

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

JUN 10 1999

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

DONALD G. BROOKS; and  
BROOKS FINANCIAL PLANNING, INC.,  
a Texas corporation,

Defendants.

Civil Action No.

3 - 99 CV 1326 - D

COMPLAINT

Plaintiff Securities and Exchange Commission, for its Complaint against Defendants Donald G. Brooks ("Brooks") and Brooks Financial Planning, Inc. ("BFP"), alleges and states:

SUMMARY

1. Brooks, a part-time education minister and Bible study teacher at relevant times herein, and BFP, a lapsed Texas corporation owned and controlled by Brooks, have fraudulently raised and misappropriated at least \$1.2 million from numerous elderly victims through sales of fictitious church bonds and interests in a fictitious "Interim Church Loan Fund" ("Church Fund").
2. Brooks purports to operate the Church Fund through BFP as a lender to churches.
3. Although Brooks and BFP promise investors annual returns of eleven percent (11%) or more from these "investments," Brooks has misappropriated victims'

investments to make "Ponzi" payments to investors and for extravagant personal expenses.

4. Brooks' and BFP's activities have been conducted by use of the means and instrumentalities of interstate commerce, including the interstate wires and the United States mails, in violation of the anti-fraud provisions of the federal securities laws.
5. Brooks operated the Church Fund scheme from offices in Irving, Texas.
6. Commencing as early as 1989, and continuing through at least April 1999, Brooks and BFP have taken investors' funds purportedly for investment in church bonds and the Church Fund.
7. Upon information and belief, Brooks continues to solicit prospective investors to purchase interests in the Church Fund.
8. During most of the relevant period and until Brooks was terminated by the broker-dealer by whom Brooks was most recently employed, Brooks was a registered representative associated with Commission-registered broker-dealers.
9. After he failed to make scheduled "interest" payments to investors in March 1999, Brooks ceased paying rent for BFP's offices, and shortly thereafter abandoned the offices. Since then, upon information and belief, he has been moving around, residing in the homes of various friends and relatives. During early April, before he disappeared, a few investors were able to reach Brooks. To these investors, Brooks offered various excuses, essentially claiming that the problem was due to others, but that he was engaged in efforts to, and would, get investors their money.

Thereafter, Brooks simply disappeared and investors have neither heard from him nor gotten their money.

10. The Commission seeks instant, ex parte relief to halt Brooks' and BFP's scheme and to "freeze" the assets held by Brooks and by BFP for the benefit of their victims.
11. The Commission also seeks other preliminary and permanent injunctive and ancillary relief, as described herein, to prohibit their future violations and to assure that Brooks and BFP do not profit from the illegal activities alleged herein.

#### **FACTUAL BACKGROUND**

12. Since at least 1989, Brooks and BFP have offered to the general public securities in the form of purported bonds and interests in the Church Fund, without compliance with federal securities laws.
13. Brooks and BFP have conducted their offering by soliciting brokerage customers and by the solicitation of individuals who attend church services or other religiously oriented seminars conducted by Brooks.
14. Brooks formed "Laborers for His Harvest," a Texas non-profit corporation, and also networked with prospective investors through a Bible study he conducted at a local club. These endeavors were ostensibly to reach those who felt disenfranchised from organized religion.
15. Brooks preyed upon his elderly, retired brokerage clients and on similarly situated persons he met through his various Church contacts and networking efforts.
16. Brooks and BFP encouraged prospective investors to liquidate legitimate, conservative investments to obtain funds to invest in the Church Fund.

