

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FT. LAUDERDALE DIVISION

CASE NO: \_\_\_\_\_

SSH2 ACQUISITIONS, INC.,

Plaintiff,

-against-

JAMES CLARK HOWARD III, PATRICIA SAA a/k/a  
PATRICIA STELLA MELENDEZ, SUTTON CAPITAL, LLC,  
and RAPALLO INVESTMENT GROUP, LLC,

Defendants.

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**COMPLAINT**

Plaintiffs, SSH2 Acquisitions, Inc. by and through its undersigned counsel, for its Complaint against Defendants, James Clark Howard III, Patricia Saa a/k/a Patricia Stella Melendez, Sutton Capital, LLC, and Rapallo Investment Group, LLC, avers as follows:

The Parties

1. Plaintiff is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in Collier County, Florida, Florida.
2. Upon information and belief, defendant James Clark Howard III is an individual citizen of Florida, residing in Broward County, Florida.
3. Upon information and belief, defendant Patricia Saa, also known as Patricia Stella Melendez, is an individual citizen of Florida, whose last known address is in Collier County, Florida.

4. Upon information and belief, defendant Sutton Capital, LLC is a limited liability company organized and existing under the laws of the State of Florida with its principal place of business in Broward County, Florida.

5. Upon information and belief, defendant Rapallo Investment Group, LLC, is a limited liability company organized under the laws of the State of Florida with its principal place of business in Collier County, Florida.

6. Upon information and belief, at all relevant times herein, James Clark Howard III and Patricia Saa a/k/a Patricia Stella Melendez (hereinafter “the individual defendants”) were owners officers, and controlling persons of defendants Sutton Capital, LLC and Rapallo Investment Group, LLC (hereinafter “the business-entity defendants”), and acted on their behalf.

#### Jurisdiction and Venue

7. This Court has subject-matter jurisdiction over this case by virtue of federal-question jurisdiction, pursuant to 28 U.S.C. § 1331, and Sections 22(a) of the Securities Act, 13 U.S.C. § 77u(a) and 27 of the Securities Exchange Act, 15 U.S.C. §§ 78u(e) and 78aa, in that plaintiff alleges violations of the securities laws of the United States.

8. The court has subject-matter jurisdiction of the state-law claims pleaded herein under principles of pendent jurisdiction.

9. In connection with the transactions, acts, practices and course of business described in this Complaint, the defendants, directly and indirectly, have made use of the means or instrumentalities of interstate commerce, of the mails, or of the means and instruments of transportation or communication in interstate commerce.

10. Venue is proper in this district pursuant to Section 27 of the Exchange Act, 15 U.S.C. § § 78aa, and under 28 U.S.C. § 1391(a) and (b). An individual defendant resides in this district and the business-entity defendants do business in and have offices located in this juridical district, and a substantial part of the events and omissions giving rise to the claims asserted herein occurred within this district.

Facts

11. From early 2009 through March 2010, defendants solicited a total of \$39,000,000.00 from plaintiff, representing that the money would be invested in a commodities-trading program. In doing so, defendants made the following representations, in telephone calls, e-mails, and face-to-face conversations:

(a) The business of defendant Sutton Capital, LLC was trading in commodities on behalf of its investors;

(b) Defendants had a strategy for commodities trading that would produce profits of 40 % per month or more, while not risking any of the invested funds; and

(c) Plaintiff's money would therefore not be at risk.

12. The statements made by defendants set forth in the previous paragraph, were false, upon information and belief, based on the records of bank accounts and other records, in that:

(a) Defendant Sutton Capital, LLC never conducted commodities trading;

(b) Defendants did not in fact have a strategy for commodities trading that could provide the promised returns on investment while not risking the loss of the principal invested;

(c) The money of plaintiff would in fact be at a risk of loss;

(d) Defendants did not in fact believe that plaintiff would make profits of 40 % per month or more;

(e) The individual defendants were using the business-entity defendants to operate a Ponzi scheme, in which money from new investors was used to pay fake “profits” to earlier investors, while no actual trading was conducted by the companies. These fake “profits” were a scheme concocted by the individual defendants to entice unsuspecting persons into investing in the fake commodities-trading programs of Sutton Capital, LLC;

(f) The individual defendants concealed from plaintiff and the world that they were converting the funds invested by plaintiff to their own use; and

(g) The defendants concealed from plaintiff that a principal of Sutton Capital, defendant James Clark Howard III, was a convicted felon who had committed financial crimes.

13. Upon receipt of funds from plaintiff, defendants immediately converted them to their own use.

14. During this time period, defendants took in from plaintiff approximately \$39,000,000.00. Approximately \$19,000,000.00 was used by defendants to pay fake and fraudulent “profits” to plaintiff. The rest was converted by defendants to their own use.

