

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

3rd

FILED 03/22/10 14:12:49
Pat O'Brien Pulaski Circuit Clerk
CR11

A. HEATH ABSHURE,
ARKANSAS SECURITIES COMMISSIONER,

Plaintiff

CASE NO. CV-10-1507

V.

MICHAEL DANIEL GARDNER and
GARDNER INSURANCE AGENCY, INC.,

Defendant

COMPLAINT

COMES NOW the Plaintiff, A. Heath Abshure, Arkansas Securities Commissioner, by and through counsel, Theodore Holder and Shannon L. Holloway, and for his complaint, states and alleges as follows:

PARTIES

1. A. Heath Abshure ("Commissioner") is the Arkansas Securities Commissioner, duly appointed in accordance with Ark. Code Ann. § 23-42-201(a). The Commissioner is charged with the administration of the Arkansas Securities Act ("Act"), Ark. Code Ann. §§ 23-42-101 – 509.
2. Michael Daniel Gardner ("Gardner") is an individual and resident of Wynne, Arkansas. He is licensed as a resident producer agent by the Arkansas Insurance Department (License No. 32497).
3. Gardner Insurance Agency, Inc. ("GIA"), a corporation formed in Arkansas on February 11, 1997, maintains a principal place of business in Wynne, Arkansas.

Gardner is GIA's president and resident agent for service of process. GIA is wholly owned and operated by Gardner solely for Gardner's business purposes.

JURISDICTION AND VENUE

4. The Commissioner brings this action pursuant to Ark. Code Ann. § 23-42-209, which permits the Commissioner to seek injunctive relief and relief ancillary to injunctive relief as may be appropriate in the public interest, including, but not limited to, obtaining an accounting, receivership, disgorgement, and the assessment of a fine. The Commissioner is the proper party to bring this action.
5. The Commissioner may bring actions for injunctive relief and ancillary relief in Pulaski County Circuit Court. See Ark. Code Ann. § 23-42-209(a)(3) and (b).
6. Because of their activities in the offer and sale of unregistered securities in and from Arkansas while being unregistered and without exemption to do so, the Defendants are subject to the provisions of the Act. They are therefore subject to the jurisdiction of this Court.

FACTUAL ALLEGATIONS

7. Relevant to this action are the following entities and individual: Diversified Lending Group, Inc. ("DLG"), a California corporation; its wholly owned subsidiary Applied Equities, Inc. ("AEI"), a California corporation; its principal, Bruce Friedman ("Friedman"), a resident of California; and Your Platinum Distributors Insurance Marketing Co. ("YPD"), a Texas corporation and wholesaler of annuity, life insurance, and investment products.

8. DLG purported to be engaged in the acquisition and operation of income producing real estate, real estate lending, insurance premium financing strategies, financial service brokerage business, and private investment pools. DLG raised funds through AEI. AEI contracted with YPD, which in turn contracted with certain insurance agents, whom DLG authorized to offer and sell securities issued by DLG. The insurance agents, such as the Defendant, then solicited the sale of securities, in the form of one or five year "Secured Investment Notes" (Notes"), ranging from \$50,000 to \$2,000,000 and paying a rate of return of either 9%, or 12% per annum.
9. From March 23, 2007, through May 12, 2008, the Defendants offered and sold Notes to twenty-nine (29) Arkansas investors, many of whom were senior citizens, raising \$3,456,024. The details of each Note sold to the Arkansas investors, who are identified herein as AR1 through AR29, are summarized as follows:

	INVESTOR	DATE OF NOTE	AMOUNT INVESTED	TERM	RATE
a.	AR1	1/28/2008	237,609.71	5 Year	12%
b.	AR2	3/23/2007	60,000.00	5 Year	9%
c.	AR3	4/26/2007	52,000.00	1 Year	9%
d.	AR4	5/9/2007	52,000.00	1 Year	9%
e.	AR5	5/17/2007	300,000.00	5 Year	12%
f.	AR6	6/22/2007	700,000.00	1 Year	9%
g.	AR7	7/2/2007	60,000.00	5 Year	12%
h.	AR8	7/2/2007	150,000.00	5 Year	12%
i.	AR9	7/26/2007	70,000.00	1 Year	12%
j.	AR10	8/27/2007	200,000.00	5 Year	12%
k.	AR11	9/4/2007	100,000.00	5 Year	9%
l.	AR12	10/6/2007	100,000.00	5 Year	12%
m.	AR13	10/26/2007	60,000.00	5 Year	12%
n.	AR14	12/21/2007	67,001.00	5 Year	12%
o.	AR15	1/2/2008	65,000.00	1 Year	12%

p.	AR16	1/11/2008	50,000.00	1 Year	12%
q.	AR17	1/18/2008	200,000.00	5 Year	12%
r.	AR18	1/23/2008	50,000.00	1 Year	12%
s.	AR19	1/25/2008	50,000.00	1 Year	12%
t.	AR20	1/31/2008	94,588.55	1 Year	12%
u.	AR21	3/1/2008	102,000.00	5 Year	12%
v.	AR22	3/3/2008	141,000.00	5 Year	12%
w.	AR23	3/10/2008	67,232.94	5 Year	12%
x.	AR24	3/13/2008	51,826.19	5 Year	12%
y.	AR25	3/20/2008	100,765.61	5 Year	12%
z.	AR26	4/1/2008	50,000.00	5 Year	12%
aa.	AR27	4/28/2008	75,000.00	5 Year	12%
bb.	AR28	5/1/2008	50,000.00	1 Year	12%
cc.	AR29	5/12/2008	100,000.00	1 Year	

