

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

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U.S. DISTRICT COURT
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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JACK A. BROWN, JULES B. FLEDER,
BERNARD WARE, ROGER SHERMAN,
TYLER REAL ESTATE, LLC,
MODEL PROPERTIES, INC.,
SMITH MOUNTAIN LAKE, LLC,
COUNTRY LAKE ESTATES, INC.,
PRAIRIE LAKE ESTATES, L.P., and
BIG PINE REAL ESTATE DEVELOPMENT, INC.,

Defendants,

and

U S REAL ESTATE PARTNERS, INC.,
KENNSINGTON HOLDING CORPORATION,
DEEP WATER HOLDINGS CORP.,
GIBRALTAR ASSET PROTECTION, INC.,
PREFERRED ASSETS, INC.,
MODEL INVESTMENTS, INC.,
J&P BROWN RESOURCES, LTD.,
J P BROWN SERVICES COMPANY, LLC, and
SUMMIT FINANCIAL SERVICES, INC.,

Defendant Solely for
Purposes of Equitable Relief.

Case No.: 6:04cv537

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (the "Commission"), files this Complaint against Jack A. Brown, Jules B. Fleder, Bernard Ware, Roger Sherman, Tyler Real Estate, LLC, Model Properties, Inc., Smith Mountain Lake, LLC, Country Lake Estates, Inc., Prairie Lake Estates, L.P. and Big Pine Real Estate Development, Inc., Defendants, and U.S. Real Estate Partners, Inc., Kennsington Holding Corporation, Deep Water Holdings

SEC v. Jack A. Brown, et al.

COMPLAINT

Corp., Gibraltar Asset Protection, Inc., Preferred Assets, Inc., Model Investments, Inc., J&P Brown Resources, Ltd., J P Brown Services Company, LLC, and Summit Financial Services, Inc., Relief Defendants, and would respectfully show the Court as follows:

SUMMARY

1. Jules B. Fleder, Bernard Ware, Roger Sherman and Jack A. Brown engaged in a scheme to defraud investors in the Tyler, Texas area of approximately \$6 million dollars. Brown, previously licensed as a securities broker, offered investors the opportunity to invest in three purported real estate developments concocted by Fleder, Ware and Sherman. According to the offering documents Brown used to solicit investors, entities controlled by Fleder, Ware and Sherman owned valuable real estate in South Carolina, Virginia and Texas. Investors were promised that their monies would be used to develop these tracts of real estate and that they would share in the profits realized from their development and sale. Investors were promised that their investments were safe and secured by the real estate being developed with their money.

2. Fleder, Ware, Sherman and Brown totally misrepresented the true merits of the investment offerings and failed to disclose material facts that went to the essence of the investments. In each instance, the entity that allegedly "owned" real estate in South Carolina, Virginia or Texas, in fact, did not own the real estate that investor funds were raised to develop. In at least two of the offerings, the property the Defendants allegedly intended to develop with investor funds was recently purchased by Fleder, Ware and Sherman through a related entity for a fraction of its purported value – a fact that was not disclosed to investors. Contrary to the representations made in offering materials, investor funds were used for virtually everything but the development of real estate – including making ponzi payments to investors, purchasing a house for Fleder and a sailboat. In all, Defendants solicited \$5,971,300 from investors in the Tyler, Texas area in connection with the three offerings. Of this amount, at least \$3.5 million

was diverted to companies controlled by Fleder, Ware, Sherman and Brown, and in excess of \$450,000 was used to make *ponzi* payments to investors.

3. Compounding the egregious misrepresentations and omissions relating to the offerings, Fleder further failed to disclose to investors that he was the subject of a cease and desist order issued by the Commissioner of the Texas State Securities Board. Specifically, Fleder agreed to the entry of a cease and desist order that found he had engaged in fraud in the offering of investments in an entity called Sunshine Real Estate Development, Inc. As an undertaking, Fleder agreed, and was ordered by the Commissioner of the Texas State Securities Board, to disclose a copy of the cease and desist order “to potential investors in all future offerings.” The cease and desist order was entered on October 23, 2002, after which Fleder, through Brown, solicited an additional \$3,986,600 in investor funds without disclosing the existence of the order to the investors.

