

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
16th DIVISION

A. HEATH ABSHURE,
ARKANSAS SECURITIES COMMISSIONER

PLAINTIFF

v.

No. CV-2008-008624

TERRY MITCHELL, d/b/a
ADVANTAGE FINANCIAL SERVICES

FILED 04/10/09 14:23:59
Pat O'Brien Pulaski Circuit Clerk
CR4 By
DEFENDANT

SECOND AMENDED COMPLAINT

Comes now the plaintiff, A. Heath Abshure, Arkansas Securities Commissioner, by and through counsel, Theodore Holder, Assistant Commissioner, and Scott S. Freydl, Staff Attorney, and for his second amended complaint alleges the following:

PARTIES

1. A. HEATH ABSHURE (Commissioner) is the Arkansas Securities Commissioner, duly appointed in accordance with Ark. Code Ann. § 23-42-201(a) (Repl. 2000). He is charged with the administration of the Arkansas Securities Act (Act), codified at Ark. Code Ann. § 23-42-101 *et seq.* (Repl. 2000).
2. TERRY MITCHELL (Mitchell) was at all times mentioned herein a duly licensed independent insurance agent located in Greenbrier, Arkansas, doing business as Advantage Financial Services. He is not and never has been registered with the Arkansas Securities Department (Department) in accordance with the Act to deal in securities in any way, either as a broker-dealer, an agent or an investment adviser.

JURISDICTION and VENUE

3. This is an action brought pursuant to the Act, specifically Ark. Code Ann. § 23-42-209 (Repl. 2000), which permits the Commissioner to seek injunctive relief to enforce compliance with the Act and with orders issued pursuant to the Act and relief ancillary to injunctive relief as may be appropriate in the public interest, including, but not limited to obtaining an accounting, disgorgement and the assessment of a fine.
4. This court has jurisdiction pursuant to Ark. Code Ann. § 23-42-209(a)(3) (Repl. 2000).
5. Venue is proper in this court pursuant to Ark. Code Ann. § 23-42-209(a)(3) (Repl. 2000).

FACTUAL ALLEGATIONS

6. On March 20, 2008, Mitchell entered into a consent order with the Commissioner agreeing to pay back four Arkansas investors \$43,000 plus 6% interest per annum calculated from the date of their investments by on or before June 16, 2008. Mitchell also agreed to pay a \$10,000 fine to the Arkansas Securities Department by the same date. The Commissioner found that Mitchell had sold unregistered securities and committed securities fraud by material omission, violations of the Act found at Ark. Code Ann. §§ 23-42-501 and 507(2), respectively. Acknowledged in the order was Mitchell's payment to the four investors of one-half of their investments.
7. On May 13, 2008, Mitchell entered into an amended and substituted consent order with the Commissioner agreeing to pay back the original four investors, plus three more investors who had been discovered since the original order was entered. With the addition of the three additional investors, the total Mitchell agreed to pay back with 6% interest rose to \$72,000.

The amount of the fine remained the same. The date by which the restitution was to have been made and the fine paid remained June 16, 2008. A copy of the Amended and Substituted Consent Order is attached hereto as Exhibit A.

8. When June 16, 2008, came, Mitchell had failed to make any further payments to the investors as he had agreed in the Amended and Substituted Consent Order, and he had not paid any amounts toward the fine.
9. After the initial complaint was filed with this Court on July 29, 2008, several other investors came to light who were not included in the Amended and Substituted Consent Order attached hereto as Exhibit A.
 - a. AR7, presently 86 years old, and her son, AR8, who is presently 53 years old, invested \$5,000 each with Mitchell on October 14, 2004. AR7 had purchased an annuity from Mitchell several years before and was satisfied with that purchase. Mitchell told them that they would double their money every six months. He did not tell them how or in what enterprise, fund or institution he was investing the money. Neither AR7, nor AR8 have been paid any returns on their investments to date.
 - b. AR9, presently 82 years old, invested \$10,000 with Mitchell on September 25, 2004. AR9 had purchased several annuities from Mitchell in the past and had been satisfied with those purchases. Mitchell told her he could double her money in six months. The promissory note he gave her varied from the oral representation in that it promised her "dividends" of 15% after six months and a doubling of her investment in one year. When she later asked Mitchell what had happened to her money, Mitchell told her it was in Malaysia. AR9 has been paid no return on her investment to date.

