IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

A. HEATH ABSHURE,
ARKANSAS SECURITIES COMMISSIONER,

Coth

Plaintiff

CASE NO. CV 10-1659

V.

RODNEY CALLAWAY, HERITAGE CORNER, LTD.,
and HERITAGE FUNDING GROUP, INC.,

Defendants

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Pat O'Brien Pulaski Circuit Clerk
CR07

COMPLAINT

The Plaintiff, A. Heath Abshure, Arkansas Securities Commissioner, and for his Complaint against Rodney Callaway, Heritage Corner, Ltd., and Heritage Funding Group, Inc., states and alleges as follows:

Parties

1. A. Heath Abshure ("Commissioner") is the Arkansas Securities Commissioner, duly appointed in accordance with Ark. Code Ann. § 23-42-201(a). The Commissioner is charged with the administration of the Arkansas Securities Act ("Act"), Ark. Code Ann. §§ 23-42-101 – 509.
2. Rodney Callaway ("Callaway") is an individual and resident of the state of Georgia. Callaway holds no registrations in any state as an investment adviser, investment adviser representative, broker-dealer or broker-dealer agent.
3. Heritage Corner, Ltd. ("HC") is a corporation organized and existing under the laws of the state of Georgia. HC maintains a principal place of business at 6555 Sugarloaf Parkway, Suite 307-120, Duluth, Georgia. That address is the location of a Mail Boxes, Etc. business. According to records maintained by the Georgia Secretary of State, Callaway serves HC as chief executive officer, chief financial officer, and secretary.

4. Heritage Funding Group, Inc. ("HFG") is a corporation organized and existing under the laws of the state of Georgia. HFG maintains a principal place of business at 6555 Sugarloaf Parkway, Suite 307-120, Duluth, Georgia. That address is the location of a Mail Boxes, Etc. business. According to records maintained by the Georgia Secretary of State, Callaway serves HFG as chief executive officer and secretary.

Relevant Entity

5. Environmental Protection of Asia Foundation, Inc. ("EPAFI") purports on its website to be a Philippine corporation and is registered as a foundation at the Philippine Securities and Exchange Commission. Callaway held himself out to be a trustee for EPAFI. Though, in a letter to the Staff of the Arkansas Securities Department dated September 17, 2009, Callaway stated that his "trustee position with [EPAFI] was terminated years ago since [EPAFI] would no longer allow a US citizen as trustee."

Factual Allegations

6. In June 2005, Sharon Carter, an Arkansas person, contacted Callaway and asked him for advice on investing $300,000, which were proceeds from the settlement of a lawsuit, in a manner that would allow Ms. Carter to provide for an ailing sibling, for whom Ms. Carter held power of attorney, as long as possible. Ms. Carter and Callaway are cousins, and Ms. Carter believed Callaway to have been in the business of "asset management" for over eighteen years.
7. Within a short time period after Ms. Carter's initial request to Callaway, Callaway told her that he knew how she could make 12% interest on the funds, which would allow her to receive $36,000 per year in interest to provide for her sibling, with "no strings attached." Callaway stated that Ms. Carter would be able to get any or all of the funds with 30 days notice. Further, Callaway expressed to Ms. Carter that his own money was invested in this investment and that his investments had proved very beneficial to him because of the high rate of return.

8. When offering and selling the investment, Callaway did not give Ms. Carter any written offering materials. Callaway advised Ms. Carter that the investment he proposed involved EPAFI and that the funds would be used to aid sick children and sea turtles. Callaway told Ms. Carter that he was on the board of directors of EPAFI and that he was in direct control of the funds, which were safely stored in a bank in London.

9. Callaway told Ms. Carter that it was imperative that she get the money to him rapidly because, if she did not, she would lose the opportunity. He told Ms. Carter that the money was needed quickly because the beginning of EPAFI's fiscal year was approaching and EPAFI needed the funds in a bank in England by July 1.

10. Because Ms. Carter was related to Callaway, she trusted him and the information he provided to her and ultimately invested $300,000, on June 27, 2005, through a promissory note, in the investment Callaway proposed.

11. Ms. Carter was not in the business of making loans and did not have any significant business experience. Ms. Carter considered the promissory note to be an investment.

12. Ms. Carter purchased the promissory note investment because of the higher than market rate of interest that was offered for the investment, the purported safety of the investment, the perceived immediate liquidity that came with holding a demand promissory note, and the recommendations of Callaway.