4. The Commission, in the interest of protecting the investing public, brings this action seeking to preliminarily and permanently enjoin Defendants from further violations of the federal securities laws and seeking an asset freeze order, accounting, disgorgement of Defendants’ ill-gotten gains, plus prejudgment interest thereon, civil monetary penalties as allowed by law and the appointment of a receiver to preserve and protect assets for the benefit of Defendants’ investors. The Commission also seeks disgorgement of the investor monies the Relief Defendants received from Defendants’ scheme as well as a freeze of the Relief Defendants’ assets, an accounting and other incidental relief against each of the Relief Defendants.

JURISDICTION

5. The Court has jurisdiction over this action pursuant to Section 20(d) and 22(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77t(d) and § 77v(a)], and Sections

21(d), 21(e) and 27 of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e) and 78(aa)]. Venue is proper because many of the transactions, acts, practices and courses of business described below occurred within the jurisdiction of the Eastern District of Texas.

PARTIES

6. Jack A. Brown, age 65, resides in Tyler, Texas. Brown has offered and sold securities in Tyler Real Estate, LLC, Smith Mountain Lake, LLC, Prairie Lake Estates, L.P. and other unrelated offerings to investors primarily located in the Tyler, Texas area. Entities controlled by Brown received in excess of \$300,000 of investor funds raised from the offerings identified in this Complaint.

7. Jules B. Fleder, age 64, resides in Beverly Hills, California. Fleder conducts his business from an office located at 1925 Century Park East, Suite 750, Los Angeles, California. Entities controlled by Fleder received in excess of \$3 million dollars of investor funds from the joint venture partners in the scheme.

8. Bernard Ware, age 46, is an attorney, licensed in California, and resides in Los Angeles, California. Ware is President, Secretary and Treasurer of Model Properties, Inc., Country Lake Estates, Inc. and Big Pine Real Estate Development, Inc., which were the joint venture partners involved in the three offerings that are the subject of this Complaint.

9. Roger Sherman, age 70, resides at 5442 Dungaree Street, Las Vegas, Nevada, and is a licensed attorney in the State of Minnesota. Sherman is a business associate of Fleder, and is an officer and director of Country Lake Estates, Inc. Sherman is also the President, Secretary and/or Treasurer of Model Investments, Inc., Kennsington Holding Corporation, and Summit Financial Services, Inc.

10. Tyler Real Estate, LLC (“Tyler Real Estate”) is a Texas limited liability company with its principal place of business located in Tyler, Texas. Tyler Real Estate offered and sold membership interests in the LLC to potential investors in Texas, purportedly for the purpose of entering into a joint venture to develop property owned by Model Properties, Inc., in Myrtle Beach, South Carolina.

11. Model Properties, Inc. (“Model Properties”) is a Nevada corporation with its principal place of business at 2316 Hardin Ridge Drive, Henderson, Nevada. Model Properties is the joint venture partner in the Tyler Real Estate offering. Model Properties purportedly owned real estate worth \$2 million dollars in Myrtle Beach, South Carolina. Model Properties received in excess of \$1.7 million dollars of investor funds raised by Tyler Real Estate.

12. Smith Mountain Lake, LLC (“Smith Mountain Lake”) is a Texas limited liability company with its principal place of business in Tyler, Texas. Smith Mountain Lake offered and sold membership interests in the LLC to potential investors in Texas, purportedly for the purpose of entering into a joint venture to develop property owned by Country Lake Estates, Inc.

13. Country Lake Estates, Inc. (“Country Lake Estates”) is a Nevada corporation with its principal place of business at 5442 Dungaree Street, Las Vegas, Nevada. Country Lake Estates is the joint venture partner in the Smith Mountain Lake offering. Country Lake Estates purportedly owned 16 parcels of real estate worth \$2 million dollars near Smith Mountain Lake, Virginia. Country Lake Estates received in excess of \$1.8 million dollars of investor funds raised by Smith Mountain Lake.

14. Prairie Lake Estates, L.P. is a Texas limited partnership with its principal place of business in Tyler, Texas. Prairie Lake Estates offered and sold limited partnership interests to potential investors in Texas, purportedly for the purpose of entering into a joint venture to develop property owned by Big Pine Real Estate Development, Inc.

