

JUN 24 2010

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

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

**APPLICATION FOR TEMPORARY RESTRAINING ORDER,  
ORDER FOR ACCOUNTING AND TEMPORARY INJUNCTION**

The Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator (“Department”), respectfully submits this application for a temporary restraining order against Defendants 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”); and an order for an accounting, and the records to support such accounting, to be prepared by or on behalf of the Defendants (“Accounting”), pursuant to the Oklahoma Uniform Securities Act of 2004 (“Act”), Okla. Stat. tit. 71, §§1-101 through 1-701 (Supp. 2009). The Department petitions this Court to halt further violations of the Act, to protect the rights of the Department in its obligation to safeguard the public interest, to prevent any dissipation or loss of investor funds and property, and to remedy acts that Defendants have already committed.

The Department moves this Court to issue *instanter* a temporary restraining order, and an order for the Accounting by the Defendants, until the Court may afford the parties a hearing, and

additionally moves for the entry of a temporary injunction at such hearing against Defendants. The entry of such orders are necessary for the reasons set forth below, to preserve the *status quo* and to protect the Department's rights in enforcing the Act.

## **I. THE DEFENDANTS**

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.

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.

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.

## **II. NATURE OF THE CASE**

### **Firststar Investment Program**

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.

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.”

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®”.

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.

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.”

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.

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.

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.

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.

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.

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**

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

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.

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”).

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.

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.

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

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.

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.

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

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

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.

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.

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.

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

### **III. VIOLATIONS OF THE ACT**

#### **A. Violation of Section 1-301 of the Act: Offer and/or Sale of Unregistered Securities**

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

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

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

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.

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

**B. Violation of Section 1-402 of the Act:  
Failure to Register as Agents and Employing Unregistered Agents**

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

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

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.

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.

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.

Firststar employed unregistered agents.

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

**C. Violation of Section 1-501 of the Act:  
Untrue Statements of Material Fact and Omissions of Material Fact  
in Connection with the Offer, Sale or Purchase of Securities**

As described 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.

As described 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.

As described 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.

As described 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.

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

**D. Violation of Section 1-501 of the Act:  
Engaging in any Act, Practice, or Course of Business that Operates  
or Would Operate as a Fraud or Deceit upon any Person**

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

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

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

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**

### **IV. NEED FOR TEMPORARY RESTRAINING ORDER, ACCOUNTING AND TEMPORARY INJUNCTION**

#### **Temporary Restraining Order**

Section 1-603 of the Act provides:

A. If the Administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this act or a rule adopted or order issued under this act or a dishonest or unethical practice, the Administrator may, prior to, concurrently with, or subsequent to an administrative proceeding, maintain an action in the district court of Oklahoma County or the district court of any other county where service can be obtained to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.

B. In an action under this section and on a proper showing, the court may:

1. Issue a permanent or temporary injunction, restraining order, or declaratory judgment;
2. Order other appropriate or ancillary relief, which may include:
  - a. an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the Administrator, for the defendant or the defendant's assets,
  - b. ordering the Administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property,
  - c. imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or up to Two Hundred Fifty Thousand Dollars (\$250,000.00) for more than one violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business

constituting a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act, and

d. ordering the payment of prejudgment and postjudgment interest;  
or

3. Order such other relief as the court considers appropriate.

A temporary restraining order has the object of preserving the *status quo*, in order to prevent irreparable injury, until such time as the Court may make a determination on Plaintiff's application for temporary injunction. *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439, 94 S.Ct. 1113, 1124 (1974); *Morse v. Earnest, Inc.*, 547 P.2d 955 (Okla. 1976). Issuing a temporary restraining order is in the public interest when the failure to grant the relief would allow dishonest businesses and individuals to take advantage of vulnerable investors. The protection of the public interest is paramount in this matter.

Defendants have engaged in acts and practices in violation of the Act and have, as a result of these activities, received a substantial amount of money from Investors. A danger exists that the money received from the Investors and/or held by Defendants will be lost, removed or transferred. A temporary restraining order to issue *instanter* against Defendants is necessary to preserve these funds, securities, and the records relating thereto, and to prevent further violations of the Act.

In addition, no injury will befall Defendants by granting such relief since Defendants have no right to act in the state of Oklahoma in violation of the Act, to include engaging in fraudulent conduct in connection with securities activities. The interference with Defendants' rights by granting the temporary restraining order will be minimal, if any, while protecting the public from immediate and irreparable injury or loss.