17. Brooks and BFP encouraged investors to invest by touting the safety of the investment and its 11% return; he sometimes even touted it as a means to avoid the volatility of the stock market. Brooks' status as a minister and financial planner caused investors to place complete trust and faith in his recommendations. Some investors, particularly early in the scheme, thought they were buying some type of church-issued bond. As his scheme progressed, Brooks re-named the investment the "Interim Church Loan Fund," which made it appear like a church-related mutual fund and which cloaked his scheme with what appeared to be the imprimatur of organized religion. To some investors, he even claimed that the Church Fund was "no load" like the mutual funds they were familiar with from prior investments.
18. Brooks and BFP made various claims that no one had ever lost money, and that all of the obligations were secured by church property.
19. Brooks and BFP promised investors semi-annual or other periodic interest payments that would provide an eleven percent (11%) per annum return.
20. Upon information and belief, none of the approximately \$1.2 million, known by the Commission to have been raised by Brooks and BFP, was used as represented to investors.
21. Brooks and BFP used at least \$185,000 of investors' funds to make putative interest payments to other investors in an obvious "Ponzi" scheme, and spent much, if not all, of the balance on Brooks' personal expenses, which included gambling trips to Las Vegas and Shreveport and numerous trips with female companions to destinations such as Europe, Maui, the Grand Caymans, San

Francisco, and the Caribbean via cruise ships. In addition, Brooks also made numerous expensive purchases at a local jewelry store, including purchases a few days before Christmas, 1997 and Valentine's Day, 1998. Brooks also had a penchant for leaving tips of \$100 or more at a local Dallas dining establishment at which he was a regular patron.

22. Brooks and BFP raised funds from no less than twenty-four (24) victims, including numerous widows and/or elderly retirees, through his false, misleading and incomplete statements of material fact.
23. Brooks and BFP used no written disclosure materials, relying instead on oral presentations made either face-to-face or by telephone, for both Brooks' initial presentations and his follow-ups and responses to specific questions.
24. After Brooks and BFP were unable to make interest payments in March 1999, their presentations became directed at lulling investors by representing that their funds were safe and that payments were forthcoming.
25. While no written disclosure was made, Brooks and BFP did provide investors with written confirmations of their investments, generally in the form of "thank you" notes which, along with victims' interest checks, were transmitted by the United States mails.
26. In mid-April 1999, even after defaulting on investor interest payments, Brooks and BFP raised additional investor funds.
27. To conceal his actions, Brooks has failed to provide information sought by the Commission's staff in response to the Commission's inquiries.

28. On information and belief, Brooks and BFP have continued to solicit prospective investors, and, unless enjoined, will continue to do so.
29. Although the Commission believes that Defendants have dissipated most, of the funds entrusted to them, the Commission fears that Defendant will spend or waste any remaining funds to the further detriment of investors.

#### **SUMMARY OF ALLEGATIONS**

30. By engaging in the conduct detailed in this Complaint, Brooks and BFP violated section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §77q(a), and 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**

31. The Commission invokes this Court's subject matter jurisdiction pursuant to sections 20(d) and 22(a) of the Securities Act, 15 U.S.C §§77t(d) and 77v(a), and sections 21(d), 21(e) and 27 of the Exchange Act, 15 U.S.C. §§78t(d), 78t(e) and 78aa.
32. Brooks and BFP maintain their residences and places of business in, and most of their violative conduct took place, in or from the Northern District of Texas.
33. Venue is proper in the Northern District of Texas pursuant to section 22(a) of the Securities Act, 15 U.S.C. §77v(a), and section 27 of the Exchange Act, 15 U.S.C. §78aa.

#### **PARTIES**

34. The Commission is an agency of the United States of America established by section 4(a) of the Exchange Act, 15 U.S.C. §77d(a).

35. Brooks, age 64, during all relevant times resided, and is believed to currently reside in the Dallas, Texas, area. Between 1989 and April 1999, Brooks was a registered representative associated with Commission-registered broker-dealers and working as an independent contractor from the offices of BFP or other private companies.
36. BFP was incorporated in Texas in October 1988 and has maintained offices in Irving, Texas. Brooks serves as BFP's President and Treasurer, and a director and upon information and belief, is its only shareholder. Although BFP's corporate charter was terminated in February, 1997, because of its failure to pay franchise taxes, Brooks has continued to represent BFP as a corporation and to use it in his fraudulent scheme.