15. Big Pine Real Estate Development, Inc. is a Nevada corporation with its principal place of business at 5442 Dungaree Street, Las Vegas, Nevada. Big Pine Real Estate is the joint venture partner in the Prairie Lake Estates offering. Big Pine Real Estate purportedly owned 125 parcels of real estate worth \$5 million dollars located in Texas. Big Pine Real Estate received in excess of \$1.4 million dollars of investor funds raised by Prairie Lake Estates.

16. U.S. Real Estate Partners, Inc. is a Nevada corporation, with its principal place of business located at 2316 Hardin Ridge Drive, Henderson, Nevada. Ware is president, treasurer and secretary. U.S. Real Estate Partners received approximately \$1,500,000 of investor funds from Country Lake Estates. This entity is named as a relief defendant for the purpose of obtaining equitable relief.

17. Kennington Holding Corporation (“Kennington”) is a Nevada corporation with its principal place of business located at 2316 Hardin Ridge Drive, Henderson, Nevada. Fleder is President and Sherman is Treasurer. Kennington received approximately \$820,000 from Big Pine Real Estate. In March 2003, U.S. Real Estate Partners transferred ownership of over 104 acres of land in Smith County, Texas to Kennington. Investor funds raised in the Prairie Lake Estates offering were used to make improvements on the land. This entity is named as a relief defendant for the purpose of obtaining equitable relief.

18. Deep Water Holdings Corp. (“Deep Water Holdings”) is a Nevada corporation with its principal place of business located at 5442 Dungaree Street, Las Vegas, Nevada. Ware is president, secretary and treasurer. Deep Water Holdings received approximately \$870,000 of investor funds from Country Lake Estates, through U.S. Real Estate Partners. At a minimum, \$300,000 of these funds were used pay a mortgage on a home in Beverly Hills, California, currently occupied by Fleder. This entity is named as a relief defendant for the purpose of obtaining equitable relief.

19. Gibraltar Asset Protection, Inc., is a Nevada corporation with its principal place of business located at 5442 Dungaree Street, Las Vegas, Nevada. Fleder is president and secretary and Sherman is treasurer. Gibraltar Asset Protection holds title to a sailboat purchased with funds sent directly to the owner of the boat by U.S. Real Estate. These funds were transferred to U.S. Real Estate by Country Lake Estates and were part of the investor funds received from the Smith Mountain Lake offering. This entity is named as a relief defendant for the purpose of obtaining equitable relief.

20. Preferred Assets, Inc., is a Nevada corporation with its principal place of business located at 1925 Century Park East, Suite 750, Los Angeles, California. The president, secretary and treasurer of Preferred Assets is a Fleder employee and works out of Fleder's Los Angeles office. Preferred Assets received approximately \$250,000 from Model Properties and \$55,000 from Big Pine Real Estate Development. This entity is named as a relief defendant for the purpose of obtaining equitable relief.

21. Model Investments, Inc. is a Nevada corporation with its principal place of business located at 1925 Century Park East, Suite 750, Los Angeles, California. Sherman is president, secretary and treasurer. Model Investments received approximately \$900,000 in investor funds from Model Properties. This entity is named as a relief defendant for the purpose of obtaining equitable relief.

22. J&P Brown Resources, Ltd. is a Texas limited partnership that Brown and his wife established in 1999. J&P Brown received in excess of \$340,000 of investor funds raised in the three offerings. This entity is named as a relief defendant for the purpose of obtaining equitable relief.

23. JP Brown Services Company, LLC is a Texas limited liability company owned and managed by Brown, and is the successor in interest to companies that were organized to

“manage” Tyler Real Estate, Smith Mountain Lake and Prairie Lake Estates. This entity is named as a relief defendant for the purpose of obtaining equitable relief.

24. Summit Financial Services, Inc., is a Nevada corporation with its principal place of business located at 5442 Dungaree Street, Las Vegas, Nevada. Sherman is president and secretary and Fleder is treasurer. Summit Financial Services received at least \$37,000 in investor funds from Big Pine Real Estate Development. This entity is named as a relief defendant for the purpose of obtaining equitable relief.

