

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
Third Division

A. HEATH ABSHURE,  
ARKANSAS SECURITIES COMMISSIONER

PLAINTIFF

v.

No. CV10-1507

FILED 08/15/11 11:18:24  
Larry Crane Pulaski Circuit Clerk  
CR3

MICHAEL DANIEL GARDNER and  
GARDNER INSURANCE AGENCY, INC.

DEFENDANTS

INJUNCTION AND  
ORDER OF DISGORGEMENT

The plaintiff's motion for summary judgment was heard on April 28, 2011. The plaintiff contended in the motion that there were no factual issues and but one legal issue, which was whether the instruments issued by Diversified Lending Group (DLG) that form the basis of this litigation entitled Secured Investment Notes (Notes) are securities. The defense agreed, and the parties offered arguments supported by authority and affidavits in support of their arguments. After considering the motion for summary judgment, the response thereto, the reply to the response, the attachments to all of these pleadings and the briefs in support of them, the Court finds that the Notes are securities within the definition of security found in the Arkansas Securities Act (Act) at Ark. Code Ann. § 23-42-102(15)(A). They are properly regulated by the plaintiff pursuant to the Act.

Based on the ruling on the motion for summary judgment, the Court grants the plaintiff's prayer for injunctive relief and an accounting.

Because there appeared to be issues of fact concerning the specific amount of commissions, summary judgment was not granted on that issue, and the plaintiff's prayer for disgorgement and civil fines was not granted.

Since the April 28 hearing, the parties have agreed to the specific amount of commissions to be disgorged. The parties have also agreed that an accounting and a civil fine are not necessary and will not be ordered. With the parties's agreement, the Court enters this order disposing of the issues raised in the complaint.

### FINDINGS OF FACT

1. From March 23, 2007, through May 12, 2008, twenty-eight Arkansas investors (the Arkansas Investors) invested \$3,456,024 with DLG through Gardner, purchasing a total of twenty-nine Notes.
2. Gardner received \$122,365.64 in commissions as remuneration for these sales.
3. The Notes were not registered pursuant to the Act.
4. Neither Gardner, nor Gardner Insurance Agency, Inc., (GIA) was registered pursuant to the Act as a broker-dealer, agent of a broker-dealer or agent of the issuer with the Arkansas Securities Department (Department).

### CONCLUSIONS OF LAW

5. The offer and sale the Notes constituted the sale of unregistered securities, a violation of Ark. Code Ann. § 23-42-501.
6. Because at the time of the offers and sales of the Notes, neither Gardner, nor GIA was registered as a broker-dealer, agent of a broker-dealer or agent of the issuer with the Department, their actions in offering and selling the Notes violated Ark. Code Ann. § 23-42-301(a).

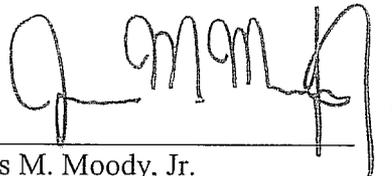
## ORDER

Having found the violations of the Act set out above, the Court orders the following:

7. INJUNCTION. The defendants are hereby enjoined from offering or selling any security in Arkansas until
  - a. the security is properly registered or is offered or sold pursuant to an exemption from registration under the Act and
  - b. the defendants are properly registered under the Act or are acting pursuant to an exemption from registration under the Act.
8. DISGORGEMENT: The defendants or either of them shall, within 30 days of the entry of this order, pay \$122,365.64 into the Registry of the Pulaski County Circuit Court. Such payment shall be: (A) made in bankable funds, i.e., by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Pulaski County Circuit Clerk; (C) hand-delivered or mailed to the Pulaski County Clerk's Office, 401 West Markham Street, Room 122, Little Rock, Arkansas 72201; and (D) submitted under cover letter that identifies the payment as being made in accordance with this order in these proceedings and the file number of this case. A copy of the cover letter and money order or check shall be sent to A. Heath Abshure, Commissioner, Arkansas Securities Department, 201 East Markham, Suite 300, Little Rock, Arkansas 72201. These funds shall be distributed by the Pulaski County Circuit Clerk according to Schedule A, attached hereto and incorporated into this Order, within thirty days of the full amount being deposited in the Registry of the Court.

