

THE STATE OF WISCONSIN,

Plaintiff,

v.

EDWARD VAN DER MOLEN,

Defendant.

Case No. 14-CF - 15

COPY

CRIMINAL COMPLAINT

COUNT 1: RACKETEERING ACTIVITY

Between July 13, 2007, and January 31, 2008, in the County of Monroe, the above-named defendant, through his association with an enterprise, directly or indirectly participated in the enterprise through a pattern of racketeering activity (to wit: Van Der Molen engaged in Securities Fraud on three occasions, as described below as incidents 1, 2, and 3), in violation of Wis. Stat. § 946.83(3) (2005-2006).

Upon conviction of this charge, a Class E Felony, the maximum penalty is a fine not to exceed \$50,000 dollars or imprisonment not to exceed fifteen (15) years, or both.

• SECURITIES FRAUD – INCIDENT 1

Between on or about July 13, 2007, and on or about November 3, 2007, in the County of Monroe, the above-named defendant, in connection with the offer to sell a security (to the Cloherty family), did omit 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, in violation of Wis. Stat. §551.41(1) (2005-2006).

• SECURITIES FRAUD – INCIDENT 2

Between on or about August 7, 2007, and on or about September 4, 2007, in the County of Monroe, the above-named defendant, in connection with the offer to sell a

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security (to the Griffin family), did omit 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, in violation of Wis. Stat. §551.41(1) (2005-2006).

• SECURITIES FRAUD – INCIDENT 3

On or about January 31, 2008, in the county of Monroe, the above-named defendant, in connection with the offer to sell a security (to Brock T. Wise), did omit 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, in violation of Wis. Stat. §551.41(1) (2005-2006).

COUNT 2: SECURITIES FRAUD

On or about January 31, 2008, in the county of Monroe, the above-named defendant, in connection with the offer to sell a security (to Brock T. Wise), did omit 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, in violation of Wis. Stat. §551.41(1) (2005-2006).

Pursuant to Wis. Stat. §551.58(1), upon conviction of this offense, a Class H Felony, the penalty for this crime is a fine of not more than \$10,000 dollars or imprisonment of not more than six (6) years, or both.

COUNT 3: THEFT BY CONTRACTOR

Between January 31, 2008, and April 20, 2008, in the county of Monroe, the above-named defendant did use over \$10,000 of moneys paid to him, in his capacity as a prime contractor, for purposes other than the exclusive use of that money for improvements upon the victim's (Mr. Brock T. Wise) mortgaged land, in violation of Wis. Stat. §779.02(5) (2005-2006).

Pursuant to Wis. Stat. §943.20(3)(c), upon conviction of this offense, a Class G Felony, the penalty for this crime is a fine of not more than \$25,000 dollars or imprisonment of not more than ten (10) years, or both.

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Summary of Investigative Findings

1.) The complainant became aware that Edward Van Der Molen offered to sell and did sell investment contracts, calling them either “net lease agreements” or “lease-back agreements.” The terms of the agreements and other statements made to potential investors were made to induce the investor to buy into the investment properties. However, Van Der Molen did not disclose information about his or his company’s failure to pay various financial obligations associated with the investment. By not disclosing this information, he misled his investors with his promises of a return on their investment and his other statements made to induce the potential investors.

FACTUAL BASIS

2.) The complainant is a Wisconsin Department of Financial Institutions (“DFI”) Investigator and bases this complaint upon information and belief, the statements of adult citizen witnesses, his review of sales and marketing documentation, and his review of financial documentation.

3.) The complainant is aware that, in Wisconsin, an investment contract is a “security.”

4.) The complainant has reviewed the 2006 and 2007 Domestic Corporation annual report filed with DFI in July of 2006 and May of 2007, respectively. The 2006 report reflects that Edward Van Der Molen was designated as the president and sole officer of Van Der Molen Recreational Properties in 2006. The 2007 report reflects that Edward

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Van Der Molen was designated as the president, sole officer, and director of Van Der Molen Recreational Properties in 2007.

Van Der Molen's Directions to Sales Staff

5.) The complainant spoke with adult citizen witness Luann Griffin. Griffin reported that she was a sales agent for Edward Van Der Molen at his Three Bears Resort in Monroe County in 2006, 2007 and 2008. Griffin reported that she was told by Ed Van Der Molen to tell purchasers that the finances of the Three Bears Resort were solid and strong. She reported that she did not have access to the financial information of the resort. Further, Griffin reported that when customers wanted to see "financials" that Van Der Molen told Griffin that he was not going to provide potential buyers with any financial reports or records. Instead, Griffin was instructed by Van Der Molen to give the potential buyers a copy of a biographical summary of Van Der Molen's accomplishments, unrelated to the Three Bears Resort. Griffin reported that all of the property units were promoted and sold as income properties that could be purchased and then rented out for the purchaser by one of Van Der Molen's businesses. This arrangement was commonly referred to as a "lease-back agreement" or "net lease agreement."