BACKGROUND FACTS

25. Jules B. Fleder, Bernard Ware and Roger Sherman are long-time business associates who have conducted several different investment offerings. In 2001, Fleder approached Brown with the opportunity to sell his investments in the Tyler, Texas area. Shortly thereafter, Brown began selling investments for Fleder to investors, initially offering “debentures” in an entity called Preferred Assets, Inc., with the purported purpose of acquiring the capital needed to finance a merger. Around the same time he was offering and selling the debentures, Brown also sold Texas investors another Fleder-sponsored investment – purported joint ventures in an entity called Sunshine Real Estate Development, Inc. for which Fleder was the president and Sherman was the executive vice-president. Sunshine Real Estate, with its office in Los Angeles, California, was purportedly in the business of purchasing, developing, and selling real estate in South Carolina.

26. In October 2002, Fleder individually and on behalf of Sunshine Real Estate consented to the entry of an order by the Commissioner for the Texas State Securities Board to cease and desist from: (1) offering or selling unregistered securities in the State of Texas, unless the securities were subject to exemption from registration under Texas law; (2) acting as dealers and agents and/or using an unlicensed agent to sell securities in Texas; and (3) offering securities

to Texas residents through the use of fraud or materially misleading statements. Significantly, Fleder agreed to several undertakings including an obligation to (1) disclose the Securities Commissioner's cease-and-desist order to potential investors in all future offerings; and (2) deliver written notification to the TSSB, Director of Enforcement, of an intent to offer or sell securities in Texas in reliance on a registration exemption under Texas law, at least 30 days prior to the date of the first offer of any security.

The Modular Home Development Scheme

27. In addition to investments described previously, Fleder initiated three additional offerings for Brown to offer and sell to investors in the Tyler, Texas, area. From May 2002 to April 2004, Fleder, through Brown, sold investments in at least three purported modular home developments in South Carolina, Virginia and Texas. The first offering, Tyler Real Estate, took place from May 2002 through October 2002, at the same time that Fleder was also offering investments in Sunshine Real Estate through Brown to investors. The second two offerings, Smith Mountain Lake and Prairie Lake Estates, occurred after October 2002 and continued until at least April 2004. Despite his undertakings in the Sunshine Real Estate cease-and-desist order, and the fact that the Smith Mountain Lake and Prairie Lake Estates offerings took place after entry of the order, Fleder did not disclose the cease-and-desist order to Smith Mountain Lake or Prairie Lake Estates investors or notify the TSSB, Director of Enforcement, of his intent to offer securities in Texas pursuant to a state exemption.

28. The three modular home offerings were almost identical in form and execution. The offering documents provided to investors consisted of a disclosure agreement, a subscription agreement, an operating agreement and a joint venture agreement (collectively "the offering documents"). Brown received the offering documents from Fleder's offices in California and provided them to investors via hand delivery, the mails and facsimile.

29. According to the offering documents, investors were offered the opportunity to invest in a limited liability company (“LLC”) or a limited liability partnership (“LLP”), which Brown through an entity he owned and controlled, would manage. The issuer entities were formed for the purpose of entering into joint venture agreements with entities owned and controlled by Fleder, Ware and Sherman (the “joint venture partners”) to develop land owned and controlled by these entities. The land to be developed was specifically described in the offering documents. Upon entering into a joint venture agreement, a copy of which was included in the offering documents, the joint venture partners controlled by Fleder, Ware and Sherman were supposed to convey title to the land to the LLC or LLP for an “agreed value” and “all of the proceeds derived from [the] offering[s], less expenses incurred by [the issuers] and its officers” shall be used to construct improvements upon the property” conveyed by the joint venture partner. The offering documents further promised that as the land was developed and sold in each joint venture, profits would be split between the joint venture partner and the LLC or LLP. Investors in the LLC or LLP would receive a share of the profits by receiving first, the equivalent of a 15% annualized return and thereafter a pro-rata share of the profits.

30. Brown negotiated for one feature in the offerings that Fleder did not contemplate – monthly or quarterly income distributions to investors in the offerings. Fleder agreed to this request by Brown, because otherwise, Brown could not successfully sell the investments. In Brown’s sales pitch, which he gave by phone and in person, he represented to investors that: (1) their principal was “safe”; (2) their investment was secured by real estate; (3) they would receive a “steady source of income” for the time their investment capital was tied up in the program; and (4) investors would receive 50% of the profits realized through the sale of the properties.