## **CAUSES OF ACTION**

### **COUNT ONE**

#### **Violations Of Section 10(b) Of The Exchange Act And Of Rule 10b-5**

37. The Commission realleges and restates the matters set forth in Paragraphs 1 through 36 of this Complaint and incorporates by reference those matters as if set forth herein verbatim.
38. Brooks and BFP, directly and indirectly, have been using and, unless enjoined, will continue to use the means and instrumentalities of interstate commerce and the mails:
- a. to employ devices, schemes and artifices to defraud;
  - b. to make untrue statements of material facts and omit 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. to engage in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons,

in connection with the purchase and sale of securities.

- 39. As a part of and in furtherance of the scheme and in connection with the offering and sale of securities, Brooks and BFP made oral and written statements that contained untrue statements of material facts and misrepresentations of material facts, including the preparation, delivery and/or mailing of checks to investors which he falsely claimed represented interest payments, and written confirmations which falsely set forth the purported terms of his bogus investments, including, but not limited to, the following:

- a. Investors' funds would be safely invested in various church-related debt obligations that would provide specified annual returns;
- b. Church Fund investors had never lost money as a result of their investments with the Church Fund;
- c. Church Fund investments were secured by mortgages on real estate owned by established churches;
- d. there was "no load"; and
- e. the Church Fund had made one loan to a church in Mississippi with 5,000 members.

- 40. In fact, those statements of material fact were false in that:



- a. Investor monies “invested” in the Church Fund were used primarily to advance Brooks’ and BFP’s ongoing scheme and to pay Brooks’ personal expenses, and not to make loans to churches as Brooks’ claimed;
  - b. Investors’ funds were not secured in any manner as represented by Brooks and BFP; and
  - c. monies would be forthcoming only as long as Brooks and BFP were able to convince others to invest in the Church Fund.
41. As a part of and in furtherance of the scheme and in connection with the offering and sale of securities, Brooks and BFP 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, including, but not limited to, the following:
- a. Brooks had commingled Church Fund investors’ monies in BFP and had misappropriated and would misappropriate funds invested in the Church Fund for numerous undisclosed purposes, including, but not limited to, “Ponzi” payments to prior investors, and for payment of personal expenses; and
  - b. the Church Fund did not exist, and there was no portfolio of church-issued and secured notes or other debt obligations
42. When Brooks and BFP made the untrue statements of material fact and when they omitted to state material facts, they did so intentionally, knowingly and/or recklessly.
43. By reason of the foregoing, Brooks and BFP acted with scienter.

44. Brooks and BFP have violated and, unless enjoined, will continue to violate the provisions 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.

**COUNT TWO**

**Violations Of Section 17(a)(1) Of The Securities Act**

45. The Commission realleges and restates the matters set forth in Paragraphs 1 through 44 of this Complaint and incorporates by reference those matters as if set forth herein verbatim.
46. Brooks and BFP have, in the offer and sale of securities, used, and unless enjoined will continue to use, the means and instruments of transportation and communication in interstate commerce and the mails, directly and indirectly:
- a. to employ devices, schemes or artifices to defraud;
  - b. to obtain money or property by means of untrue statements of material fact or omissions to state material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and
  - c. to engage in transactions, practices or courses of business which operate or would operate as a fraud or deceit.
47. As a part of and in furtherance of the scheme and in connection with the offering and sale of securities, Brooks and BFP made oral presentations and prepared, delivered and/or mailed interest checks and sent written confirmations that contained untrue statements of material facts and misrepresentations of material facts, including, but not limited to, the following:

- a. Investors' funds would be safely invested in various church-related debt obligations that would provide specified annual returns;
- b. Church Fund investors had never lost money as a result of their investments with the Church Fund;
- c. Church Fund investments were secured by mortgages on real estate owned by established churches;
- d. there was "no load"; and
- e. the Church Fund had made one loan to a church in Mississippi with five thousand (5,000) members.

