

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DEREK A. NELSON, CAPITAL MOUNTAIN
HOLDING CORP., SYSTEMS XXI, ACT I, LLC
and SYSTEMS XXI, ACT II, LLC,

Defendants, and

PLOUTEO, INC. and HOMAIDE REAL ESTATE
SERVICES CORP.,

Relief Defendants,
Solely for the Purposes of
Equitable Relief.

Civil Action No. _____

COMPLAINT

The Securities and Exchange Commission (“Commission”) files this Complaint against Defendants Derek A. Nelson (“Nelson”), Capital Mountain Holding Corp. (“CMHC”), Systems XXI, Act I, LLC (“Act I”), and Systems XXI, Act II, LLC (“Act II”) (collectively, “Defendants”), and, solely for purposes of equitable relief, Plouteo, Inc. (“Plouteo”) and Homaide Real Estate Services Corp. (“Homaide”) (collectively, “Relief Defendants”). The Commission alleges:

SUMMARY

1. This is an offering fraud case. From on or about June 2008 through September 2009, Defendants raised at least \$25 million through the offer and sale of high-yield notes issued by CMHC, Act I, and Act II. The offerings were not registered with the Commission.

2. In offering and selling the notes, Defendants represented to investors that the offering proceeds would be used to buy real property at deeply discounted values, and that the properties would then be improved, leased, and resold at a profit.

3. Defendants' representations to investors were false. Instead of investing offering proceeds in the real estate necessary to support legitimate business operations, Defendants used most of the funds to: make Ponzi payments to investors; purchase luxury items for Nelson; pay Nelson's personal expenses; and pay overhead expenses for various companies controlled by Nelson. In addition, investor funds, and assets acquired with investor funds, were transferred to Relief Defendants.

4. In summer 2009, Defendants' scheme collapsed, payments to investors ceased, and lien holders began foreclosure proceedings on the properties acquired and held by Defendants.

5. By this conduct, Defendants have offered and sold securities in violation of the registration and antifraud provisions of the federal securities laws, specifically Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and of Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

6. The Commission, in the interest of protecting the public from further such fraudulent activities and harm, brings this action seeking the appointment of a receiver and an asset freeze, permanent injunctive relief, disgorgement of Defendants ill-gotten gains, plus prejudgment interest thereon, and civil monetary penalties. Additionally, the Commission is seeking disgorgement from the Relief Defendants—entities to which Defendants transferred investor funds and assets.

JURISDICTION AND VENUE

7. The investments offered and sold by Defendants are “securities” under Section 2(1) of the Securities Act [15 U.S.C. § 77b] and Section 3(a)(10) of the Exchange Act [15 U.S.C. § 78c].

8. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78(aa)].

9. Defendants, directly or indirectly, made use of the means or instruments of transportation and communication, and the means or instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein. Certain of the transactions, acts, practices, and courses of business alleged herein took place in the Northern District of Texas.

DEFENDANTS

10. **Nelson**, age 42, is a resident of Fairview, Texas. He owns and controls CMHC, Pluteo and Homaide. Nelson is also the managing member of Act I and Act II.

11. **CMHC** is a Texas corporation owned and controlled by Nelson with its principal place of business in Dallas County, Texas. CMHC has also had offices in Tampa and Las Vegas. CMHC has never registered an offering of securities under the Securities Act or a class of securities under the Exchange Act.

12. **Act I** is a Texas limited liability company managed by Nelson. Its principal place of business is in Dallas. Act I has never registered an offering of securities under the Securities Act or a class of securities under the Exchange Act.

13. **Act II** is a Texas limited liability company managed by Nelson. Its principal

place of business is in Dallas. Act I has never registered an offering of securities under the Securities Act or a class of securities under the Exchange Act.

RELIEF DEFENDANTS

14. **Plouteo** is a Nevada corporation controlled by Nelson. Certain properties purchased by CMHC were titled in the name Plouteo, for no apparent consideration.

15. **Homaide** is a Texas corporation controlled by Nelson. Homaide received at least \$1.2 million of investor funds, for no apparent consideration.

THE INVESTMENT SCHEME

Fraudulent, Unregistered Note Offerings

16. Between June 2008 and September 2009, Defendants raised at least \$25 million through the offer and sale of notes issued by CMHC, Act I, and Act II. Hundreds of investors residing in several states (including Texas), Canada, and Australia purchased the notes. The note offerings were not registered with the Commission.

The CMHC Note Offering

17. In about June 2008, Nelson began marketing CMHC notes to investors. The notes were marketed via CMHC's website (www.capitalmountain.com) and a Canada-based investment club.

18. CMHC notes promised to pay investors a return of 10% interest per month for three months. Nelson represented to investors that CMHC would use the proceeds from the sale of the notes to purchase distressed residential real estate – i.e., property on which the owner could no longer afford to make mortgage payments – significantly below market value. Nelson told investors that after acquiring the discounted property, he would rehab or rent it, and then sell the property at or near its true value, thereby generating the returns promised to investors.

19. Investors in CMHC notes typically wired their investments to a CMHC bank account. Once investor funds were received, Nelson and CMHC provided the investors with written information on the note program, including the promissory notes.