31. In each of the three offerings, Brown raised approximately \$2 million dollars from approximately 35 investors. Investor funds from each offering were deposited into an

account set up in the name of the issuer. Subsequently, Brown personally transferred or directed his wife to transfer the investors' funds to Fleder's office in California via checks made payable to the specific joint venture partner. The understanding between Fleder and Brown was that Brown would keep 10% of the investor funds raised and forward 90% of the investor funds to the joint venture partner Fleder controlled.

32. In each of the offerings, Fleder, Ware, Sherman and Brown, acting intentionally or with severe recklessness, falsely represented that the joint venture partner involved "owned" the land to be developed and falsely misrepresented that "all" of the funds raised from the investors would be used to develop the land, except funds used to pay expenses. With respect to the last two offerings, Defendants failed to disclose that shortly before the offering was made, a Fleder controlled entity had acquired the land to be sold to the joint venture for a fraction of the "agreed value" stated in the offering documents and failed to disclose the TSSB cease-and-desist order.

The Tyler Real Estate Offering

33. Beginning in May 2002 through October 2002, Brown marketed the Tyler Real Estate offering to investors in Texas. Tyler Real Estate, LLC, was created at the direction of Fleder, Ware and Sherman by a business associate of Fleder's, who works out of Fleder's Los Angeles office. Tyler Real Estate was purportedly created for the purpose of raising money for an alleged modular home development in South Carolina. A separate entity named Texas Real Estate Investments, Inc. was formed for the purpose of acting as the "manager" of Tyler Real Estate.

34. According to the Tyler Real Estate offering documents that Brown gave to investors, Tyler Real Estate had entered into a joint venture agreement with Model Properties, of which Ware was president, secretary and treasurer. The joint venture agreement stated that: (1)

the purpose of the joint venture is “to improve, develop and sell, either by means of sale of real property or, by bulk sale, the Real Property;” (2) Model Properties owns real property in South Carolina; (3) Model Properties will convey the South Carolina property to Tyler Real Estate subject to an encumbrance of \$2,000,000; (4) Model Properties would undertake to develop and market the land for the benefit of the joint venture. The disclosure agreement provided to each investor stated that “It is contemplated that all of the proceeds derived from this offering, less expenses incurred by Tyler Real Estate and its officers, shall be utilized to construct improvements upon the property . . .” In addition, Brown represented to investors that (1) they would realize annual returns of 10 to 15%; (2) they would share 50/50 in the profits of the development; (3) the investment was “safe” because it was secured by property in South Carolina.

35. Brown raised approximately \$1,984,700 from investors in the Tyler Real Estate Offering. Brown transferred \$1,758,000 of investor funds to Model Properties and retained \$208,450 of the funds from investors to allegedly pay for the expenses of operating the LLC and to pay the “salary” of the manager. Brown transferred \$52,036 of the retained amount to J&P Brown Resources, an entity he controls.

36. Although the offering documents stated that Model Properties, simultaneously with the execution of the joint venture agreement, would deliver to an escrow agent a “recordable Grant Deed effectively transferring title to the Real Property to [Tyler Real Estate],” to date, Model Properties has not deeded any property to Tyler Real Estate in accordance with the offering documents.

37. Bank records reflect that Model Properties transferred approximately \$885,000 of funds raised in the Tyler Real Estate offering to Model Investments, Inc., an entity controlled by Sherman. Although Sherman is the only listed corporate officer for Model Investments, Fleder

has signature authority over the bank account into which these funds were transferred. Model Properties further used in excess of \$300,000 of funds obtained from Tyler Real Estate to make *ponzi*-like payments to investors in Tyler Real Estate as well as investors in the Smith Mountain Lake offering.

The Smith Mountain Lake Offering

38. Beginning in October 2002 through May 2003, Brown marketed the Smith Mountain Lake offering to investors in Texas. Smith Mountain Lake, LLC, was created at the direction of Fleder, Ware and Sherman by a business associate of Fleder's, who works out of Fleder's Los Angeles office. A separate entity named Lake Front Properties Inc. was formed for the purpose of acting as the "manager" of Smith Mountain Lake.

