

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

CASE NO S-09-004

ORDER NO. S-09-004-09-FO01

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ARKANSAS SECURITIES DEPT.

**IN THE MATTER OF:
GREENLEAF COMPANIES, LLC,
ERIC C. GAGNEPAIN, AND MISTY PERKINS**

**ORDER AFFIRMING
CEASE AND DESIST ORDER**

On March 23, 2009, the Staff of the Arkansas Securities Department (“Staff”) filed its Request for a Cease and Desist Order, which was amended by an Amended Request for Cease and Desist Order filed on May 13, 2009 (collectively, the “Request”). In the Request, the Staff stated that it had information and evidence indicating that Greenleaf Companies, LLC, Eric C. Gagnepain, and Misty Perkins had violated provisions of the Arkansas Securities Act (“Act”), Ark. Code Ann. §§ 23-42-101 through 23-42-509. I issued a Cease and Desist Order on June 2, 2009 (“Cease and Desist Order”).

On June 29, 2009, I received a Motion to Dismiss Cease and Desist Order filed by Mr. Gagnepain. This motion included an alternative request that I set a hearing on the Cease and Desist Order. On June 30, 2009, the Staff filed its response to Mr. Gagnepain’s motion. On July 7, 2009, I received a Motion to Dismiss Cease and Desist Order filed by Ms. Perkins. This motion also included an alternative request that I set a hearing on the Cease and Desist Order. On July 7, 2009, the Staff filed its response to Ms. Perkins’s Motion. On July 14, 2009, I entered an Order Denying Motions to Dismiss and Notice of Hearing.

The hearing on this matter, as requested by Gagnepain and Perkins and set in the Order Denying Motions to Dismiss and Notice of Hearing, was held on August 18, 2009. Although properly served with notice of this hearing, none of the above named Respondents appeared at the hearing. Testimony was received from two witnesses, and five exhibits were admitted into evidence.

FINDINGS OF FACT

From the testimony of witnesses, documentary evidence, and all other matters properly before the Commissioner, the Commissioner does make the following findings of fact:

1. Greenleaf Companies, LLC (“Greenleaf”) is a Missouri limited liability company. Greenleaf is the sole member and parent company of Park Estates I, L.L.C. (“Park Estates”). Greenleaf is not registered with the Arkansas Securities Department (“Department”) in any capacity.

2. Eric C. Gagnepain (“Gagnepain”) is a resident of the State of Missouri. Gagnepain is an organizer and manager of Greenleaf. Gagnepain is also an organizer and manager of Park Estates. Gagnepain is not registered with the Department in any capacity.

3. Misty Perkins (“Perkins”) is a resident of the State of Missouri. Perkins was the investor relations manager for Greenleaf. Perkins is not registered with the Department in any capacity.

4. During 2006, an unaccredited investor and Arkansas resident (“AR1”) was invited and attended two Greenleaf investor meetings in Arkansas. One of these investor meetings was conducted by Gagnepain, and the other was conducted by Perkins.

5. On or about June 2006, AR1 signed an investment agreement with Greenleaf. The term of the agreement was three years from the date of purchase of the investment property. In said investment agreement, AR1 agreed to purchase real estate investments set up by Greenleaf. In addition, Greenleaf guaranteed to pay AR1 a minimum Risk Investment Compensation of either \$4,000.00 or \$10,000.00. This Risk Investment Compensation was the benefit or profit AR1 was to receive for making an investment with Greenleaf. Further, in this agreement Greenleaf guaranteed to pay to AR1 monthly mortgage payments as well as the necessary expenses for maintenance and repair of AR1's investment property. Finally, in the agreement Greenleaf promised to find a third party buyer for AR1's investment property within three years or Greenleaf itself would purchase the property from AR1 at the loan value accepted when AR1 initially purchased the property. Neither at the time this agreement was signed by AR1 nor at any other time did anyone from Greenleaf ever make any inquiry to determine whether AR1 was an accredited investor.

6. At the time AR1 signed the investment agreement detailed in Paragraph 5, AR1 received a three-page document on Greenleaf letterhead. This document contained information and representations about Greenleaf, Greenleaf's investment scheme and frequently asked questions with answers about Greenleaf. Specifically, said document states in response to the question "How much can I lose? [Greenleaf] and its processes are designed to all but nullify the risk of loss for every investor." Further, said document states that, "[Greenleaf] will guaranty the P.I.T.I. [principal, interest, taxes, insurance] payments for the entire contract period." Finally, the document lists the following response to the question "What is the worst that could happen? . . . The three year

contract expires and the home isn't sold. You have a contract with [Greenleaf] that guarantees that we will buy the property back from you for what you owe against it. You will still receive the remainder of the \$10,000.00 Greenleaf Guarantee.”