The Finances of the Investment

6.) The complainant spoke with an adult citizen witness by the name of Beverly Paigen. Paigen is the sister of Edward Van Der Molen. Paigen reported that she owns a portion of the Three Bears Resort lodge. Paigen reported that Three Bears underwent a business failure that devastated the family. Paigen reported that she lost approximately

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\$280,000.00 and that Edward's other sister, Debbie, lost her whole life savings. Debbie is also a part owner of the lodge. Paigen reported that Edward's brother, Jeff, was also a part owner of the lodge and water park.

Notably, Paigen explained that within the first 3 months of 2007, that Paigen, Debbie and Jeff stopped receiving their monthly interest payments from Ed Van Der Molen. In March of 2007, Paigen, Debbie and Jeff attended a family wedding and reception where they confronted Edward about the overdue lease payments and the status of the Three Bears Resort. At that time, Edward Van Der Molen admitted to the group of 3 that his company was in financial trouble, but that things would get better because he was going to receive a huge influx of money from someone named Bruce Bryant. Paigen reports that the financial downfall of the Three Bears Resort has hurt Edward Van Der Molen's extended family. She added that the collapse of the Three Bears Resort has torn the family apart.

7.) The complainant has reviewed a letter from Attorney Aaron J. Bernstein, an attorney representing Boelter and Lincoln, Inc ("Boelter"). Bernstein reports that Boelter entered into an agreement in November of 2006 to perform advertising services. Beginning in April of 2007, Van Der Molen's account with Boelter was in arrears and remained that way until November of 2007, when Boelter filed a lawsuit for the \$86,284.34 that was owed, plus interest, for the advertising services that had been performed pursuant to the November, 2006, agreement.

8.) The complainant reviewed a document titled "Van Der Molen Recreational Properties – Operating Statement" from Randy Isaacson, an attorney representing United

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Bank of Mauston. The document reflects that Van Der Molen Recreational Properties suffered a NET LOSS of \$9,777,307.17 for the 12 months ending in December of 2006 and a NET LOSS of \$4,883,026.31 for the 12 months ending in December of 2007.

9.) The complainant has reviewed a document entitled "Balance Sheet Trends" for Van Der Molen Recreational Properties prepared by United Bank of Osseo, Wisconsin. The balance sheet reflects that Van Der Molen Recreational Properties suffered a loss of equity in the amount of \$10,694,072.00 for the 12/31/2006 tax year. Additionally, the document reflects that Van Der Molen Recreational Properties suffered a loss of equity in the amount of \$479,544.00 for the 12/31/2005 tax year.

10.) The complainant spoke with an adult citizen witness named George Welch. Welch is a cousin of Edward Van Der Molen. Welch has been a business partner with Van Der Molen in many businesses. Welch has done work in the areas of finance, business planning and architecture for some of Van Der Molen's companies. Van Der Molen's parents were very wealthy because of their partial ownership of a waste management company in Illinois. Van Der Molen received millions of dollars from his family. Van Der Molen does not understand the average person's finances because he has been wealthy his whole life.

Welch reported that on June 30, 2006, Welch made a \$500,000.00 loan to Edward Van Der Molen in the form of a "Promissory Note" so that Van Der Molen could pay subcontractors money that he owed them as he was a number of months behind in payments to them. The note indicated that Van Der Molen was to make monthly

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payments (interest & principal) to Welch of \$16,367.00 per month until paid in full. Van Der Molen defaulted on the promissory note during the summer of 2007.

Welch reported that after the resort closed, he briefly discussed with Van Der Molen the negative impact the closing had on many of the villa purchasers. Van Der Molen told Welch that every investment has risk and purchasers should have known that there was some risk involved with purchasing a villa.

11.) The complainant contacted Dean Basten, adult citizen witness, of Miron Construction Company, Inc. ("Miron"). Basten reported that Edward Van Der Molen owed Miron \$800,000.00 for work that had been performed. Basten reported that in December of 2006, Van Der Molen told Miron that he did not have the funds to pay off the \$800,000.00 that was owed to Miron. Two promissory notes were signed by Van Der Molen where he agreed to pay all principal and interest by July 1, 2007. However, Basten reported that Van Der Molen never made any payments on these notes.