10. The Arkansas investors expected their profits to come solely from the efforts of DLG, which was to have total control over the enterprise. Gardner provided to each Arkansas investor an Offering Circular that stated, “[DLG] will have absolute discretion as to whether and when to sell a property, and we will have no obligation to sell properties as any particular time...[DLG] will have absolute discretion with respect to the selection of specific investments.”

11. Because each Note represented an investment in a common enterprise, the investors were without control of any kind and dependent on DLG and Friedman and expected profits of 9% or 12% per annum from the efforts of DLG and Friedman, each Note offered and sold by the Defendants constituted an investment contract and, therefore, was a security pursuant to Ark. Code Ann. § 23-42-102(15)(A) (xi).

12. Because the Notes are written as promissory notes, they also qualify as securities pursuant to the Act as notes and evidences of indebtedness, defined at Ark. Code Ann §§ 23-42-102(15)(A)(i) and 23-42-102(15)(A)(vi), respectively.

13. Upon information and belief, the Commissioner alleges that the Defendants received in commissions from DLG through YPD an amount of at least \$122,000 and perhaps much more on the sales of the DLG Notes to the Arkansas investors.
14. The Notes offered and sold in Arkansas by the Defendants were not registered as securities pursuant to the Act. In connection with these Notes, the Arkansas Securities Department has no record of registration, a filing evidencing an exemption from registration pursuant to the Act or a notice filing as a federal covered security.
15. At no time relevant to this action were the Defendants registered under the Act in any capacity pursuant to the Act.
16. On March 19, 2009, the Commissioner issued an Order to Cease and Desist against DLG, Friedman, and Gardner. The Order required DLG, Friedman, and Gardner to cease and desist from offering or selling securities in Arkansas unless the securities were registered or exempt and ordered DLG and Friedman to immediately cease and desist from engaging in securities fraud in Arkansas.
17. Additionally, The Securities and Exchange Commission ("SEC") filed suit in United States District Court, Central District of California, against DLG, AEI, Friedman, and others alleging that DLG, AEI, and Friedman raised at least \$216 million from hundreds of investors nationwide by promising guaranteed high returns through real estate-related investments. The SEC complaint alleges that

Friedman diverted substantial investor money to ventures unrelated to real estate and to Friedman's personal lifestyle. A receiver was appointed and directed to take possession of DLG and AEI and to preserve assets, provide accountings, and report to the federal court. The receiver was also ordered to liquidate assets and distribute the proceeds to investors, including the twenty-nine (29) Arkansas persons described herein.

VIOLATIONS

18. The Commissioner realleges and incorporates by reference all factual allegations set out above in paragraphs 7 through 17.
19. The Defendants have violated the Act by selling unregistered securities in violation of Ark. Code Ann. § 23-42-501.
20. The Defendants have violated the Act by acting as an unregistered broker-dealer in violation of Ark. Code Ann. § 23-42-301(a).

CLAIMS FOR RELIEF

21. Pursuant to Ark. Code Ann. § 23-42-209(a)(3), the Commissioner may apply to this Court for injunctive relief to permanently enjoin any act or practice found to be in violation of the Act and to enforce compliance with the Act.
22. Pursuant to Ark. Code Ann. § 23-42-209(b), the Commissioner may apply to this Court for ancillary relief which may be in the public interest, including obtaining an accounting, disgorgement and the assessment of a fine in an amount not more than the amount of money received in connection with any violation of the Act.

PRAYER FOR RELIEF

WHEREFORE, the Commissioner respectfully requests this Court to:

1. Permanently restrain and enjoin the Defendants, their agents, officers, employees and others in active concert or participation with them, directly or indirectly, singly or in concert, from further violations of the Act;
2. Order the Defendants to render an accounting of all monies received in connection with violations of the Act set out above;
3. Order disgorgement to all investors of all commissions or other profits earned by the Defendants in connection with the offer and sale of the unregistered securities discussed herein;
4. Assess a fine against the Defendants, payable joint and severally, in an amount equal to the amount of money taken in by the Defendants in connection with violations of the Act set out above; and
5. Grant such other and further relief as the Court may deem just and appropriate.

Respectfully submitted,

A. Heath Abshure
ARKANSAS SECURITIES COMMISSIONER

By: 

Theodore Holder, Ark. Bar No. 79090
Shannon L. Holloway, Ark. Bar No. 05136
Arkansas Securities Department
201 East Markham, Suite 300
Little Rock, Arkansas 72201
(501) 324-9260
Facsimile: (501) 324-9268

Attorneys for the Plaintiff