7. As a result of the aforementioned agreement with Greenleaf and at the direction of Greenleaf, AR1 purchased a single-family residence at 105 Deer Run, Willard, Missouri, in the Park Estates I subdivision. Said single-family residence was purchased by AR1 from the title holder the Park Estates, LLC. Greenleaf handled the entire transaction for AR1. Greenleaf, or entities/persons acting on Greenleaf's behalf, selected the property, mortgage company, and appraiser. It was AR1's understanding that once the property was purchased, Greenleaf, or entities/persons acting on Greenleaf's behalf, would manage the property for AR1 and find a third party renter to occupy and eventually purchase the property from AR1. It was never the intention of Greenleaf or AR1 for AR1 to personally occupy the aforementioned single-family residence located in Willard, Missouri. AR1 only transferred funds and executed documents to facilitate the purchase of said property as AR1 was instructed to do by Greenleaf in order to participate in the investment agreement. Further, as part of the investment agreement detailed in Paragraph 5, AR1 allowed Greenleaf immediate control over his investment property. During this time and after, AR1 had regular contact with Perkins. Perkins was the main contact person at Greenleaf for investors, like AR1.

8. On or about December 11, 2006, Greenleaf and AR1 signed a Contract for Deed. Greenleaf was represented in this document by Gagnepain, who was listed on the document as the chief executive officer of Greenleaf. In paragraph number one of said Contract for Deed, Greenleaf agreed to pay AR1 a total purchase price of \$196,500.00.

Said amount was to be paid by Greenleaf to AR1 in the following amounts: ten percent of the purchase price together with closing costs at or before the time of execution of the Contract for Deed. The balance of the purchase price was to be paid with interest in monthly installments. In paragraph number three of the Contract for Deed, Greenleaf also agreed to pay all general and special real estate taxes. In paragraph number four of the Contract for Deed, Greenleaf agreed to retain insurance coverage on the aforementioned property in an amount not less than that required under the loan. In paragraph number five of the Contract for Deed, Greenleaf was granted the right to occupy, rent, or sell the property to a third party through a lease purchase agreement or contract for deed during the course of the Contract for Deed. Finally, in paragraph number seven of the Contract for Deed, Greenleaf agreed to bear all risk of loss, injury or damage to all improvements to the aforementioned investment property, and all persons entering thereon.

9. In the agreement detailed in Paragraph 5, and the Contract for Deed detailed in Paragraph 8, and at all other times, Greenleaf, Gagnepain, and Perkins omitted and failed to provide AR1 with full and complete disclosure of the following material facts; the relationship of Greenleaf and the seller of AR1's investment property, Greenleaf's performance with prior investors, the true financial condition of Greenleaf, all of the risks of Greenleaf's investment plan, material information concerning how investment property was selected by Greenleaf, the criteria used by Greenleaf for selecting potential lessors/purchasers of AR1's investment property, and vacancy rates for investment property managed by Greenleaf.

10. On or about January 4, 2007, less than one month after AR1 signed the Contract for Deed detailed in Paragraph 5, a private placement memorandum (“PPM”) was prepared for the Park Estates offering. As detailed below, the securities offered by Greenleaf through Park Estates were identical to the security offered and sold by Greenleaf to AR1. On page two of the PPM, Greenleaf is described as the sole member and “parent” of Park Estates. The investment scheme offered by Greenleaf through Park Estates as detailed in the PPM states that, “Under the Investment Program, [Park Estates] will solicit suitable persons or entities to enter into Investor Agreements. . . . Under each Investor Agreement, [Park Estates], as the [investor’s] real estate consultant, will recommend, for such [investor’s] purchase, single-family residential houses located in Park Estates I, Willard, Missouri.” At the end of three years Greenleaf through Park Estates would either find a purchaser for the investor’s house or Greenleaf would purchase the house from the investor. On page three of the PPM, Greenleaf acting through Park Estates promised to pay each investor the mortgage and escrow payments for up to three years. Also, Greenleaf through Park Estates promised to pay all repairs, maintenance costs, real estate fees and real estate taxes for the life of the agreement or three years.

11. On pages two, three and ten of the PPM, details of the investment risk compensation fees are provided. This investment risk compensation fee was the benefit or return promised by Greenleaf acting through Park Estates to each investor. Each investor was to receive total compensation from Greenleaf through Park Estates in the amount of \$10,000.00. Said amount was to be paid in two installments. First, a three-thousand dollar payment was to be made by Park Estates to the investor at the time of

closing of the purchase of the house by the investor. Second, the balance of the \$10,000.00 was to be paid at the end of three years at the time of the transfer of title to the house by the investor. The fact that Greenleaf acting through Park Estates went to the trouble and expense of preparing a PPM for the Park Estates offering, which is the same investment offered and sold to AR1, is a clear indication Greenleaf understood that the investment offered and sold to AR1 was a security.

