

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

JUN 24 2010

PATRICIA PRESLEY, COURT CLERK
by _____ DEPUTY

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
v.)
)
Firststar Financial Group of Central)
Oklahoma, LLC, an Oklahoma limited)
liability company; John Joseph Hamilton,)
an individual; and Robin L. Peck,)
an individual,)
)
Defendants.)

Case No.

CJ - 2010 - 5 2 6 8

**PETITION FOR PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF**

COMES NOW the Plaintiff, Oklahoma Department of Securities, *ex rel.* Irving L. Faught (Department), and for its claims against the above-named Defendants, alleges and states as follows:

OVERVIEW

1. This case involves violations of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§1-101 through 1-701 (Supp. 2009), by Firststar Financial Group of Central Oklahoma, LLC (formerly known as First Fidelity Financial Group of Oklahoma City, LLC); John Joseph Hamilton; and Robin L. Peck (collectively, "Defendants"). Specifically, the Department accuses Defendants of issuing, offering and selling unregistered securities in violation of Section 1-301 of the Act, failing to register as agents or employing unregistered agents in violation of Section 1-402 of the Act, and/or perpetrating a fraud in connection with the offer, sale or purchase of securities in violation of Section 1-501 of the Act.

JURISDICTION

2. The Administrator of the Department brings this action pursuant to Section 1-603 of the Act and is the proper party to bring this action against Defendants.

3. Pursuant to Sections 1-102 and 1-610 of the Act, Defendants, in connection with their activities in the offer, sale, and/or purchase of securities, are subject to the provisions of the Act. By virtue of their transaction of business by contract and otherwise and commission of other acts in this state, Defendants are subject to the jurisdiction of this Court and to service of summons within or outside of this state.

4. Defendants engaged in acts and practices in violation of the Act. Unless enjoined, they will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object.

DEFENDANTS

5. Firststar Financial Group of Central Oklahoma, LLC (formerly known as First Fidelity Financial Group of Oklahoma City, LLC) (Firststar) is an Oklahoma limited liability company domiciled in the state of Oklahoma. At all times material hereto, Firststar issued, offered and/or sold securities in and/or from Oklahoma as described herein.

6. John Joseph Hamilton (Hamilton), an Oklahoma resident, was licensed by the Oklahoma Insurance Commissioner, between March 2003 and March 2009, to sell life insurance and accident and health insurance. Hamilton is not currently licensed by the Oklahoma Insurance Commissioner to sell insurance in any capacity. Hamilton has not been registered in any capacity under the Act. Hamilton is the Managing Member of Firststar. At all times material hereto, Hamilton offered and/or sold securities in and/or from Oklahoma as described herein.

7. Robin L. Peck (Peck), an Oklahoma resident, is licensed by the Oklahoma Insurance Commissioner to sell life insurance and accident and health insurance. Peck has not been registered in any capacity under the Act. At times material hereto, Peck offered and/or sold securities in and/or from Oklahoma as described herein.

NATURE OF THE CASE

Firststar Investment Program

8. At times material hereto, Defendants Firststar and Hamilton have placed newspaper advertisements in *The Oklahoman* promoting certificates of deposit issued by FDIC-insured banks that purportedly offer the highest certificate of deposit rates in the country to investors (Firststar Investors). The advertisements also reference the availability of other “higher yielding tax deferred products” through Defendant Firststar. The most recent newspaper advertisement appeared on June 20, 2010.

9. The Firststar advertised rates on a three month certificate of deposit have ranged from five (5) to six (6) percent annual percentage yield (APY). Fine print in the advertisement states “Firststar Financial Group, LLC is a financial services firm that locates FDIC insured banks offering the highest CD yields nationwide.” The fine print also states “promotional incentive may be included to obtain yield.”

10. Defendant Firststar describes itself as an organization that focuses on the needs of the retired. While Defendant Firststar is not a state or federally insured financial institution, the entity brands itself as “Your Safe Money Solution®”.

11. Defendant Firststar is affiliated and/or associated with First Fidelity Financial Group, LLC located in the state of Florida (First Fidelity Florida). First Fidelity Florida promotes a marketing concept to entities across the country involving the packaging of FDIC-

insured bank certificates of deposit with promotional incentives that result in annual percentage yields higher than those offered by the issuing banks. First Fidelity Florida promotes this program as an inducement to obtain customers who may then purchase other products or services.

12. Defendant Firststar's promotional materials contain various representations including, but not limited to, the following:

- a. "Our objective is to provide you with financial instruments that can give you the peace of mind to enjoy your retirement – knowing that your funds are safe and secure."
- b. "At Firststar we follow the '3-P's' approach to investing" to wit: "Preservation of Principal . . . Provide the Best Possible Return . . . and Peace of Mind."
- c. "Firststar Financial wants to simplify your life. Retirement is a time to be enjoying the rewards of your life, so we spotlight investments that are predictable in terms of conserving principal and rate of return – certificates of deposit (CD's), savings accounts, money market accounts, fixed annuities, and other higher yielding accounts."

