounts at Financial Institution A. In addition, in some instances, McKelvey first initiated fraudulent internal journals at Financial Institution A from the Customers' accounts to a trust account that he owned and controlled, which he then typically used to make Credit Card Payments via ACH transactions.

3. In a number of instances, McKelvey sold securities in the Customers' accounts shortly before making the fraudulent transfers to make the Credit Card Payments so that cash was available for him to misappropriate. In certain other instances, he misappropriated by causing checks to be issued from Customer A's loan account that was collateralized by Customer A's brokerage account.

VIOLATIONS

4. By virtue of the foregoing conduct and as alleged further herein, Defendant has violated 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 Defendant is restrained and enjoined, he will engage in the acts, practices, transactions, and courses of business set forth in this Complaint or 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 the authority conferred upon it by Exchange Act Section 21(d) [15 U.S.C. § 78u(d)].

7. The Commission seeks a final judgment: (a) permanently enjoining Defendant from violating the federal securities laws and rules this Complaint alleges he has violated; (b) ordering Defendant to disgorge all ill-gotten gains he has received as a result of the violations alleged here and to pay prejudgment interest thereon, pursuant to Exchange Act Sections 21(d)(3), 21(d)(5), and

21(d)(7) [15 U.S.C. §§ 78u(d)(3), 78u(d)(5), and 78u(d)(7)]; (c) ordering Defendant to pay civil money penalties pursuant to Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)]; and (d) ordering any other and further relief the Court may deem just and proper.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to Exchange Act Section 27 [15 U.S.C. § 78aa].

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

10. Venue lies in this District under Exchange Act Section 27 [15 U.S.C. § 78aa]. McKelvey's residence is within the Fort Worth Division of the Northern District of Texas. McKelvey's place of business was in the Fort Worth Division of the Northern District of Texas when the fraud took place, and certain of the acts, transactions, practices, and courses of business alleged herein took place in the Fort Worth Division of the Northern District of Texas.

DEFENDANT

11. **McKelvey**, age 58, resides in Southlake, Texas, and was a registered representative and investment adviser representative at the Southlake, Texas branch of Financial Institution A from November 2008 until he was terminated in April 2022 following the discovery of this alleged conduct. McKelvey has held FINRA series 7, 63, and 66 licenses.

FACTS

I. BACKGROUND

12. While working for Financial Institution A, McKelvey acted as both a registered representative of the broker-dealer serving as the financial advisor on customer brokerage accounts and as an investment adviser representative of the investment adviser serving as the financial advisor

on client advisory accounts.

13. Among other accounts, McKelvey handled accounts for two close elderly relatives: Customers A and B. The Customers were both brokerage customers of Financial Institution A. McKelvey served as their registered representative and financial advisor.

14. From approximately June 2013 through February 2022, McKelvey misappropriated more than \$1.7 million from the Customers' accounts at Financial Institution A. Of that sum, McKelvey misappropriated more than \$750,000 in the last five years. He primarily misappropriated from the Customers to make Credit Card Payments on credit cards used by McKelvey and/or his wife to pay their personal expenses.

II. MCKELVEY MISAPPROPRIATED FROM CUSTOMER A

15. Between approximately June 2013 and January 2022, McKelvey misappropriated a total of over \$600,000 from Customer A through more than 50 separate unauthorized transfers. McKelvey's misappropriations from Customer A took place in Customer A's non-discretionary brokerage account (the "Customer A Individual Account") and from a credit line loan account that was secured by the Customer A Individual Account (the "Customer A Loan Account" and, together with the Customer A Individual Account, the "Customer A Accounts").

16. McKelvey carried out his scheme using three primary means. Initially, between 2013 and 2014, McKelvey primarily caused checks to be issued from the Customer A Accounts to make payments to another financial institution ("Financial Institution B") for a credit card used by McKelvey and/or his wife to pay their personal expenses (the "Financial Institution B Credit Card"). In at least one instance, McKelvey made false attestations on internal forms that he had received a verbal request from Customer A to issue the check from the Customer A Individual Account to Financial Institution B.

17. In 2015, as well as one instance in 2022, McKelvey made numerous unauthorized

ACH transfers that he initiated through Financial Institution B to withdraw funds from the Customer A Individual Account to pay balances on the Financial Institution B Credit Card. McKelvey entered the account information for the Customer A Individual Account as the payment instructions at Financial Institution B, which in turn transmitted those instructions to Financial Institution A using the ACH system. In doing so, McKelvey took advantage of the fact that Financial Institution A did not require an authorization from the Financial Institution A account holder for ACH transfers initiated by third parties, such as Financial Institution B.

18. In addition, in some instances in 2015 and 2016, McKelvey first fraudulently transferred funds via internal cash journal transfers from the Customer A Individual Account to a trust account that McKelvey owned and controlled at Financial Institution A (the "Trust Account"), which he then typically used to fund ACH payments for the Financial Institution B Credit Card. To facilitate his scheme, McKelvey repeatedly made false attestations on internal forms that he had received a verbal request from Customer A requesting the cash journal transfer from the Customer A Individual Account to the Trust Account. Virtually all of the unauthorized journal transfers from the Customer A Individual Account to the Trust Account were followed in a few days by ACH transfers of an identical value from the Trust Account to pay the Financial Institution B Credit Card.

