

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
v.)
)
William S. Dalton,)
)
Defendant.)

Case No.

CJ - 2014 - 4751

PETITION FOR 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 Defendant, 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. 2004), by William S. Dalton (Dalton).

2. Using offering documents and newsletters containing materially false and misleading representations and projections, Defendant offered and sold limited liability company membership interests (the "LLC Interests") to investors for the stated purpose of purchasing mobile homes and mobile home parks. In connection with the offer and sale of the LLC Interests, Defendant failed to disclose that he was personally receiving millions of dollars in profit from the sale of the mobile home parks to investors, failed to disclose that many parks

were operating at a loss, and provided financial projections that he knew or should have known had no reasonable basis.

JURISDICTION

3. 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 the Defendant.

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

5. Defendant has engaged in acts and practices in violation of the Act. Unless enjoined, he will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object.

DEFENDANT

6. William S. Dalton is a resident of Oklahoma and was at all times material hereto the managing member of IPS Oklahoma Management, L.L.C. and BDMP, L.L.C.

RELATED ENTITIES

7. IPS Oklahoma Management, L.L.C., (IPS) was an Oklahoma limited liability company that at all times relevant hereto maintained its principal place of business in Tulsa, Oklahoma.

8. BDMP, Inc. (BDMP) was an Oklahoma limited liability company that at all times relevant hereto maintained its principal place of business in Tulsa, Oklahoma.

9. Mobile Home Park Services, Inc. (MHPS) is a Georgia corporation that at all times relevant hereto maintained its principal place of business in Columbus, Georgia.

10. H. Patrick McKee is a resident of Georgia and was at all times material hereto the president of Mobile Home Park Services, Inc.

NATURE OF THE CASE

Background

11. Beginning in approximately 2004, Defendant began to offer and sell membership interests in limited liability companies formed for the purpose of purchasing mobile home parks and mobile homes for placement in those parks.

12. Once Defendant identified a mobile home park for purchase, he distributed to potential investors a general information package describing the park to be purchased (General Information Package). Each General Information Package contained a "Site Description" of the specific mobile home park describing its location and size. Each General Information Package also contained a "Business Approach Overview" explaining how particular parks were chosen for purchase. The "Business Approach Overview" stated that Defendants specifically targeted larger parks needing revitalization and having 40 to 60 percent vacancy rates. It also stated that Defendants planned to increase the value of the park through revitalization, increased occupancy rates and increased lot rental rates.

13. The General Information Packages also contained an "Executive & Financial Summary" describing the debt financing arranged for the park, the equity needed for the park purchase and the amount of additional funds needed for improvements. The "Executive and Financial Summary" provided two exit strategy scenarios for investors at the end of a targeted two year period. After two years, the park was to be either sold or refinanced at an increased

value with a portion of that income or equity going to investors. Additionally, during the two year period, investors were promised an annual ten percent return, payable monthly, on their principal invested in each park. Income projections included with the General Information Packages were based upon full park occupancy despite the parks having only forty percent (40%) to sixty percent (60%) occupancy initially. The General Information Packages represented that both scenarios would achieve a capitalization rate of approximately eight percent (8%).

14. In most cases, a separate limited liability company was formed to hold each mobile home park (Park LLC). Investors received and executed operating agreements specific to each Park LLC in which they invested. The operating agreements designated either BDMP or IPS as the member manager. The operating agreements provided that the Park LLC, through its manager, would maintain its own bank accounts. The operating agreement also provided that the funds of the Park LLC would not be commingled with funds from other sources and would be used solely for the business of that particular park.

15. The overwhelming majority of mobile home parks were losing money each month, and investor money was not being segregated as represented but was being commingled with investor money from other parks.

Undisclosed markups

16. Defendant, both orally and in writing through the General Information Packages, advised investors of the purchase price of each park. Undisclosed to investors, Defendant was profiting from the sale of the mobile home parks to investors. After identifying a mobile home park for purchase and arranging the bank and investor financing, MHPS purchased the park from its original seller. Usually on the very same day that MHPS purchased the park from the original seller, MHPS sold it to the Park LLC at an increased price. Defendant and McKee divided the

undisclosed markup. Beginning in 2005, Defendant began to increase the amount of the markups, some exceeding thirty percent (30%) of the purchase price from the original seller and at least one exceeding fifty percent (50%) of the original purchase price. The total undisclosed markups received by Defendant and McKee exceeded twenty million dollars (\$20,000,000). The markup increased the levels of debt incurred by the park and thereby its ability to operate in a manner that would enable it to repay lenders and investors.