39. According to the Smith Mountain Lake offering documents that Brown gave to investors, Smith Mountain Lake entered into a joint venture agreement with Country Lake Estates, of which Ware was president, secretary and treasurer. The joint venture agreement stated that: (1) the purpose of the joint venture is "to improve, develop and sell, either by means of sale of individual Parcels or, by bulk sale, the Real Property;" (2) Country Lake Estates "is currently the owner of those Sixteen (16) Parcels of real property located in the State of Virginia;" (3) Country Lake Estates will convey the Virginia property to Smith Mountain Lake subject to an encumbrance of \$2,000,000; (4) Country Lake Estates would undertake to develop and market the land for the benefit of the joint venture. The disclosure agreement provided to each investor stated that "It is contemplated that all of the proceeds derived from this offering, less expenses incurred by Smith Mountain Lake and its officers, shall be utilized to construct improvements upon the property . . ." In addition, Brown represented to investors that (1) they would realize annual returns of 10 to 15%; (2) they would share 50/50 in the profits of the development; (3) the investment was "safe" because it was secured by property in Virginia.

40. Although by the time Brown began offering investments in Smith Mountain Lakes to investors Fleder had consented to the entry of the TSSB cease-and-desist order, he failed to provide or otherwise disclose the cease-and-desist order to any investor solicited by Brown. Equally, failed to deliver written notification to the TSSB, Director of Enforcement, of an intent to offer or sell securities in Texas in reliance on a registration exemption under Texas law, at least 30 days prior to the date of the first offer of any security.

41. Brown raised approximately \$1,989,800 from investors in the Smith Mountain Lake offering. Brown transferred \$1,827,400 to Country Lake Estates and retained \$162,400 of the funds from investors allegedly to pay for the expenses of operating the LLC and to pay the “salary” of the manager. Brown transferred \$140,000 of the retained funds to another entity he controls named J&P Brown Resources, Ltd.

42. Despite the fact that almost \$2 million was transferred to Country Lake Estates, to date, Country Lake Estates has not deeded any land to Smith Mountain Lake. Allegedly, and not contained in any of the offering documents, Fleder, Ware and Sherman intended to use the investor funds solicited in the Smith Mountain Lake offering to develop 16 lots acquired in a real estate transaction in June 2002. In this transaction, U.S. Real Estate Partners, Inc., a Fleder controlled entity, acquired 100 acres of real property, subdivided into 47 lots, near Smith Mountain Lake, Virginia. The deed reflects that the purchase price of this land was \$500,000 and that U.S. Real Estate Partners paid \$50,000 down on the property and financed the remaining \$450,000 purchase money debt by executing two promissory notes in favor of the grantors of the property and which were secured by the property.

43. According to the offering documents, Country Lake Estates would deliver a deed conveying the “16 parcels” of land to be developed under the joint venture agreement to Smith Mountain Lake subject to an encumbrance of \$2 million dollars. In essence, Country Lake

Estates was selling the property to Smith Mountain Lakes for \$2 million dollars. The offering documents represented that this was an “agreed value” of the land and supposedly represented the current fair market value of the land to be developed. For investors to earn a return on their investment, the land had to be developed and sold for an amount in excess of the “agreed value” and in excess of the costs of any improvements or other expenses incurred in selling or developing the land. Defendants failed to disclose to any investor that 1) U. S. Real Estate Partners was the owner of the land allegedly to be developed or 2) that U.S. Real Estate Partners had, just a few months earlier, acquired this land for a fraction of the “agreed value” contained in the offering documents.

44. Bank records indicate between November 2002 and April 2003, Country Lake Estates transferred to U.S. Real Estate Partners \$1,557,000 of investor funds. Approximately \$900,000 of that amount was transferred from U.S. Real Estate Partners to Deep Water Holdings, another Fleder controlled entity. From the Deep Water Holdings account, at least \$300,000 and possibly as much as \$870,000 was paid to make a down payment on a home in Beverly Hills, California, in which Fleder lives. An additional \$123,000 of investor funds was paid by U.S. Real Estate Partners to a retailer to purchase a Boston Whaler sailboat. Although U.S. Real Estate Partners paid the money, the title to the sail boat was placed in the name of Gibraltar Asset Protection – another Fleder controlled entity. Country Lake Estates further used approximately \$173,000 of investor funds to make *ponzi*-like payments to Smith Mountain Lake investors and investors in the Tyler Real Estate and Prairie Lake Estates offerings.