10. After the amended complaint was filed with this Court on December 30, 2008, adding the newly discovered investors, AR7, AR8 and AR9, two other investors, AR10 and AR11, came to light:
 - a. AR10, approximately 77 years old presently, invested \$5,000 with Mitchell on or about October 20, 2004. As with many other investors, including AR7 and AR8, she was told she would double her money every six months. To date, AR10 has received no return on her investment.
 - b. AR11, presently 80 years old, invested \$2,500 with Mitchell on November 2, 2004. AR11 had purchased an annuity from Mitchell before making this investment and had no complaints. Mitchell gave AR11 a document entitled Global Strategy Deposit Agreement documenting the investment. It promised to double her money every six months. Mitchell told her orally that the money was being invested in a storm-stricken country somewhere overseas. To date, AR11 has been paid no return on her investment.
11. Although Mitchell did not mention PIPS, an acronym for People in Profit Systems, he was referring to it when he told AR9 her money was in Malaysia. He was also referring to PIPS when he told AR11 that her money was being invested in a storm-stricken country overseas. This enterprise was presented as a program based in Malaysia in which investments such as these would be pooled and loaned to poor farmers and poor people all over Southeast Asia. The return was said to have been in the neighborhood of .5% to 2.0% per day, compounded, which would be approximately 182% to 730% per annum. In reality, PIPS was a huge Ponzi scheme operated by Bryan Marsden, a British citizen well known for such schemes.

Marsden and his Malaysian wife were charged in Malaysia with 41 counts of money laundering over this very scheme in 2006. At least six state securities regulatory agencies have issued cease and desist orders against this scheme: Texas - 6 April 2005; Alaska - 20 May 2005; Nebraska - 6 June 2005; Iowa - 10 November 2005; Connecticut - 19 January 2006; and Alabama - 1 February 2006. Mitchell invested an as yet undetermined portion of the funds of AR7, AR8, AR9, AR10 or AR11 in PIPS.

12. Mitchell did not inform AR7, AR8, AR9, AR10 or AR11 that he would not invest the money given to him in any way such that it could make the returns promised and would instead convert an as yet undetermined portion of the funds to his own use.

VIOLATIONS

NONCOMPLIANCE WITH AMENDED AND SUBSTITUTED CONSENT ORDER ISSUED BY SECURITIES COMMISSIONER ON MAY 13, 2008

13. Consent orders such as the Amended and Substituted Consent Order, attached hereto as Exhibit A, are authorized under Ark. Code Ann. § 23-42-209(c) (Repl. 2000)
14. The plaintiff realleges and incorporates by reference all factual allegations set forth in ¶¶ 6-8.
15. The facts set out in ¶¶ 6-8 of this amended complaint show that the defendant has failed to comply with the Amended and Substituted Consent Order of May 13, 2008, which entitles the Commissioner to apply to this court to enforce compliance with that order.

UNREGISTERED OFFER AND SALE OF SECURITIES

16. The plaintiff realleges and incorporates by reference each and every allegation in ¶¶ 9-12.

above, as if the same were fully set forth herein.

17. The investments AR7, AR8, AR9, AR10 and AR11 made with Mitchell were securities, specifically investment contracts and/or evidences of indebtedness.
18. The records maintained by the Arkansas Securities Department contain no registration, proof of exemption filing, or notice filing indicating the status of a “federal covered security” for any of the securities allegedly issued, offered, or sold by Mitchell in Arkansas.
19. Mitchell violated Ark. Code Ann. § 23-42-501 (Repl. 2000) when he offered or sold securities in Arkansas without those securities being: (1) registered under the Act, (2) exempt from registration under the Act or (3) federal covered securities.