Failure to Disclose Ongoing Losses

17. In connection with the offer and sale of the LLC Interests, Defendant failed to disclose that the majority of the mobile home parks were losing money monthly. The General Information Packages projected annual increases in net income by the particular mobile home park. However, the majority of mobile home parks previously purchased were not operating at a profit, a fact known to Defendant before each new General Information Package was distributed to potential investors.

18. As early as December, 2005, the Chief Financial Officer of IPS notified Dalton via e-mail that accounting challenges associated with the parks were magnified by the fact that most of the parks did not produce cash flow to sustain their own operations. Despite his knowledge that the majority of parks were losing money each month, Defendant continued to solicit investors using financial projections showing annual increases in park income. From December 2005, Defendant received in excess of seventeen million dollars (\$17,000,000) from investors and purchased fourteen (14) additional mobile home parks at a cost totaling in excess of seventy million dollars (\$70,000,000).

Commingling of Investor Funds

19. Despite the operating agreements associated with each Park LLC stating that member capital contributions would not be commingled with funds from other sources, investor money was being commingled immediately upon receipt. Rather than depositing investor funds into an account held by the particular Park LLC, investor money was deposited into an IPS general account where money from investors in other parks was also deposited. The IPS account was used to fund expenses of different parks as was needed to keep the scheme afloat.

FIRST CAUSE OF ACTION

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

20. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 20 above.

21. The LLC Interests are securities as defined by Section 1-102 of the Act.

22. Defendant offered and sold the LLC Interests in and/or from Oklahoma.

23. The LLC Interests offered and sold by Defendant are not and have not been registered under the Act as required by Section 1-301 of the Act, nor have the LLC Interests been offered or sold pursuant to an exemption from registration.

24. By reason of the foregoing, Defendant has violated Section 1-301 of the Act, 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 Agent)**

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

26. Defendant, by virtue of his efforts and activities in this state in effecting or attempting to effect transactions in securities of an issuer, is an agent, as defined in Section 1-102 of the Act.

27. Defendant is not, and has not been, registered as an agent pursuant to Section 1-402 of the Act.

28. By reason of the foregoing, Defendant, directly and indirectly, has violated Section 1-402 of the Act, 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 the Offer and Sale of Securities.)

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

30. As described in paragraphs 11 through 20 above, Defendant, in connection with the offer and sale of the LLC Interests, directly and indirectly, has made untrue statements of material facts, including, but not limited to,

- a. that the financial projections and business plans for the parks were achievable;
- b. that the returns on investment would come from the revitalization and increased revenue of the particular mobile home park; and
- c. that funds belonging to a particular mobile home park would not be commingled with funds from any other sources.

31. As described in paragraphs 11 through 20 above, Defendant, in connection with the offer and sale of the LLC Interests, directly and indirectly, omitted to state material facts necessary, in light of the circumstances under which they were made, not misleading, including, but not limited to,

- a. that Defendant and McKee were marking up the price of the mobile home parks by using McKee's closely held company, MHPS, to purchase the park and then sell it at an increased price to the Park LLC, thereby making a profit that Defendant and McKee divided;
- b. that previously purchased mobile home parks were losing money every month;
- c. that investor funds would be commingled with funds from other sources;
- d. that investor funds would be used for mobile home parks and expenses other than for the specific mobile home park in which the investor thought he invested; and
- e. that projections of rates of return on previously purchased mobile home parks had not been achieved.

32. By reason of the foregoing, Defendant, directly and indirectly, has violated Section 1-501 of the Act, 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)**

33. The Department realleges and incorporates by reference each and every allegation contained in the preceding paragraphs.

34. Defendant, in connection with the offer, sale or purchase of securities, and as described in paragraphs 11 through 20 above, has engaged in acts, practices, or a course of business that has operated as a fraud or deceit upon other persons.

35. By reason of the foregoing, Defendant, directly and indirectly, has violated and unless enjoined, will continue to violate Section 1-501 of the Act.

PRAYER FOR RELIEF

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 permanent injunction, restraining and enjoining the Defendant, his agents, servants, employees, assigns and all those persons, directly or indirectly, acting on his behalf, under his direction and control, and/or in active concert or participation with them, who receive actual notice hereof, by personal service, facsimile or otherwise, and each of them from violating the Act; and

II.

An order requiring Defendant to pay a civil penalty to the Department in the amount of Two Hundred Fifty Thousand Dollars (\$250,000).

III.

An order requiring Defendant to make restitution to any and all Investors who purchased securities from Defendants;

IV.

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. Faught, Administrator

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