48. In fact, those statements of material fact were false in that:

- a. Investor monies "invested" in the Church Fund were used primarily to advance Brooks' and BFP's ongoing scheme and to pay Brooks' personal expenses, and not to make loans to churches as Brooks' claimed;
- b. Investors' funds were not secured in any manner as represented by Brooks and BFP;
- c. monies would be forthcoming only as long as Brooks and BFP were able to convince others to invest in the Church Fund; and

49. As a part of and in furtherance of the scheme and in connection with the offering and sale of securities, Brooks and BFP 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, including, but not limited to, the following:

- a. Brooks had commingled Church Fund investors' monies in BFP and had misappropriated and would misappropriate funds invested in the Church

Fund for numerous undisclosed purposes, including, but not limited to, “Ponzi” payments to prior investors, and for payment of personal expenses; and

b. the Church Fund did not exist, and there was no portfolio of church-issued and secured notes or other debt obligations.

50. When Brooks and BFP made the untrue statements of material fact and when they omitted to state material facts, they did so intentionally, knowingly and/or recklessly.

51. By reason of the foregoing, Brooks and BFP acted with scienter.

52. By reason of the foregoing, Brooks and BFP have violated, and unless enjoined, will continue to violate sections 17(a)(1) of the Securities Act, 15 U.S.C. 77q(a)(1).

### **COUNT THREE**

#### **Violations Of Section 17(a)(2)-(3) Of The Securities Act**

53. The Commission realleges and restates the matters set forth in Paragraphs 1 through 52 of this Complaint and incorporates by reference those matters as if set forth herein verbatim.

54. Brooks and BFP, directly or indirectly, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, have obtained money and property by means of untrue statements of material fact and by omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Securities and Exchange Commission prays for judgment as follows:

(1) orders temporarily restraining and preliminarily and permanently enjoining Defendants Donald G. Brooks and Brooks Financial Planning, Inc., their agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the temporary restraining order and/or injunction by personal service or otherwise, and each of them, from future violations of section 17(a) of the Securities Act, 15 U.S.C. §77q(a), of section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and of Rule 10b-5, 17 C.F.R. §240.10b-5;

(2) an order instanter freezing the assets of Defendants Donald G. Brooks and Brooks Financial Planning, Inc., and directing that all financial or depository institutions comply with the Court's order;

(3) an order instanter that Defendants Donald G. Brooks and Brooks Financial Planning, Inc., file with the Court and serve upon Plaintiff Securities and Exchange Commission, no later than ten (10) calendar days after entry of the freeze order, an accounting, under oath, detailing all of their assets and all funds or other assets received from investors and from one another;

(4) ordering instanter that Defendants Donald G. Brooks and Brooks Financial Planning, Inc., be restrained and enjoined from destroying, removing, mutilating, altering, concealing or disposing of, in any manner, any of their books and records or documents

relating to the matters set forth in the Complaint, or the books and records and such documents of any entities under their control, until further order of the Court;

(5) ordering that the parties may commence discovery immediately, and that notice periods be shortened to permit the parties to require production of documents or the deposition of any party or party-representative, on seventy-two (72) hours notice by facsimile or personal service;

(6) ordering Defendants Donald G. Brooks and Brooks Financial Planning, Inc., to disgorge any monies or other assets received from investors and any income or profit therefrom plus prejudgment interest on that amount

(7) ordering civil penalties against Defendants Donald G. Brooks and Brooks Financial Planning, Inc., pursuant to section 20(d) of the Securities Act, 15 U.S.C. §77t(d), and pursuant to section 21(d) of the Exchange Act, 15 U.S.C. §78u(d), for the violations alleged herein; and

(8) ordering such other and further relief as the Court may deem just and proper.

Dated: June 10, 1999.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'S. Korotash', is written over a horizontal line.

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