19. Customer A did not authorize any of the checks, ACH transactions, or journal transfers from her accounts described in paragraphs 15-18, above.

20. As part of his scheme, McKelvey frequently sold securities in the Customer A Individual Account in order to generate cash so he could misappropriate the proceeds of those sales. Specifically, there were approximately 20 instances of misappropriation that took place within three days of a security sale, of which approximately 17 instances were either the day of or the day following a sale of securities in the same account.

21. In addition, each of the unauthorized withdrawals from the Customer A Loan Account was a loan advance taken against the securities holdings in the Customer A Individual Account and therefore constituted a sale of the securities.

22. Customer A did not authorize McKelvey to sell securities and withdraw the proceeds for his own personal use, which McKelvey knew or recklessly disregarded.

IV. MCKELVEY MISAPPROPRIATED FROM CUSTOMER B

23. Between approximately August 2016 and February 2022, McKelvey misappropriated a total of over \$1.1 million from Customer B through more than 250 separate unauthorized transfers. McKelvey's misappropriations from Customer B took place in Customer B's individual non-discretionary brokerage account (the "Customer B Individual Account").

24. As with Customer A, McKelvey misappropriated funds from the Customer B Individual Account through unauthorized ACH transfers and unauthorized journals to the Trust Account.

25. Between 2017 and February 2022, McKelvey made over 200 unauthorized ACH transfers that he initiated through Financial Institution B and another financial institution ("Financial Institution C") to withdraw funds from the Customer B Individual Account to make Credit Card Payments. In the vast majority of instances, these transfers were directed to Financial Institution B to pay balances on the Financial Institution B Credit Card and to Financial Institution C to pay balances on a Financial Institution C credit card used by McKelvey and/or his wife to pay personal expenses (the "Financial Institution C Credit Card"). In a small handful of instances, the transfers were directed to Financial Institution B to pay balances on a Financial Institution B credit card held in the name of another one of McKelvey's close family members.

26. Once again, McKelvey initiated these ACH transfers by providing the Customer B Individual Account information as the payment instructions to Financial Institutions B and C, which

in turn transmitted those instructions to Financial Institution A using the ACH system.

27. In addition, in several instances in 2016 and 2017, McKelvey fraudulently transferred funds from the Customer B Individual Account to the Trust Account via internal cash journals. As with his unauthorized cash journals from the Customer A accounts to the Trust Account, the unauthorized journals from the Customer B Individual Account to the Trust Account were typically followed within several days to weeks by ACH transfers of similar value from the Trust Account to make Credit Card Payments on the Financial Institution B Credit Card and Financial Institution C Credit Card.

28. Customer B did not authorize any of ACH or cash journal transfers described in paragraphs 23-27, above.

29. Once again, as part of his scheme, McKelvey frequently sold securities in the Customer B Individual Account so he could misappropriate the proceeds of those sales. There were more than 50 instances of misappropriation from the Customer B Individual Account that took place within three days of a security sale, of which approximately 30 instances were either the day of or the day following a sale of securities in the same account.

30. Customer B did not authorize McKelvey to sell securities and withdraw the proceeds for his own personal use, which McKelvey knew or recklessly disregarded.

31. McKelvey also took steps to conceal his fraud from Customer B. At one point, when Customer B noticed a payment to Financial Institution B from her account, she asked McKelvey for an explanation. McKelvey falsely told her that it was normal practice for Financial Institution A to route customer funds through Financial Institution B and that nothing was amiss.

32. Separately, at another time, McKelvey told Customer B that he was using money in her account to invest in an annuity that would provide her with benefits. He provided her with a fake annuity document to substantiate his claim. In reality, the annuity did not exist.

FIRST CLAIM FOR RELIEF
Violations of Exchange Act Section 10(b) and Rule 10b-5 Thereunder

33. The Commission re-alleges and incorporates by reference here the allegations in paragraphs 1 through 32.

34. Defendant, directly or indirectly, singly or in concert, in connection with the purchase or sale of securities and by the use of means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange, knowingly or severely recklessly has (i) employed one or more devices, schemes, or artifices to defraud, (ii) made one or more untrue statements of a material fact or omitted to state one or more material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and/or (iii) engaged in one or more acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

35. By reason of the foregoing, Defendant, directly or indirectly, singly or in concert, has violated and, unless enjoined, will again violate Exchange Act Section 10(b) [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 enter a Final Judgment:

I.

Permanently enjoining McKelvey and his agents, servants, employees and attorneys and all persons in active concert or participation with him from violating, directly or indirectly, Exchange Act Section 10(b) and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5].

II.

Ordering McKelvey to disgorge all ill-gotten gains he received directly or indirectly, with pre-

judgment interest thereon, as a result of the alleged violations, pursuant to Exchange Act Sections 21(d)(3), 21(d)(5), and 21(d)(7) [15 U.S.C. §§ 78u(d)(3), 78u(d)(5), and 78u(d)(7)];

III.

Ordering McKelvey to pay civil monetary penalties under Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)];

IV.

Granting any other and further relief this Court may deem just and proper.

JURY DEMAND

The Commission demands a trial by jury.

Dated: June 6, 2023

/s Emily E. Rush

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* Not admitted in the Northern District of Texas; motion for admission *pro hac vice* filed concurrently with Complaint

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