

FILED IN CLERK'S OFFICE  
USDC Atlanta

ORIGINAL

OCT 11 2006

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JAMES N. HATTEN, Clerk

By *J. P. Puckey* Deputy Clerk

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

PINNACLE DEVELOPMENT  
PARTNERS LLC and GENE A.  
O'NEAL,

Defendants.

Civil Action No.

06 CV 2431

COMPLAINT FOR EMERGENCY INJUNCTIVE AND OTHER RELIEF

Plaintiff, Securities and Exchange Commission ("Commission"), alleges that:

OVERVIEW

1. From October 2005 through the present, Pinnacle Development Partners LLC ("Pinnacle") and Gene A. O'Neal ("O'Neal") have been selling fraudulently unregistered securities in the form of nominal general partnerships which invest in real estate development. Pinnacle sold some investors notes in lieu

of partnership interests. Pinnacle appears to have raised at least \$30 million from more than 2,000 investors in thirty-three states and two foreign countries.

2. Pinnacle advertised the investment through an extensive national advertising campaign promising investors a 25% return in 45 days and a second 25% and return of investor capital at the end of 90 days. Later investors were promised a 25% return in 60 days.

3. Pinnacle told investors that the promised returns were obtained by the partnerships purchasing foreclosed real estate from banks, making minor repairs and reselling the property within 45 to 60 days.

4. In fact, without disclosure to investors, Pinnacle and/or O'Neal purchased property from third-parties and then sold it to its investor partnerships at higher prices.

5. The purported returns paid to investors were obtained by reselling the properties to other partnerships controlled by Pinnacle. Rather than selling the properties to third parties, Pinnacle used investments by later investors to generate

returns for earlier inventors. In effect, Pinnacle's investment program is a Ponzi scheme.

### **VIOLATIONS**

6. Defendants have engaged, and unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

### **JURISDICTION AND VENUE**

7. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)], to enjoin the defendants from engaging in the transactions, acts, practices, and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties and for other equitable relief.

8. This Court has jurisdiction over this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

9. Defendants, directly and indirectly, made use of the mails, the means and instruments of transportation and communication in interstate commerce and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

10. Certain of the transactions, acts, practices, and courses of business constituting violations of the Securities Act and the Exchange Act occurred in the Northern District of Georgia. In addition, Defendant O'Neal resides in the Northern District of Georgia. Defendant Pinnacle has its principal place of business in the Northern District of Georgia and the property purchased by the defendants is located here.

11. Defendants Pinnacle and O'Neal, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of

business alleged in this complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

### **THE DEFENDANTS**

12. **Pinnacle Development Partners LLC** is a Georgia limited liability company with its principal place of business in Atlanta, Georgia.

13. **Gene A. O'Neal**, age 36, resides in Alpharetta, Georgia. O'Neal founded Pinnacle and serves as its managing member and Chief Financial Officer.

### **FACTS**

14. This matter involves a fraudulent offering of unregistered securities, in the form of real estate development partnerships, through a nationwide advertising campaign. Since October 2005, more than 2,000 investors from at least 33 states and two foreign countries have invested at least \$30 million in the Pinnacle partnerships.

15. O'Neal controls Pinnacle and orchestrated the offerings, designed the offering materials, directed the distribution of the offering materials, directed the in-house sales representatives who dealt with investors and managed the business.

16. Pinnacle offered its investments through its website, and through an extensive national advertising campaign.

17. Pinnacle also made general solicitations for investors in Newsweek magazine, and the New York Post and as many as 40 other publications.

18. As recently as September 21, 2006, Pinnacle advertised the investment on a business opportunity Internet website.

19. Through its offering materials, Pinnacle offered investors fractional partnership interests in real estate developments that would purportedly pay a return of 25% within 45 (or later 60) days and a second 25% return and the return of capital after 90 days.

20. The profits would purportedly be earned by purchasing foreclosed real estate, making basic improvements and re-selling the property within the prescribed period.

21. Pinnacle's sales materials claimed that the advantage of buying bank foreclosures is that they are "99.99% risk-free."