9. SCHEDULE OF PROPERTY. In accordance with Ark. Code Ann. § 16-66-221, the defendants are ordered to prepare a schedule verified by affidavit of all their property, both real and personal, including but not limited to moneys, bank accounts, rights, credits and choses in action, specifying particular property claimed to be exempt under any provisions of law, and to file the same with the Pulaski County Circuit Clerk within forty-five days of the entry of this order.
10. This order is not intended to serve as a basis for any disqualification from registration exemptions or safe harbor provisions that may be contained in the any of the following:
- a. Federal securities laws, or the rules and regulations promulgated thereunder, including Section 3(a)(39) of the Securities Exchange Act of 1934;
  - b. Rules and regulations of self regulatory organizations; or
  - c. Any state's or United States territory's securities laws.

IT IS SO ORDERED this 15<sup>th</sup> day of August, 2011.



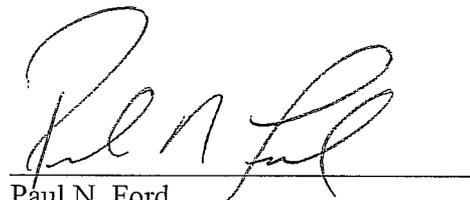
James M. Moody, Jr.  
CIRCUIT JUDGE

Approved as to Form:



Theodore Holder

*Attorney for Plaintiff*



Paul N. Ford

*Attorney for Defendants*

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## Schedule A

### List of Investors and Amounts to be Paid Each

Tanya K. Baldwin 1164 Ready Hollow Lane Cordova, TN 38016	\$4,398.94
Sherry Brothers 207 South Brickys Osceola, AR 72370	\$2,816.91
Alyce Caldwell 1206 Longuille Street Wynne, AR 72396	\$1,948.33
Larry G. Cowan 2330 Murray Lane Heber Springs, AR 72543	\$3,618.08
Ouida Cowan 2330 Murray Lane Heber Springs, AR 72543	\$3,929.61
Brenda Crawford 547 CR 231 Cherry Valley, AR 72324	\$4,225.43
Sandra K. Edwards 2928 Highway 163 Cherry Valley, AR 72324	\$2,522.54
Ernestine Emerson 1729 Lemons Street Wynne, AR 72396	\$3,867.90

Steve and Janie Eppes .....	\$1,799.41
3608 Highway 193	
Hickory Ridge, AR 72347	
William G. Gilbert .....	\$2,916.14
1102 Oak Meadow Blvd.	
Jonesboro, AR 72401	
Raymond H. Grantham .....	\$3,405.43
624 CR 724	
Wynne, AR 72396	
James Timothy Haltiwanger .....	\$3,153.18
1204 Blake Drive	
Wynne, AR 72396	
George Haynes .....	\$1,912.93
1012 Canal Street	
Wynne, AR 72396	
Jerry W. Haynes .....	\$5,432.13
109 CR 158	
Wynne, AR 72396	
Thomas E. And Jewell W. Hendrix .....	\$1,257.47
47 CR 385	
Wynne, AR 72396	
Betty M. Karnes .....	\$2,178.90
3381 Highway 364	
Wynne, AR 72396	
Sharron C. Littlejohn .....	\$2,910.63
P.O. Box 1387	
Wynne, AR 72396	
Wayne and Randy Marr .....	\$29,429.65
187 Highway 42	
Hickory Ridge, AR 72347	
Kim K. Murphy .....	\$2,448.25
2405 Highway 1 North	
Wynne, AR 72396	

Jennifer Sikes . . . . .	\$2,485.12
6 Springhill Drive W Greenbrier, AR 72058	
Martin V. Sikes . . . . .	\$4,166.82
6 Springhill Drive W Greenbrier, AR 72058	
Sloan Swindle Family Foundation . . . . .	\$9,885.97
c/o Regions Bank Trust Department, Trustee Attn: Betsy Meacham 400 West Capitol Avenue, 7 <sup>th</sup> Floor Little Rock, AR 72201	
Sloan Swindle GST Trust . . . . .	\$6,964.34
c/o Regions Bank Trust Department, Trustee Attn: Betsy Meacham 400 West Capitol Avenue, 7 <sup>th</sup> Floor Little Rock, AR 72201	
Sloan Swindle Living Trust . . . . .	\$8,408.47
c/o Regions Bank Trust Department, Trustee Attn: Betsy Meacham 400 West Capitol Avenue, 7 <sup>th</sup> Floor Little Rock, AR 72201	
Louis J. Stadler . . . . .	\$2,261.35
17 Wynnewood Drive Wynne, AR 72396	
J. C. White . . . . .	\$2,102.12
502 Wilson Street Wynne, AR 72396	
Gladys Wimberly . . . . .	\$1,919.57
1012 East Poplar Avenue Wynne, AR 72396	
<b>Total . . . . .</b>	<b>\$122,365.64</b>