12. On or about May 29, 2007, Gagnepain on behalf of Park Estates made a Notice of Sale of Securities Pursuant to Regulation D filing with the United States Securities and Exchange Commission (“SEC”). Greenleaf and Gagnepain acting through Park Estates were attempting to claim Regulation D, Rule 506 covered security status for the securities they were offering and selling to investors, like AR1. However, no notice filing was made with the Department by Greenleaf, Gagnepain or Park Estates concerning the sale of securities to AR1. Park Estates’s business address listed on said form is 3645 South Avenue, Springfield, MO 65807, with a phone number of 417-823-9498. This is the same business address and phone number as Greenleaf. In addition, Gagnepain is listed on said form as one of the beneficial owners, executive officers and general and/or managing partners of Park Estates. The filing of the aforementioned Notice of Sale of Securities with the SEC by Gagnepain, on behalf of Greenleaf acting through Park Estates, is a clear indication Gagnepain and Greenleaf understood that the investment offered and sold to AR1 was a security.

13. Greenleaf acting through Park Estates attempted to gain covered security status under Regulation D, Rule 506 for the securities offered and sold to investors, like

AR1. However, Greenleaf used general solicitation in the form of seminars or investor meetings to promote and sell its investment scheme or securities to investors, like AR1.

14. On or about August 2006, Greenleaf began to collect and send to AR1 the mortgage payments for AR1's investment property. AR1 used these payments from Greenleaf to pay the note and mortgage owed for said property. Greenleaf stopped sending AR1 these contractually required monthly mortgage payments. In addition, Greenleaf did not find a buyer for AR1's investment property. Further, AR1 never received the balance, in the approximate amount of \$7,000.00, of his investment risk compensation fee from Greenleaf. AR1 made approximately two additional mortgage and interest payments for AR1's investment property after Greenleaf stopped making the mortgage and interest payments. Said property is currently in foreclosure.

CONCLUSIONS OF LAW

15. The investment arrangement between AR1 and Greenleaf as reflected in the investment agreement, the contract for deed, and the other documents described in the Findings of Fact constitutes an investment contract and is therefore a security. Ark. Code Ann. § 23-42-102(15)(A)(xi).

16. It is unlawful for any person to offer or sell any security in Arkansas unless: (i) it is registered, (ii) the security or transaction is exempted under Ark. Code Ann. §§ 23-42-503 or 23-42-504, or (iii) it is a covered security. Ark. Code Ann. § 23-42-501. Greenleaf, Gagnepain and Perkins violated Ark. Code Ann. § 23-42-501 by offering and selling a security to AR1 in Arkansas that was neither registered, exempt, nor a covered security.

17. It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly: (i) to employ any device, scheme, or artifice to defraud; (ii) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or (iii) to engage in any act, practice, or course of conduct which operates or would operate as a fraud or deceit upon any person. Ark. Code Ann. § 23-42-507. Greenleaf violated Ark. Code Ann. §23-42-507(2) when it made untrue and materially misleading written statements in the investment agreement detailed in Paragraph 5 about Greenleaf and its process all but nullifying the risk of loss for every investor and Greenleaf's guaranteed principal, interest, taxes, and insurance payments to investors, like AR1.

18. Greenleaf, Gagnepain and Perkins failed to disclose material facts to AR1, including omissions regarding the relationship of Greenleaf and the seller of AR1's investment property, Greenleaf's performance with prior investors, the true financial condition of Greenleaf, all of the risks of Greenleaf's investment plan, information concerning how investment property was selected by Greenleaf, the criteria used by Greenleaf for selecting potential lessors/purchasers of AR1's investment property, and vacancy rates for investment property managed by Greenleaf. These omissions of material facts caused all other statements made by Greenleaf, Gagnepain and Perkins concerning AR1's investment with Greenleaf to be misleading and therefore violated Ark. Code Ann. § 23-42-507(2).

19. Whenever it appears to the Commissioner, upon sufficient grounds or evidence satisfactory to the Commissioner, that any person has engaged or is about to

engage in any act or practice constituting a violation of any provision of the Act or any rule or order under the Act, the Commissioner may summarily order the person to cease and desist from the act or practice. Ark. Code Ann. § 23-42-209. Considering the seriousness of the violations, the opportunity to commit future violations, the degree of harm to the investor resulting from the violations, the remedial function to be served by the Cease and Desist Order, and based on the Findings of Fact and Conclusions of Law, the affirmation of the Cease and Order is in the public interest and is appropriate pursuant to Ark. Code Ann. § 23-42-209(a)(2)(C).

ORDER

The Cease and Desist Order entered June 2, 2009, against the Greenleaf Companies, LLC, Eric C. Gagnepain and Misty Perkins is hereby affirmed in all respects and for all purposes.



A. Heath Abshure
Arkansas Securities Commissioner

September 18, 2009
Date