15. The representations and omissions of defendants were material to the decision of plaintiff to invest its money with defendants, and plaintiff reasonably relied on them, unaware of their falsity.

16. Plaintiff has demanded the return of its funds from defendants, and defendants have failed and refused to return the funds.

COUNT I

17. Paragraphs 1-16 are hereby realleged.

18. Defendants, directly and indirectly, with scienter, by use of a means or instrumentality or interstate commerce or by use of the mails, have employed a device, scheme, or artifice to defraud; have made an untrue statement of material fact or 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, or have engaged in an act, practice, or course of business which has been and is operating as a fraud or deceit upon the plaintiffs as purchasers or sellers of securities.

19. By reason of the foregoing, defendants have violated Section 10(b) of the Securities Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

20. By virtue of the defendants' violation of the above provisions, plaintiff has been damaged in the amount of \$19,000,000.00.

COUNT II

21. Paragraphs 1-16 are hereby realleged.

22. This claim is brought under Section 22(a)(1) of the Securities Act of 1933, as amended, 15 U.S.C. § 77v(a)(1) to enforce a liability created by Section 12(a) of the Securities Act, 15 U.S.C. § 77l(2) and 15 U.S.C. § 77(o), respectively, arising out of the sale of unregistered securities.

23. The business-entity defendants directly offered and sold securities, or were material participants in such sales, to plaintiff, in the form of an investment in commodities trading, using one or more means of interstate commerce

24. These investments constitute securities.

25. No registration statement for these securities was filed, or was in effect, in accordance with federal securities requirements, and the securities were sold in violation of Section 5(a)(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

26. The individual defendants at all times controlled the activities of the business-entity defendants and are therefore jointly and severally liable for the violations pursuant to Section 15 of the Securities Act and Section 20A of the Securities Exchange Act, 15 U.S.C. § 77(o) and 15 U.S.C. § 78t(a).

27. Plaintiff is entitled, as a direct cause of action, to recover under this claim all of their investment losses against those directly engaged in the sale of the securities or those who were knowingly material participants. Plaintiff asserts each defendant was a seller or a material participant, and that each is therefore jointly and severally liable to plaintiff under this claim.

### COUNT III

28. Paragraphs 1-16 hereof are hereby realleged.

29. As a result of the fraud of defendants, plaintiffs have been damaged in an amount to be determined after an accounting is had.

30. Upon information and belief, defendants have made similar fraudulent representations to others, as part of a fraudulent scheme aimed at the public in general.

31. Plaintiffs should therefore have judgment against defendants for punitive damages, in addition to their actual damages.

### COUNT IV

32. Paragraphs 1-16 hereof are hereby realleged.

33. Plaintiff and defendants entered into contracts under which defendants agreed to invest plaintiffs' funds pursuant to a trading program that would prevent risk to principal and provide contractually-specified profits. .

34. Defendants breached the contracts by failing to invest plaintiffs' funds as agreed.

35. Defendants' breach of contract has caused plaintiffs to be damaged in the amount to be determined at trial.

COUNT V

36. The allegations of paragraphs 1-16 are hereby realleged.

37. In managing plaintiff's investments, defendants owed it a fiduciary duty.

38. Defendants violated their fiduciary duty to plaintiff in failing to deal with the invested funds as agreed.

39. As a result of defendants' breach of their fiduciary duty, plaintiff has been damaged in an amount to be determined after an accounting is had.

COUNT VI

40. Paragraphs 1-16 are hereby realleged.

41. Defendants have converted the funds of plaintiff to their own use.

42. Plaintiff has been damaged in the amount of \$19,000,000.00.

WHEREFORE, plaintiff respectfully demands judgment against defendants, jointly and severally:

- a. on Count I, for damages in the amount of \$19,000,000.00;
- b. on Count II, for damages in the amount of \$19,000,000.00;

c. on Count III, imposing a constructive trust on all funds that defendants received from plaintiff and still hold, and for an accounting by defendants and for judgment in accordance therewith.

d. on Count IV, for damages in the amount of \$19,000,000.00;

e. on Count V, imposing a constructive trust on all funds that defendants received from plaintiff and still hold, and for an accounting by defendants, and for a judgment in accordance therewith.

f. on Count VI, for damages in the amount of \$19,000,000.00;  
together with the costs and disbursements of this action.

Jury Demand

Plaintiff demands trial by jury as to all issues so triable.

Respectfully submitted,

/s/ Gary A. Woodfield, Esq.  
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