22. Investors were told that their investment would be secured by a deed to real property in which they are named.

23. The company's and O'Neal's expertise in buying deeply discounted properties were touted to support the unrealistic profits claimed.

**A. Structure of Investment**

24. The partnership agreement Pinnacle gave to prospective investors, as well as actual agreements with investors, gave Pinnacle as managing partner the sole right and authority to manage and carry out the business of the respective partnership, and make all management decisions.

25. The agreements required the unanimous approval of all partners with respect to, among other things, borrowing of any funds for the partnership in excess of \$10,000 and any contracts between the partnership and any related parties.

26. However, Pinnacle regularly transferred properties to the partnerships, and transferred properties from one partnership to another, in related party transactions, often with undisclosed mortgages, without the approval of the partners or disclosure to them.

27. Although the agreements identified the investors as general partners, Pinnacle's partnership agreement contained no provisions that allowed the partners to remove the managing partner or that otherwise empowered the investors/partners to control their investments. Investors had no ability to replace Pinnacle as managing partner or manage the partnerships.

28. Investors had no role in the management of the partnerships. No investors have had any input into, or played any active role in, their partnerships' business.

29. Pinnacle paid its investors every 45 days and encouraged them to roll-over their capital contributions into another partnership.

30. Later Pinnacle investors invested through a 'short-form,' a one-page document that noted the investor's contribution and the payout date for his promised 25% return.

31. Investors in a given partnership were prevented from communicating with each other.

32. Investors were not given contact information on other investors in a respective partnership. In addition, a memorandum to Pinnacle investors advised them that in order to protect the privacy of Pinnacle's investors, an investor who contacted other Pinnacle investors, other than those on a list of references, without Pinnacle's permission, could be dismissed from the partnership and forfeit his or her profits.

33. Until June 2006, investors who had IRA money to invest were directed to self-directed IRA custodians and enrolled in the program through 180-day promissory notes paying the same 25% return every 45 days over the 180-day note period. These notes are securities.

**B. Pinnacle's Misrepresentations**

34. Pinnacle's website and its offering materials, created by O'Neal, described Pinnacle's business as the purchasing and selling distressed and foreclosed real estate through general partnerships that it forms with individual investors.

35. The Pinnacle sales materials included with the O'Neal's letter represented that Pinnacle "currently has in excess of \$56,430,000 in wholesale real estate and current renovations to date." Georgia real estate records show that O'Neal and/or Pinnacle have purchased 27 properties for approximately \$13.2 million since October 2005.

36. The "Frequently Asked Question" section of the offering materials claimed that Pinnacle identified properties that have a minimum of \$35,000 equity which it buys directly from banks. Scripts which O'Neal provided to Pinnacle's sales force claimed Pinnacle purchased properties for cash, which protected investors from foreclosure of the properties.

37. The materials claimed that, when the partnerships bought property, Pinnacle would pay one-half of the purchase price of the property and one or more investors contribute the other half.

38. One FAQ offered a purported explanation to “How do I make a 25% return within 3 to 4 weeks:”

Pinnacle gets a five day window contract from the bank. This allows us to send our local buyer, appraiser, and contractor out to make sure the property is satisfactory. Once this process is done, we get the local buyer pre-qualified from our loan officer and we do minor work to the property, such as new carpet, painting, kitchen cabinets, etc. From there the local investor loan takes about 10 to 14 days to close. After closing the investor will receiver their 25% return of their principal amount.

39. The offering materials claimed that the benefits of buying bank owned properties included savings of up to 70% off home market values and that buying bank foreclosures was 99.9% risk-free because banks always provide good, clear title.

40. At least some investors were told that Pinnacle had end-buyers ready to make the purchases required to generate these profits.

41. In fact, the partnerships did not generally buy foreclosed properties from banks.

42. Instead, Pinnacle or O'Neal bought the properties (not always in foreclosure) and sold the properties to the partnerships at large markups.

43. In addition, the purported profits, which have been paid to investors to date, came from investments made by other Pinnacle investors in other partnerships.

44. Upon information and belief, neither Pinnacle nor any of the related partnerships have sold any property to non-related third parties.