20. Nelson and CMHC raised at least \$15 million from the sale of the CMHC notes.

The Act I and Act II Note Offerings

21. In about October 2008, Nelson began offering notes issued by Act I and Act II. The notes were marketed via the Act I and Act II website, www.systemsxxi.com, and a Canada-based investment club. Nelson also persuaded many CMHC investors to roll their CMHC investments into Act I and Act II investments.

22. Prospective Act I and Act II investors were given private placement memoranda, which claimed, among other things, that: (1) the notes paid 18% annually for two years (Act I) or 21% annually for five years (Act II); (2) 90% of the offering proceeds would be used for property purchases or “note development,” with the remaining 10% to be used for payroll, marketing, rent, filing fees, brokerage fees, and other related expenses; and (3) Nelson would be paid an annual salary of just \$24,000.

23. Investors in Act I and Act II notes typically wired their investments to an Act I or Act II bank account. Those investor funds were then transferred into CMHC bank accounts and comingled with other investor funds.

24. Defendants raised approximately \$10 million from the sale of Act I and Act II notes.

Defendants Made False Statements and Misrepresentations to Investors

25. Instead of investing note proceeds in distressed real estate as promised, Defendants misapplied a majority of the funds.

26. Of the \$25 million raised from the CMHC, Act I, and Act II offerings: at least \$10 million was used to make Ponzi payments to investors; at least \$2.6 million was transferred to Nelson's personal bank accounts; more than \$1 million was used to make a down payment on Nelson's personal residence in Fairview, Texas; \$80,000 was used by Nelson to purchase a luxury car; and \$1.2 million was transferred to Homaide.

27. Defendants falsely represented to investors that investing in CMHC, Act I and Act II notes was low risk. In fact, in August 2008, Nelson told investors that the only investment risk was if he were to die, because no one at CMHC had his expertise. Prospective investors in Act I and Act II were falsely assured that their investments were secured with first lien positions on the properties. In fact, Defendants typically acquired the properties by assuming the mortgages of the prior homeowners or by borrowing funds from a third-party lender. Therefore, in a majority of the instances, Act I and Act II investors did not have first lien positions on the properties acquired by Defendants.

28. In summer 2009, with insufficient new investor funds, Defendants were unable to continue making Ponzi payments to earlier investors or keep mortgages on the properties current. As a result, payments to investors ceased and lien holders began foreclosing on many of the properties acquired and held by Defendants.

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

29. Plaintiff Commission repeats and incorporates paragraphs 1 through 28 of this Complaint by reference as if set forth *verbatim*.

30. Defendants, directly or indirectly, singly or in concert with others, in the offer or sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes, and artifices to defraud; (b) obtained money or

property by means of untrue statements of a material fact and omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices, and courses of business which operate or would operate as a fraud and deceit upon the purchasers.

31. As a part of and in furtherance of their scheme, Defendants, directly and indirectly, prepared, disseminated, or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which 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.

32. With respect to violations of Sections 17(a)(2) and (3) of the Securities Act, Defendants were negligent in their actions regarding the representations and omissions alleged herein. With respect to violations of Section 17(a)(1) of the Securities Act, Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

33. By reason of the foregoing, Defendants have violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM

Violations of Section 10(b) of the Exchange Act and Rule 10b-5

34. Plaintiff Commission repeats and incorporates paragraphs 1 through 28 of this Complaint by reference as if set forth *verbatim*.

35. Defendants, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes, and artifices to

defraud; (b) made untrue statements of a material fact and omitted to state a material fact 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, and courses of business which operate or would operate as a fraud and deceit upon purchasers, prospective purchasers, and any other persons.

36. As a part of and in furtherance of their scheme, Defendants, directly and indirectly, prepared, disseminated, or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which 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.

37. Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

38. By reason of the foregoing, Defendants violated and, unless enjoined, will continue to violate 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].

THIRD CLAIM
Violations of Sections 5(a) and 5(c) of the Securities Act

39. Plaintiff Commission repeats and incorporates paragraphs 1 through 28 of this Complaint by reference as if set forth *verbatim*.

40. Defendants, directly or indirectly, singly and in concert with others, have been offering to sell, selling and delivering after sale, certain securities, and have been, directly and indirectly: (a) making use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, through the use of written contracts,

offering documents and otherwise; (b) carrying and causing to be carried through the mails and in interstate commerce by the means and instruments of transportation, such securities for the purpose of sale and for delivery after sale; and (c) making use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

41. As described above, no registration statements were ever filed with the Commission or otherwise in effect with respect to these transactions and offerings.

42. By reason of the foregoing, Defendants have violated and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

I.

Permanently enjoin Defendants from violating Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

II.

Order Defendants to disgorge an amount equal to the funds and benefits they obtained illegally, or to which they are otherwise not entitled, as a result of the violations alleged, plus prejudgment interest on that amount.

III.

Order Defendants to pay civil monetary penalties in an amount determined as appropriate by the Court pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] for the violations alleged herein.

IV.

Order such further relief as this Court may deem just and proper.

Dated this 20th day of November 2009.

Respectfully submitted,

s/ Robert Long

Robert Long

Arizona Bar No. 019180

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