12.) The complainant spoke with adult citizen witness Bruce Bryant. Bryant states that in early January 2008 Ed Van Der Molen told Bryant that he needed a loan of a significant amount of money in order to keep the business operating. Ed Van Der Molen explained that he needed money to pay employees and to pay the villa owners their promised monthly lease back dividends.

13.) The complainant has reviewed Wisconsin Department of Revenue (DOR) Tax Returns for Edward Van Der Molen and for Van Der Molen Recreational Properties Inc. for 2005, 2006, and 2007.

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- For the tax year ending on 12/31/2005, Van Der Molen Recreational Properties declared a business income loss of \$1,941,958.00 and Edward Van Der Molen declared an individual total partnership and corporation income loss of \$3,175,703.00.

- For the tax year ending on 12/31/2006, Van Der Molen Recreational Properties declared a business income loss of \$9,342,067.00 and Edward Van Der Molen declared an individual total partnership and corporation income loss of \$7,092,010.00.

- For the tax year ending on 12/31/2007, Van Der Molen Recreational Properties declared a business income loss of \$4,330,406.00 and Edward Van Der Molen declared an individual total partnership and corporation income loss of \$3,354,196.00.

Securities Transactions

The Griffins

14.) Luann Griffin reported that in 2007 she and her husband decided that they would purchase a villa at the Three Bears Resort. Their decision was based solely on the fact that Van Der Molen offered a lease-back investment contract with the purchase of a property. Griffin stated that Van Der Molen offered her a 9% annual return based on her investment of \$234,000.00, by the purchase of a "Gold Finch" property.

15.) Between August 7, 2007, and September 4, 2007, Griffin had at least a half-dozen face to face conversations with Edward Van Der Molen ("Van Der Molen") about Griffin & her husband possibly purchasing a villa at Three Bears Resort. The conversations that Griffin had with Van Der Molen included detailed discussions about the terms of the Net Lease Agreement. Van Der Molen told Griffin that he was offering Griffin & her husband a seven year lease agreement rather than the usual five year lease agreement because Griffin worked for Van Der Molen selling property at the resort. Edward Van

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Der Molen specifically assured Griffin on numerous occasions, and before the purchase, that he would not default on the lease agreements.

16.) The Griffins closed on the purchase on September 4, 2007, at Farmers & Merchants Bank in the city of Tomah, Monroe County, State of Wisconsin. The Griffins had to obtain a loan in order to come up with the money for the investment that Van Der Molen was offering. The payment was made to Van Der Molen Recreational Properties / Aspen Avenue.

17.) The Griffins were never given any information on the debts or lease payment history of Van Der Molen, or any of his companies before the purchase. Further, the Griffins were never provided with any information that Van Der Molen, or Van Der Molen Recreational Properties might not honor the lease back agreement. Instead, Edward Van Der Molen assured Griffin on numerous occasions, before obtaining her money, that he would not default on the leases.

18.) The Griffins received a letter dated March 26, 2008, informing them for the first time that Van Der Molen and Van Der Molen Recreational Properties had a large financial problem. The Griffins were never advised of any of the financial debts of Van Der Molen and his companies, nor were they given any information about his company's failure to pay financial obligations.

19.) The complainant has reviewed the "offer to purchase" and the "amendment to offer to purchase" that was made between the Griffins and Edward Van Der Molen. It reflects that Albert and Luann Griffin entered into an agreement to purchase 428 Overlook Court, Warrens, WI 54666 with Edward Van Der Molen on August 10, 2007.

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The agreement reflects that it was signed by the Griffins and Edward Van Der Molen on August 10, 2007.

20.) The complainant has reviewed the lease back agreement that was made with the Griffins as part of the purchase of the investment property. It reflects that Van Der Molen promised to pay the Griffins \$20,655.00 every year, for 7 years, to be paid on a monthly basis at the rate of \$1,721.25. This amount actually, equals an 8.8% return, as opposed to a 9% return. The agreement also entails that Van Der Molen Recreational properties would pay all operating and maintenance expenses of the property, including real estate taxes, special assessments, insurance, utilities, maintenance or replacement costs, all furniture, mechanical equipment, and plumbing costs. The agreement was signed by Van Der Molen on September 4, 2007.

21.) Therefore, Van Der Molen made statements to the Griffins that there would be a return on the investment. However, such statements were misleading because Van Der Molen did not disclose the fact that he was unable to pay other investors their investment returns, was unable to pay other financial obligations, and that the investment properties had been experiencing a consistent loss of money in recent years.