SECURITIES FRAUD

20. The plaintiff re-alleges and incorporates by reference each and every allegation in ¶¶ 9-12, above, as if the same were fully set forth herein.
21. As a result of the conduct alleged herein, the defendant, in connection with the offer, sale, or purchase of securities, directly or indirectly, made an untrue statement of material fact or omitted a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.
22. By reason of the foregoing, Mitchell committed securities fraud, a violation of Ark. Code Ann. § 23-42-507 (Repl. 2000).

CLAIMS FOR RELIEF

23. Pursuant to Ark. Code Ann. § 23-42-209 (Repl. 2000), 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 and any order issued under the Act.

24. It is clear from the facts set out in ¶¶ 6-12 that unless restrained, Mitchell will continue to flout the Amended and Substituted Consent Order discussed in ¶¶ 6-8 and attached hereto as Exhibit A and sell unregistered securities by means of securities fraud.
25. Ark. Code Ann. § 23-42-209(b) (Repl. 2000) provides that 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 a violation of the Act.
26. It is clear from the facts set out in ¶¶ 6-12 that Mitchell should be ordered to comply with the Amended and Substituted Consent Order attached hereto as Exhibit A and make whole the investors listed therein, as well as make whole those investors discovered since this action was filed, referred to as AR7, AR8, AR9, AR10 and AR11 and discussed in ¶¶ 9-12.

RELIEF REQUESTED

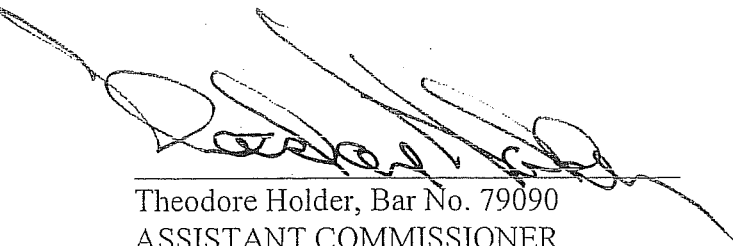
WHEREFORE, the Plaintiff, the Commissioner, respectfully requests that this Court:

1. Grant an injunction to enforce the Amended and Substituted Consent Order attached hereto as Exhibit A, directing the Defendant to repay the investors listed therein with interest and directing the Defendant to pay a \$10,000 fine to the Arkansas Securities Department, all as ordered therein by the Commissioner;
2. Permanently restrain and enjoin Mitchell from selling unregistered securities in violation of Ark. Code Ann. § 23-42-501 (Repl. 2000) and from committing securities fraud in violation of Ark. Code Ann. § 23-42-507 (Repl. 2000);
3. Order Mitchell to disgorge the monies invested with him by AR7, AR8, AR9, AR10 and

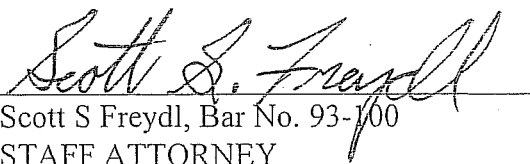
AR11 as set forth in ¶¶ 9-12, and any and all ill-gotten gains, together with prejudgment interest, derived from the activities set forth in this second amended complaint;

4. Order Mitchell to make an accounting, under oath, (1) detailing all monies and other benefits received, directly or indirectly, as a result of the activities alleged herein (including the date on which the monies or other benefit was received and the name, address, and telephone number of the person paying the money or providing the benefit), (2) listing all current assets wherever they may be located and in whoever's name they are being held (including the name and address of the holder and the amount or value of the holdings), and (3) listing all accounts with any financial or brokerage institution maintained in the name of, on behalf of or for the benefit of Mitchell (including the name and address of the account holder and the account number) and the amount held in each account at any point during the period from inception through the date of the accounting; and
5. Grant such other relief as the Court may find just and appropriate.

Respectfully Submitted,



Theodore Holder, Bar No. 79090
ASSISTANT COMMISSIONER



Scott S Freydl, Bar No. 93-100
STAFF ATTORNEY

Arkansas Securities Department
201 East Markham Street, Suite 300
Little Rock, Arkansas 72201
Telephone: (501) 324-9260
Facsimile: (501) 324-9268

Attorneys for the Plaintiff