45. For example, Pinnacle purchased a property at 1459 East Mercer Avenue for \$500,000 from a third party on February 14, 2006. On March 3, 2006, Pinnacle sold the property to 1459 East Mercer Development Partners for \$660,000. The same day, 1459 East Mercer Development Partners sold the property to Village at East Mercer Development Partners for \$1,550,000. All of the purchasers subsequent to Pinnacle are Pinnacle investor partnerships.

46. Similarly, on March 14, 2006, Pinnacle purchased another property for \$950,000 in an arms-length transaction. An April 10, 2006, Pinnacle sold the property to three Pinnacle related partnerships, Adeline Avenue Development Partners, The Village at Lone Oak Development Partners and 5907 Lone Oak Development Partners for \$4.75 million. The same day, those three partnerships sold the property for the same price to Adeline Estates Development Partners, another Pinnacle investor partnership.

47. Throughout Pinnacle's offering of securities, O'Neal has been aware of the actual method of Pinnacle's business and directed the related party transfers of property. O'Neal directed his sales agents not to disclose the practice of selling to related entities unless asked.

48. Pinnacle also claims that the properties will not be mortgaged. In fact, there are substantial mortgages on several of the properties which the partnerships own.

49. Pinnacle funds were deposited into one bank account controlled by O'Neal.

50. Pinnacle made payments for investor returns, salaries, commissions, expensive advertising and other expenses of the business from the bank account.

51. In a newsletter Pinnacle sent to investors and prospective investors in September 2006, Pinnacle represented that O'Neal has a "tremendous reputation with the banking institutions in the metro Atlanta area." The newsletter and other materials Pinnacle sent to investors failed to disclose that on February 13, 1998, O'Neal was sentenced to four years of probation, ordered to pay a \$100 fine and make restitution for the offense of forgery in the first degree.

52. There has been no registration statement filed with the Commission with respect to the offering of the securities described herein.

**COUNT I—UNREGISTERED OFFERING OF SECURITIES**

**Violations of Sections 5(a) and 5(c) of the Securities Act  
[15 U.S.C. § 77e(a) and 77e(c)]**

53. Paragraphs 1 through 52 are hereby realleged and are incorporated herein by reference.

54. No registration statement has been filed or is in effect with the Commission pursuant to the Securities Act and no exemption from registration exists with respect to the transactions described herein.

55. From as early as October 2005 through the present, defendants Pinnacle and O'Neal, singly and in concert, have:

- (a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise;
- (b) carried securities or caused such securities to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or for delivery after sale; and
- (c) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy securities, through the use or medium of any prospectus or otherwise,

without a registration statement having been filed with the Commission as to such securities.

56. By reason of the foregoing, defendants, directly and indirectly, singly and in concert, have violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

**COUNT II—FRAUD**

**Violations of Section 17(a)(1) of the Securities Act  
[15 U.S.C. § 77q(a)(1)]**

57. Paragraphs 1 through 52 are hereby realleged and are incorporated herein by reference.

58. Defendants Pinnacle and O’Neal, in the offer and sale of the securities described herein, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above.

59. Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

60. While engaging in the course of conduct described above, the defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

61. By reason of the foregoing, the defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

### **COUNT III—FRAUD**

#### **Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act[15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]**

62. Paragraphs 1 through 52 are hereby realleged and are incorporated herein by reference.

63. Defendants Pinnacle and O'Neal, in the offer and sale of the securities described herein, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

a. obtained money and property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

b. engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

64. By reason of the foregoing, the defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

#### **COUNT IV—FRAUD**

##### **Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]**

65. Paragraphs 1 through 52 are hereby realleged and are incorporated herein by reference.

66. Defendants Pinnacle and O'Neal, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- a. employed devices, schemes, and artifices to defraud;
- b. made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

67. The defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, the defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

68. By reason of the foregoing, the defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Commission respectfully prays for:

**I.**

Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that the defendants named herein committed the violations alleged herein.

**II.**

A temporary restraining order, preliminary and permanent injunctions enjoining the defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, by personal service or otherwise, and each of them, from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] promulgated thereunder.