The Clohertys

22.) The complainant spoke with Dori Cloherty. Cloherty reports that between July 13, 2007, and October 30, 2007, she and her husband decided that they would purchase a villa at the Three Bears Resort. They dealt with Luann Griffin who was a sales agent for Ed Van Der Molen. Van Der Molen was offering a lease-back investment contract. Van Der Molen was offering a 9% annual return on the purchase price of \$238,000.00, to be

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paid on a monthly basis at the rate of \$1,785.00. The agreement also entailed that Van Der Molen Recreational properties would pay all operating and maintenance expenses of the property, including real estate taxes, special assessments, insurance, utilities, maintenance or replacement costs, all furniture, mechanical equipment, and plumbing costs. On October 30, 2007, the Clohertys made a payment of \$5,000.00 in earnest money to consummate the offer to purchase and the Villa net lease agreement. The back of the check indicates that it was deposited into Van Der Molen's account at Farmers & Merchants Bank. The complainant has reviewed a document entitled "Rider to Purchase and sale agreement" which states that the date of the contract is October 30, 2007, that the Clohertys have paid \$5,000.00 as a down payment, and that the seller is Edward Van Der Molen, President of Aspen Avenue Development, Inc. The document is signed, accepted, and dated by Van Der Molen on November 3, 2007.

23.) The Clohertys closed on the purchase on February 1, 2008, at Black River Country Abstract Company at 208 Main Street in the city of Black River Falls, Jackson county, State of Wisconsin. The payment was made to Aspen Avenue Development Inc. Prior to their purchase, they were never given any information on the debts or financial problems of Van Der Molen, or any of his companies. Instead, the Clohertys had been told by Luann Griffin that Van Der Molen and his various business entities were doing very well. The Clohertys had to obtain a mortgage loan in order to come up with the money for the investment that Van Der Molen was offering.

24.) The Clohertys received a letter dated March 26, 2008, informing them for the first time that The Three Bears Resort and Van Der Molen had serious financial problems.

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build a Golf-Course and was going to expand to the other side of the highway through a tunnel which would be built underneath the highway.

28.) The purchase price was \$426,069.00 of which Wise paid \$80,429.00 in cash and obtained a mortgage loan from M & I Bank for the remaining amount of \$345,640.00. Wise reports that in February 2008, M & I Bank sent the first draw of funds in the amount of \$106,450.00 to Van Der Molen as payment on the villa. Wise reports that absolutely no work was done on this villa.

29.) Wise reports that prior to the purchase he was never advised of any of the financial debts of Van Der Molen and his companies, nor was he given any information about Van Der Molen and his company's failure to pay financial obligations.

30.) Wise received a letter dated March 26, 2008, informing him that The Three Bears Resort and Van Der Molen had serious financial problems. Van Der Molen never made any lease payments to Wise related to this purchase.

31.) On or about April 20, 2008, Wise spoke with Edward Van Der Molen in an office at the Three Bears lodge. At that time, Wise asked Van Der Molen for the return of the money that Wise had paid to Three Bears/Van Der Molen for his purchase of the villa. Van Der Molen told Wise that he could not give Wise any of his money back because Van Der Molen had already spent it.

32.) Therefore, Van Der Molen made statements to Mr. Wise that there would be a return on his investment. However, such statements were misleading because Van Der Molen did not disclose the fact that he was unable to pay other investors their investment

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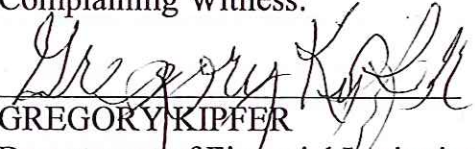
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returns, was unable to pay other financial obligations, and that the investment properties had been experiencing a consistent loss of money in recent years.

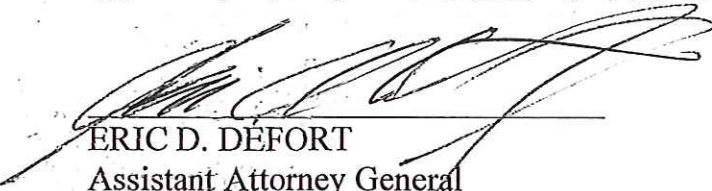
END OF COMPLAINT

Dated this 16th day of January, 2014.

Complaining Witness:


GREGORY KIPFER
Department of Financial Institutions
State of Wisconsin

Subscribed and sworn to before me and approved for filing this 16th day of January 2014.


ERIC D. DEFORT
Assistant Attorney General
Wisconsin Department of Justice
Special Prosecutor for Monroe County
Notary Public with Permanent Commission
State Bar No. 1041760
17 W. Main Street, Madison, WI 53707

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