

SUPREME COURT IN THE COUNTY OF NEW YORK
STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK

-vs-

FELONY COMPLAINT

LAWRENCE S. POWELL formerly known as
LAWRENCE LEIBOWITZ

Defendant.

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STATE OF NEW YORK)
 :ss.:
COUNTY OF NEW YORK)

Confidential Investigator SYLVIA RIVERA of the Criminal Investigations Bureau of the New York State Attorney General’s Office (“OAG”), being duly sworn, deposes and says that on or about June 2000 and thereafter, in the County of New York, in the State of New York and elsewhere, the defendant committed the offense of:

A VIOLATION OF GENERAL BUSINESS LAW § 352-c(6), a class E felony; in that the defendant intentionally engaged in fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase and sale, and with intent to deceive and defraud, made material false representations and statements, while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation or purchase within or from New York of a security, and thereby wrongfully obtained property with a value in excess of \$250.

Defendant committed this crime as follows:

I am informed by examinations of documents in the OAG that mutual funds generally determine the daily price of their shares at 4:00PM Eastern Time. In these circumstances, orders

received before 4:00PM must be executed at the price determined as of 4:00PM and orders received after 4:00PM must be executed at the price determined as of 4:00PM the next trading day. In addition, mutual fund prospectuses contain representations concerning the pricing of the NAV as of 4:00PM.

I am informed by the defendant that from on or about June 2000 and thereafter, the defendant was employed by Kaplan and Company Securities, Inc.(hereinafter referred to as “Kaplan and Co.”), as a trader, engaged in the business of inducing and promoting the purchase and sale of mutual fund shares from numerous mutual funds (hereinafter referred to as “the Mutual Funds”). A share of the Mutual Funds is a type of security which is sold to the public.

I am further informed by the defendant that he and others placed numerous orders on behalf of the clients of Kaplan and Co. to purchase and sell shares of the Mutual Funds after 4:00PM Eastern Time, and that the price executed for these orders according to the Mutual Funds prospectuses was only available to investors who had placed their orders before 4:00PM Eastern Time. This practice is known as “late trading.”

Finally, I am informed by the defendant that through fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale which was employed pursuant to this scheme, the defendant, and others known to the Attorney General caused the Mutual Funds to accept orders to buy and sell mutual fund shares for the benefit of Kaplan and Co., and that the defendant thereby wrongfully obtained property with a value in excess of \$250.

False statements made herein are punishable as a class A misdemeanor pursuant to Penal Law §210.45.

SYLVIA RIVERA
Investigator

Sworn to before me this _____
day of January, 2005