13. Most, if not all, of the certificates of deposit offered by Defendant Firststar are products of Discover Bank and Ally Bank. However, at no time material hereto, has Discover Bank or Ally Bank offered certificates of deposit with APY rates as high as those advertised by Firststar.

14. In order to achieve the yield advertised to Firststar Investors, Defendant Firststar must contribute additional cash (Promotional Incentives) to that paid by the Firststar Investors so

that such Firststar Investors will receive the advertised APY upon maturity of the certificates of deposit. The Promotional Incentives are funded by Defendant Firststar.

15. The interests in the Firststar investment program (Investment Program Interests) are not, and have never been, registered under the Act. The Investment Program Interests include the certificates of deposit with the Promotional Incentives.

16. Defendants Firststar and Hamilton (Firststar Defendants) made the following misrepresentations to purchasers of the Investment Program Interests:

- a. that certificates of deposit paying the advertised APY rate are available directly from and/or through an FDIC-insured bank; and/or
- b. that the advertised APY is offered by the issuing bank.

17. The Firststar Defendants omitted to state the following facts to purchasers of the Investment Program Interests:

- a. that purchasers of the Investment Program Interests cannot receive the advertised APY without the direct participation in, and control of, the transaction by the Firststar Defendants; and
- b. that banks issuing the certificates of deposit are not offering to pay and will not pay the advertised APY rate.

18. By reason of the foregoing, the Firststar Defendants, directly and indirectly, violated Sections 1-301, 1-402 and 1-501 of the Act.

A&O Appreciation Bonds

19. At times material hereto, Hamilton identified himself as "Managing Member" of A&O Life Funds, L.P.

20. Beginning in 2007, Hamilton and A&O Life Funds, L.P. hosted seminars for Oklahoma residents. A&O's invitations promoted each seminar as an "Accredited Investor Opportunity." The invitations described "[a]n extremely unique strategy for accredited and sophisticated investors to obtain true portfolio diversity without market risk or interest rate risk...." Various benefits were listed, to include (a) yields potentially higher than 12% to 15%; and (b) payments collateralized by "A" rated institutions.

21. The attendees at the seminars were offered potential investments in capital appreciation bonds issued by A&O Life Funds, L.P., and/or its affiliates (collectively, "A&O").

22. A&O described the capital appreciation bonds as "general obligations" of A&O "backed by bonded life insurance policies acquired for investment by [A&O]" (Capital Appreciation Bonds). A&O stated that Provident Capital Indemnity, Ltd. (Provident) was providing a surety bond as security for the Capital Appreciation Bonds.

23. A&O required all persons investing in the Capital Appreciation Bonds to be "accredited investors" as that term is defined under federal and state securities laws and regulations. Promotional materials used in connection with the offer of the Capital Appreciation Bonds state, *inter alia*, that the bonds should be purchased only by sophisticated persons who are able to bear the economic risk of the loss of their investment and who have limited need for liquidity.

24. The Capital Appreciation Bonds are not, and have not been, registered under the Act.

25. Defendants Hamilton and Peck (A&O Defendants) sold the Capital Appreciation Bonds issued by Life Fund 5.1 LLC, an A&O affiliate, to at least two Oklahoma residents (A&O

Investors). Neither were accredited investors nor able to bear the economic risk of the loss of their investments.

26. In completing the required subscription agreement to purchase the Capital Appreciation Bonds at the request of the A&O Defendants, the A&O Investors stated that they were not accredited investors.

27. The A&O Investors have not received interest payments of any amount.

28. In September of 2009, A&O Life Fund 5.1 LLC filed for bankruptcy protection under Chapter 11 in the Northern District of Illinois.

29. Since Provident was not registered to provide insurance or a surety bond, there was no valid surety bond against which the A&O Investors could file claims to recover their investment losses.

30. The A&O Defendants made the following misrepresentations to the A&O Investors:

- a. that the Capital Appreciation Bonds would pay interest at a rate of twelve percent (12%) per year with respect to one A&O Investor and fifteen percent (15%) with respect to another;
- b. that the Capital Appreciation Bonds were backed by a surety bond; and
- c. that the Capital Appreciation Bonds were more secure than bank investments.

31. The A&O Defendants omitted to state the following fact to the A&O Investors: that on November 6, 2006, the Texas Department of Insurance had issued an Emergency Cease and Desist Order against Provident for acting as an unregistered insurer or surety and for

committing unfair or deceptive acts or practices by selling, issuing, or administering fraudulent, false, or misleading insurance and/or engaging in the unauthorized business of insurance.

32. By reason of the foregoing, the A&O Defendants, directly and indirectly, violated Sections 1-301, 1-401 and 1-501 of the Act.

FIRST CAUSE OF ACTION

(Violation of Section 1-301 of the Act: Offer and/or Sale of Unregistered Securities)

33. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 32 above.

34. The Firststar Investment Program Interests are securities as defined by Section 1-102 of the Act.

35. The Capital Appreciation Bonds are securities as defined by Section 1-102 of the Act.

36. Defendants offered and sold the Investment Program Interests and/or the Capital Appreciation Bonds in and/or from Oklahoma.

