

Document hosted at JDSUPRA
http://www.jdsupra.com/post/documentViewer.aspx?fid=962b5457-6ee6-40c0-9b52-cc9968d45899
COPIED
DEC-4 AM 9:03
FILED IN WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 MARC J. FAGEL (Cal. Bar No. 154425) <http://www.jdsupra.com/post/documentViewer.aspx?fid=962b5457-6ee6-40c0-9b52-cc9968d45899>
2 MICHAEL S. DICKE (Cal. Bar No. 158187)
3 MARK P. FICKES (Cal. Bar No. 178570)
4 (fickesm@sec.gov)
5 JINA L. CHOI (New York Bar No. 2699718)
6 (choij@sec.gov)
7 KRISTIN A. SNYDER (Cal. Bar No. 187175)
8 (snyderk@sec.gov)

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
44 Montgomery Street, Suite 2600
San Francisco, California 94104
Telephone: (415) 705-2500
Facsimile: (415) 705-2501

E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,
vs.
WILLIAM J. "BOOTS" DEL BIAGGIO III,
Defendant.

CV

08 Case No. _____

5450

COMPLAINT

JCS

Plaintiff Securities and Exchange Commission ("Commission") alleges:

SUMMARY OF THE ACTION

1. This matter involves multiple fraudulent schemes perpetrated by Defendant William "Boots" Del Biaggio III, a prominent Silicon Valley venture capitalist. Between 2003 and 2008, Del Biaggio defrauded various investors and lenders out of approximately \$65 million, using the proceeds to purchase an interest in a professional hockey team and to finance a luxurious lifestyle.

2. First, Del Biaggio fraudulently obtained \$45 million in loans by pledging as collateral securities owned by unknowing customers of a San Francisco brokerage firm. Beginning in August 2007, the managing director of the brokerage firm (a friend of Del Biaggio) supplied Del Biaggio

1 with the account statements of innocent customers. Del Biaggio falsified the account statements to
2 make it appear that they belonged to him, and provided the bogus documents to various banks and
3 private lenders. Del Biaggio used part of the loan proceeds to buy an interest in the Nashville
4 Predators professional hockey team.

5 3. Second, since at least 2003, Del Biaggio raised over \$19 million from investors in a
6 series of fraudulent offerings by capitalizing on his reputation as a prominent venture capitalist and
7 founder and CEO of an established venture capital firm. He then misappropriated his clients' money
8 for personal use or pledged the securities bought with the investors' money as collateral for personal
9 loans. Among other things, Del Biaggio used his clients' money as his personal checkbook to pay
10 home mortgage and decorating expenses, gambling debts, credit card bills and other personal and
11 unrelated business expenses.

12 4. Del Biaggio violated the federal securities laws, including the antifraud statutes,
13 through his fraudulent pledging of securities that did not belong to him, his misappropriation of his
14 advisory clients' assets, his false representations to his clients about how he would use their
15 investment funds, and his failure to inform his clients that he intended to pledge and margin their
16 assets to obtain personal loans. The Commission seeks to enjoin Del Biaggio from further conduct
17 that violates the securities laws and seeks disgorgement of ill-gotten gains and civil money penalties
18 from him.

19 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

20 5. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the
21 Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b) and 77t(d)], Sections 21(d) and 21(e)
22 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and 78u(e)], and
23 Sections 209 and 214 of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-9
24 and 80b-14]. This Court has jurisdiction over this action pursuant to Sections 20(d)(1) and 22(a) of
25 the Securities Act [15 U.S.C. §§ 77t(d)(1) and 77v(a)], Sections 21(d)(3), 21(e), and 27 of the
26 Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u(e), and 78aa], and Sections 209 and 214 of the Advisers
27 Act [15 U.S.C. §§ 80b-9 and 80b-14].
28

1 sent by email and the U.S. mail to the various lenders to demonstrate Del Biaggio's financial
2 wherewithal to obtain the loans he needed to, among other things, purchase an interest in the
3 Predators team.

4 12. In August and September 2007, Del Biaggio received additional customer account
5 statements from the Managing Director to use as purported security for bank loans. Del Biaggio
6 received account statements belonging to two unknowing individual clients of the Managing
7 Director. Each account held roughly \$4 million in securities. These customer accounts had low
8 margin debt and remained relatively stable from month to month, ensuring that the account value
9 would remain steady and minimize the risk that the lenders would detect the fraud.

10 13. From September 2007 through April 2008, Del Biaggio falsified the account
11 statements and provided them by email and the U.S. mail to at least seven banks and private lenders
12 located throughout the United States. Del Biaggio obtained roughly \$45 million in loans based upon
13 his oral and written representations that the accounts belonged to him. He used \$25 million to
14 purchase an interest in the Predators hockey team and the remaining \$20 million to pay other
15 business and personal expenses.

16 14. In addition to providing the falsified account statements to the lenders, Del Biaggio
17 also signed agreements with the lenders pledging the securities contained in the individuals' accounts
18 as collateral for the loans he obtained. Del Biaggio sent the signed Account Control Agreements
19 back to the lenders via e-mail and the U.S. mails.