## **B. Accounting**

Section 1-603 of the Act specifically grants this Court the power to fashion appropriate equitable relief to provide effective enforcement of the Act. Once the equity powers of the court are invoked, the court possesses the power to fashion appropriate interim remedies. *SEC v. Manor Nursing Centers*, 458 F. 2d 1082, 1103 (2<sup>nd</sup> Cir. 1972). Within the equity power of the court is the authority to order an accounting by the Defendants. *SEC v. R.J. Allen & Associates*, 386 F. Supp. 866, 880 (S.D.N.Y. 1974); *SEC v. Manor Nursing Centers, supra* at 1103-1104.

Defendants make use of untrue statements of material fact and omit to state material facts as alleged in Plaintiff's verified petition, in violation of Section 1-501 of the Act. The whereabouts of all of the money raised by Defendants through violations of the Act is not known at this time. These circumstances make it necessary that the Defendants account for the money raised through violations of the Act so as to protect Investors and to provide effective relief.

## **C. Temporary Injunction**

Once the plaintiff has shown the defendants' past conduct is in violation of the Act, the proper test for the issuance of a statutory injunction is whether there is a reasonable expectation of future violations by defendants. *SEC v. Manor Nursing Centers, Inc., supra*; *SEC v. Culpepper*, 270 F.2d 241, 249 (2d Cir. 1959). In considering this issue, past illegal conduct is strong support for the likelihood of future violations. *Oklahoma Securities Commission v. CFR International, Inc.*, 622 P.2d 293, 295 (Okla. Ct. App. 1980) (citing *Bradford v. SEC*, 278 F.2d 566 (9<sup>th</sup> Cir. 1960)). Here, the Defendants have violated the Act which creates a presumption of likelihood of future violations. Because the Plaintiff has conclusively demonstrated the existence of past violations, injunctive relief is appropriate and the burden of showing there is no reasonable expectation of future violations will shift to the Defendants and their burden "is a

heavy one.” *SEC v. Culpepper, supra; Oklahoma Securities Commission v. CFR International, Inc., supra.*

Unlike private actions for injunctions, the Department’s action is based on statute and no showing of irreparable injury or the inadequacy of other remedies is required. *Oklahoma Securities Commission v. CFR International, Inc., supra.* Although not required, the Department has also shown that the public will suffer irreparable injury if Defendants are not enjoined from further violations of the Act.

#### **D. An Ex Parte Order Should be Issued**

While courts have been cautious with the use of *ex parte* orders, they are approved in appropriate cases where a party may suffer irreparable harm during the time required to give notice to the opposite party. *SEC v. Bravata, 2009 WL 224564 (E.D. Mich).* The Department alleges facts that demonstrate a strong likelihood of ongoing violations of the Act by Defendants.

In addition, there is a great risk that Defendants will continue to perpetuate their activity of fraudulently offering and/or selling unregistered securities. Providing notice of this action to Defendants could lead to irreparable harm because the notice might stimulate the very actions the restraining order is intended to prevent. *Id* at \*2. The issuance of a temporary restraining order *instanter*, and an order for an accounting by the Defendants will help maximize the relief to Investors and the protection of the public interest.

#### **V. Conclusion**

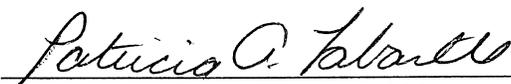
The Department, pursuant to Section 1-602 of the Act, conducted an investigation into Defendants’ activities in and/or from the state of Oklahoma. The investigation produced evidence that clearly indicates Defendants have issued, offered and/or sold unregistered securities in and/or from this state. Such activity is continuing. The investigation also revealed that Defendants, in connection with the offer, sale and/or purchase of securities: (1) made, and

are making, untrue statements of material fact; (2) omitted, and are omitting, to state certain material facts; and (3) engaged, and are engaging, in a course of business that has operated as a fraud or deceit upon other persons. Defendants have engaged and are engaging in substantial violations of the Act, including fraudulent practices. The Department submits that the evidence firmly establishes a *prima facie* case for the issuance of a temporary restraining order, an order for an accounting, and a temporary injunction.

In light of the facts presented and the authorities cited, the Department respectfully requests that this Court issue an order for an accounting, and a temporary restraining order, until such time as the Court may afford the parties a hearing on the Plaintiff's motion for temporary injunction, all to halt Defendants' unlawful practices and to provide effective relief to Investors and to the Department.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES  
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