37. The Investment Program Interests and/or Capital Appreciation Bonds offered and sold by Defendants are not and have not been registered under the Act nor have the Investment Program Interests and/or Capital Appreciation Bonds been offered or sold pursuant to an exemption from registration under Sections 1-201 through 1-203 of the Act.

38. By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-301 of the Act.

SECOND CAUSE OF ACTION

(Violation of Section 1-402 of the Act: Failure to Register as Agents and Employing Unregistered Agents)

39. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding cause of action.

40. Firststar is an issuer as defined in Section 1-102 of the Act.

41. A&O is an issuer as defined by Section 1-102 of the Act.

42. Defendant Hamilton, by virtue of his efforts and activities in representing Firststar in effecting or attempting to effect purchases or sales of its securities, is an agent as defined in Section 1-102 of the Act.

43. Defendants Hamilton and Peck, by virtue of their efforts and activities in representing A&O in effecting or attempting to effect purchases or sales of its securities, are agents as defined by Section 1-102 of the Act.

44. Defendants Hamilton and Peck are not registered under the Act as agents. Defendants Hamilton and Peck transacted and are transacting business in this state as agents without benefit of registration under the Act.

45. Firststar employed unregistered agents.

46. By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-402 of the Act.

THIRD CAUSE OF ACTION

(Violation of Section 1-501 of the Act: Untrue Statements of Material Fact and Omissions of Material Fact in Connection With Offer, Sale or Purchase of Securities)

47. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

48. As described in paragraph 16 above, the Firststar Defendants, in connection with the offer and/or sale of the Firststar securities, directly and indirectly, have made, and are making, untrue statements of material fact.

49. As described in paragraph 17 above, the Firststar Defendants, in connection with the offer and/or sale of the Firststar securities, directly and indirectly, omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading.

50. As described in paragraph 30 above, the A&O Defendants, in connection with the offer and/or sale of the Capital Appreciation Bonds, directly and indirectly, have made, and are making, untrue statements of material fact.

51. As described in paragraph 31 above, the A&O Defendants, in connection with the offer and/or sale of the Capital Appreciation Bonds, directly and indirectly, omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading.

52. By reason of the foregoing, Defendants, directly and/or indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

FOURTH CAUSE OF ACTION

(Violation of Section 1-501 of the Act: Engaging in any Act, Practice, or Course of Business Which Operates or Would Operate as a Fraud or Deceit upon any Person)

53. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

54. The Firststar Defendants, in connection with the offer, sale or purchase of securities, and through the misrepresentations and omissions of material fact described in

paragraphs 16 and 17 above, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon other persons.

55. By reason of the foregoing, the Firststar Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

56. The A&O Defendants, in connection with the offer, sale or purchase of securities, and through the misrepresentations and omissions of material fact described in paragraphs 30 and 31 above, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon other persons.

57. By reason of the foregoing, the A&O Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

PRAYER FOR RELIEF

Defendants engaged in acts and practices in violation of the Act and, as a result of these activities, received a substantial amount of money from Investors.

WHEREFORE, based upon the foregoing, and pursuant to the authority specifically granted by Section 1-603 of the Act, the Department prays for the Court to grant the following relief:

I.

A temporary restraining order to issue *instanter* and temporary and permanent injunctions, restraining and enjoining the Defendants, their agents, servants, employees, assigns and all those persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them, who receive actual notice of the restraining order or temporary and/or permanent injunctions, by personal service, facsimile or otherwise, and each of them from offering and selling any security in and/or from this state

including, but not limited to, the Investment Program Interests and/or Capital Appreciation Bonds;

II.

An order prohibiting Defendants, their affiliates, agents, servants, employees, assigns and all those persons, directly or indirectly, acting on their behalf, who receive actual notice of the order, by personal service, facsimile or otherwise, and each of them from tampering with, mutilating, altering, fabricating, erasing, concealing, removing, destroying or otherwise disposing of any and all books, records, documents, files, correspondence, computer disks, tapes or other data recordings of any type, pertaining to or referring to Defendants;

III.

An order requiring Defendants to make restitution to any and all Firststar and/or A&O Investors who purchased securities from Defendants or who transferred money to Defendants for the purpose of making investments on their behalf; and

IV.

An order *instanter* requiring Defendants to create, file with this Court and to serve on Plaintiff, within fifteen (15) days of the filing of this Petition, an accounting or other similar report, under oath, detailing all of the assets acquired and/or disposed of during the period beginning January 2007 through the present, and detailing all funds received from the Firststar Investors and/or the A&O Investors by name, date and amount, and the disposition and/or use of those funds by recipient, date and amount, and all documentation supporting the report;

V.

An order imposing a civil penalty against Defendants in the amount of Fifty Thousand Dollars (\$50,000.00) each; and

VI.

Such other equitable relief as the Court may deem necessary, just and proper in connection with the enforcement of the Act.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES
Irving L. Faight, Administrator

By:

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