20 15. To perpetuate the fraud, from December 2007 through May 2008, Del Biaggio
21 continued to receive electronic copies of the individuals' monthly account statements from the
22 Managing Director. Del Biaggio again doctored the statements to make it appear the accounts
23 belonged to him, and provided copies to some of the lenders on a monthly basis to show that the
24 collateral remained intact.

25 16. In September 2007, early in the scheme, Del Biaggio expressed concerns to the
26 Managing Director about getting caught. Despite Del Biaggio's concerns, he continued the fraud
27 until May 2008 when the Commission's examination staff conducted an examination of the
28 Managing Director's brokerage firm and uncovered the scheme.

1 17. Del Biaggio knew, or was reckless in not knowing, that his representations regarding
2 his ownership of the securities he had pledged were false and misleading.

3 **B. Del Biaggio Created Investment Funds and Used Them for Illicit Purposes.**

4 18. While Del Biaggio has never registered with the Commission as an investment
5 adviser, he has provided investment advice to dozens of clients in exchange for compensation since at
6 least 2003. Between 2003 and 2008, Del Biaggio formed three separate private investment funds,
7 raising more than \$19 million from his advisory clients and others. As described below, Del Biaggio
8 defrauded these investors by using the invested funds for unrelated business and personal use.

9 **i. Sand Hill Capital Partners III, LLC Was Del Biaggio's Personal Checkbook**

10 19. From January 2003 through January 2008, Del Biaggio solicited investments for Sand
11 Hill Capital Partners III, LLC ("SHCP"), an investment fund he formed and described to prospective
12 and current clients as a "sub-debt fund." Del Biaggio was the 100% owner of SHCP. Because Del
13 Biaggio used a name similar to Sand Hill Capital, the well-known capital firm he had co-founded,
14 Del Biaggio's clients believed that SHCP was being operated under the umbrella of Del Biaggio's
15 established Sand Hill firm. Adding to the confusion, Del Biaggio's clients believed that SHCP had a
16 similar investment model as funds affiliated with the firm: lending investor funds to start-up
17 companies in the form of short-term loans at rates of roughly 20%, and then paying clients 12%
18 interest on the money they had put into the fund.

19 20. Dozens of Del Biaggio's clients invested more than \$10 million in SHCP and received
20 promissory notes signed by Del Biaggio guaranteeing a 12% rate of return on their investment with
21 the interest to be paid either monthly or quarterly. The term of the notes was generally one to two
22 years. For several years, Del Biaggio paid clients their regular interest payments, often with funds
23 raised from more recent clients.

24 21. Del Biaggio's clients believed that he would invest their money in business ventures,
25 but in reality Del Biaggio used the funds raised as his personal checkbook. Del Biaggio used investor
26 funds to pay the interest and redemption payments of prior investors, and also used millions of dollars
27 of investor funds for business and personal expenses, including paying for home decorating costs,
28 mortgage payments on his luxury homes, gambling debts, funding for other unrelated Del Biaggio

1 business ventures and personal credit card bills. In all, Del Biaggio currently owes his clients who
2 invested in SHCP more than \$10 million.

3 22. Del Biaggio's actions ultimately led to SHCP filing for bankruptcy protection on June
4 5, 2008. According to Del Biaggio's bankruptcy filings, SHCP has outstanding debts that
5 substantially exceed its available assets.

6 23. Del Biaggio knew, or was reckless in not knowing, that the statements he made to his
7 clients about how their money would be used were false and misleading, and that he was
8 misappropriating client money for personal expenses contrary to his representations to his clients.

9 **ii. Del Biaggio Fraudulently Pledged and Margined the Assets of BDB I**

10 24. In 2003, Del Biaggio formed BDB Management, LLC ("BDB I") and was the majority
11 shareholder and manager of the entity. Del Biaggio solicited clients and other investors to put money
12 into the BDB I fund. BDB I had a written Operating Agreement stating that the fund intended to
13 acquire a block of unspecified equity stock for investment purposes. Del Biaggio made the decisions
14 about how his clients' money would be invested, including choosing the stock in which BDB I would
15 invest. Del Biaggio ultimately decided to purchase shares of Heritage Commerce Corp. (NASDAQ
16 ticker: HTBK) with the roughly \$7 million raised from the dozens of clients in BDB I.

17 25. BDB I's Operating Agreement prohibited Del Biaggio from issuing "notes, bonds, and
18 other obligations and secure[ing] any of them by mortgage or deed of trust or security interest of any
19 or all of" the funds assets. Contrary to the prohibition in the Operating Agreement, Del Biaggio
20 pledged and gave private lenders and banks a security interest in the Heritage shares held by BDB I
21 so that he could obtain cash for other business and personal use. Del Biaggio obtained millions of
22 dollars in loans by pledging the stock in BDB I as security for the personal loans. Del Biaggio then
23 misappropriated millions of dollars of the money he obtained from the loans to pay personal bills or
24 for business obligations unrelated to the investment funds.