13. Ms. Carter signed the promissory note, which was entitled Agreement, on June 17, 2005. The promissory note ("Agreement") was delineated on HC letterhead. Callaway signed the Agreement on behalf of HC and as trustee for EPAFI. The Agreement stated:

> Received from Sharon Carter the amount of 300,000 US dollars in the form of a bank transfer, effective July 1, 2005, for a period of one year and may be extended or modified as requested. The purpose of this loan is for the benefit of humanitarian projects approved and supported by EPAFI. This loan will pay interest at a rate of 12 percent per year prorated by month for any partial period. Upon maturity or any early demand for partial or full repayment will be processed within thirty days, and will be credited to the bank, trust fund;

or other account as designated [sic]. Renewal of this agreement for a period of one year will be by separate letter and will be agreed upon at the current rate, this rate will be no less than the current rate of 12 per cent [sic] per year. Accumulated interest may be credited as agreed.

14. Ms. Carter wired $300,000 to Callaway on June 27, 2005, pursuant to the Agreement. The Agreement claimed that the $300,000 would be used to "benefit humanitarian projects approved and supported by EPAFI."

15. Contrary to the representation Callaway made to Ms. Carter, Callaway never used the funds for the intended purpose but instead deposited them into one or more accounts, which were not held by any banks in England, and used the funds for other purposes such as repaying a previous investor who had also invested with Callaway and paying Callaway's personal expenses.

16. To date, Callaway has failed to have Ms. Carter's investment returned or any accounting of investment. However, Callaway paid Ms. Carter eight purported interest payments totaling $165,000, with checks drawn on HC and HFG accounts, which serves to mitigate Ms. Carter's loss.

17. In August 2006, after Ms. Carter had received a $36,000 purported interest payment, Callaway called Ms. Carter and told her that he had another opportunity for her where he needed $50,000 to fund litigation where her return on investment would be "exorbitant." Ms. Carter declined Callaway's offer, but he continued to call her asking instead for $25,000 or $30,000, and telling her what a great deal she would get. Ms. Carter continued to refuse the offers.

18. The securities offered and sold to Ms. Carter were neither registered nor exempt from registration under the terms of the Act.

Violations

19. The Commissioner re-alleges and incorporates by reference all factual allegations set out above in paragraphs 6 through 18.

20. The Defendants violated Ark. Code Ann. § 23-42-301(a) by transacting business in this state as broker-dealers or agents without being registered to do so under the Act.

21. The Defendants violated Ark. Code Ann. § 23-42-501 by offering and selling unregistered securities in this state.

22. Callaway materially misrepresented to Ms. Carter that the $300,000 of investor proceeds would be used to benefit humanitarian projects approved and supported by EPAFI in violation of Ark. Code Ann. § 23-42-507(2), which states that it is unlawful for any person, in connection with the offer, sale, or purchase or any security, directly or indirectly, 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.

23. Callaway engaged in acts, practices, or courses of business that operated as a fraud or deceit upon Ms. Carter in violation of Ark. Code Ann. § 23-42-507(3), which states that it is unlawful for any person, in connection with the offer, sale, or purchase or any security, directly or indirectly, to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. Callaway's uses of Ms. Carter's funds to pay personal expenses and to pay investment returns to another investor, along with the misrepresentations described above, constitute a course of business that operated as a fraud on Ms. Carter.

Claims for Relief

24. Pursuant to Ark. Code Ann. § 23-42-209(a)(3), 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.

25. Pursuant to Ark. Code Ann. § 23-42-209(b), the Commissioner may apply to this Court for ancillary relief which may be in the public interest, including obtaining an accounting,

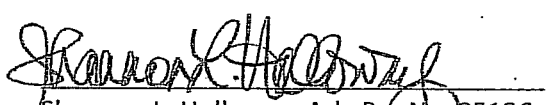
disgorgement, and the assessment of a fine in an amount not more than the amount of money received in connection with any violation of the Act.

Prayer for Relief

WHEREFORE, the Commissioner respectfully requests that this Court (1) permanently restrain and enjoin the Defendants, their agents, officers, employees, and others in active concert or participation with them, directly or indirectly, singly or in concert, from further violations of the Act; (2) order the Defendants to render an accounting of all monies received in connections with the violations of the Act set out above; (3) order disgorgement to the Arkansas person named herein of all profits or ill-gotten gains earned by the Defendants in connection with the offer and sale of the unregistered securities discussed herein; (4) assess a fine against the Defendants, payable joint and severally, in an amount equal to the amount of money taken in by the Defendants in connection with the violations of the Act set out above; and (5) grant such other and further relief as the Court may deem just and appropriate.

Respectfully submitted,

A. Heath Abshure,
ARKANSAS SECURITIES COMMISSIONER

By: 

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