25 26. Del Biaggio's actions ultimately led to BDB I filing for bankruptcy protection on June
26 7, 2008. According to Del Biaggio's bankruptcy filings, BDB I has outstanding debts that
27 substantially exceed its available assets.

28

1 27. Del Biaggio knew, or was reckless in not knowing, that his pledging and margining of
2 the assets held by BDB I was fraudulent, and that his failure to inform his advisory clients about the
3 pledging and margining of their assets constituted material omissions.

4 **iii. Del Biaggio Fraudulently Pledged and Margined the Assets of BDB III**

5 28. In 2007, Del Biaggio formed BDB Management III, LLC (“BDB III”) and was the
6 majority shareholder and manager of the entity. Del Biaggio solicited clients and other investors to
7 put money into the BDB III fund. BDB III had a written Operating Agreement stating that the fund
8 intended to acquire a block of unspecified equity stock for investment purposes. Del Biaggio made
9 the decisions about how his clients’ money would be invested, including choosing the stock in which
10 BDB III would invest. Del Biaggio ultimately decided to purchase shares of Pacific Premier
11 Bancorp, Inc. (NASDAQ ticker: PPBI) with the roughly \$2 million raised from the handful of clients
12 who invested in BDB III.

13 29. BDB III’s Operating Agreement prohibited Del Biaggio from issuing “notes, bonds,
14 and other obligations and secure[ing] any of them by mortgage or deed of trust or security interest of
15 any or all of’ the funds assets. Contrary to the prohibition in the Operating Agreement, Del Biaggio
16 pledged and gave private lenders and banks a security interest in the Pacific Premier shares purchased
17 for BDB III so that he could obtain cash for other business and personal ventures. Del Biaggio
18 obtained millions of dollars in loans by pledging the stocks in BDB III as security for the personal
19 loans. Del Biaggio then misappropriated millions of dollars of the money he obtained from the loans
20 to pay personal bills or for business obligations unrelated to the investment funds.

21 30. Del Biaggio’s actions ultimately led to BDB III filing for bankruptcy protection on
22 June 7, 2008. According to Del Biaggio’s bankruptcy filings, BDB III has outstanding debts that
23 substantially exceed its available assets.

24 31. Del Biaggio knew, or was reckless in not knowing, that his pledging and margining of
25 the assets held by BDB III was fraudulent, and that his failure to inform his advisory clients about the
26 pledging and margining of their assets constituted material omissions.

FIRST CLAIM FOR RELIEF**(Violations of Section 17(a) of the Securities Act)**

32. The Commission realleges and incorporates by reference paragraphs 1 through 31.

33. By engaging in the acts and conduct alleged above, Del Biaggio, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails: (a) with scienter employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or by omitting to state a material fact necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchasers.

34. By reason of the foregoing, Del Biaggio has violated and, unless restrained and enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

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

35. The Commission realleges and incorporates by reference Paragraphs 1 through 31.

36. By engaging in the acts and conduct alleged above, Del Biaggio, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national security exchange, with scienter: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact 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 (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, including purchasers and sellers of securities.

37. By reason of the foregoing, Del Biaggio has violated and, unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §§ 240.10b-5] thereunder.

THIRD CLAIM FOR RELIEF**(Violations of Section 206(1) and 206(2) of the Advisers Act)**

38. The Commission realleges and incorporates by reference Paragraphs 1 through 31.

39. By engaging in the acts and conduct alleged above, Del Biaggio, directly or indirectly, through use of the means or instruments of transportation or communication in interstate commerce or of the mails, and while engaged in the business of advising others for compensation as to the advisability of investing in, purchasing, or selling securities: (a) employed devices, schemes, and artifices to defraud; and (b) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon clients or prospective clients.

40. By reason of the foregoing, Del Biaggio has violated and, unless restrained and enjoined, will continue to violate Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Permanently enjoin defendant Del Biaggio from directly or indirectly violating 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], and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

II.

Order defendant Del Biaggio to pay civil money penalties pursuant to Section 20(d)(1) of the Securities Act [15 U.S.C. § 77t(d)(1)], and Section 21A of the Exchange Act [15 U.S.C. § 78u-1], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

III.

Order defendant Del Biaggio to disgorge all ill-gotten gains according to proof, plus prejudgment interest.

IV.

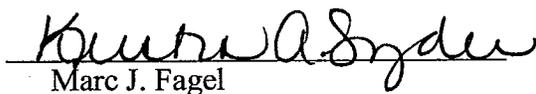
1
2 Retain jurisdiction of this action in accordance with the principles of equity and the Federal
3 Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that
4 may be entered, or to entertain any suitable application or motion for additional relief within the
5 jurisdiction of this Court.

6 V.

7 Grant such other and further relief as this Court may deem just, equitable, and necessary.

8
9 Dated: December 4, 2008

10 Respectfully submitted:

11
12
13 By: 

Marc J. Fagel
Michael S. Dicke
Mark P. Fickes
Jina L. Choi
Kristin A. Snyder

14
15
16 Attorneys for Plaintiff
17 SECURITIES AND EXCHANGE COMMISSION
18
19
20
21
22
23
24
25
26
27
28