The Prairie Lake Estates Offering

45. In January 2003, unlike the prior two offerings, Brown formed Prairie Lake Estates, L.P. a Texas limited partnership. J.B. Real Estate Development, Inc. was formed for the purpose of acting as the general partner of Prairie Lake Estates. The offering documents for

Prairie Lake Estates, however, were prepared at the direction of Fleder by persons in his office. Shortly thereafter, from February 2003 to April 2004, Brown offered and sold investments in Prairie Lake Estates.

46. According to the Prairie Lake Estates offering documents that Brown gave to investors, Prairie Lake Estates entered into a joint venture agreement with Big Pine Real Estate Development, of which Ware was president, secretary and treasurer. The joint venture agreement stated that: (1) the purpose of the joint venture is “to improve, develop and sell, either by means of sale of individual Parcels or, by bulk sale, the Real Property;” (2) Big Pine Real Estate “is currently the owner of those One Hundred Twenty Five (125) Parcels of real property located in the State of Texas;” (3) Big Pine Real Estate will convey the Texas property to Prairie Lake Estates subject to an encumbrance of \$5,000,000; (4) Big Pine Real Estate would undertake to develop and market the land for the benefit of the joint venture. The disclosure agreement provided to each investor stated that “It is contemplated that all of the proceeds derived from this offering, less expenses incurred by Prairie Lake Estates and its officers, shall be utilized to construct improvements upon the property . . .” In addition, Brown represented to investors that (1) they would realize annual returns of 10 to 15%; (2) they would share 50/50 in the profits of the development; (3) the investment was “safe” because it was secured by 125 parcels of property in Texas.

47. Although by the time Brown began offering investments in Prairie Lake Estates to investors Fleder had consented to the entry of the TSSB cease-and-desist order, he failed to provide or otherwise disclose the cease-and-desist order to any investor solicited by Brown. Equally, failed to deliver written notification to the TSSB, Director of Enforcement, of an intent to offer or sell securities in Texas in reliance on a registration exemption under Texas law, at least 30 days prior to the date of the first offer of any security.

48. Brown raised approximately \$1,996,800 from investors in the Prairie Lake Estates offering. Brown transferred \$1,454,510 to Big Pine Real Estate and retained \$541,490 of the funds from investors allegedly to pay for the expenses of operating the LLC and to pay the “salary” of the manager. Brown transferred \$200,000 of the retained funds to J&P Brown Resources, Ltd., a company he controlled. Although Brown raised only \$1,996,000 and the joint venture agreement provided that \$5,000,000 would be exchanged for the 125 parcels of property, Brown has told investors that the program was going forward as planned.

49. Despite representations in the joint venture agreement to the contrary, no land was ever deeded to Prairie Lake Estates by Big Pine Real Estate. Allegedly, and not contained in any of the offering documents, Fleder, Ware, Sherman and Brown intended to use the investor funds solicited in the Prairie Lake Estates offering to develop approximately 100 acres of land acquired in a real estate transaction in January 2003. In this transaction, U.S. Real Estate Partners acquired approximately 105 acres near Lindale, Texas, for approximately \$320,000. In March 2003, U.S. Real Estate Partners executed a quit-claim deed purporting to convey the land to Kennsington.

50. According to the offering documents, the Big Pine Real Estate would deliver a deed conveying the “125 parcels” of land to be developed under the joint venture agreement to Prairie Lake Estates subject to an encumbrance of \$5 million dollars. In essence, Big Pine Real Estate was selling the property to Prairie Lake Estates for \$5 million dollars. The offering documents represented that this was an “agreed value” of the land and supposedly represented the current fair market value of the land to be developed. For investors to earn a return on their investment, the land had to be developed and sold for an amount in excess of the “agreed value” and in excess of the costs of any improvements or other expenses incurred in selling or developing the land. Defendants failed to disclose to any investor that 1) Kennsington was the

owner of the land allegedly to be developed and that its only title to the land was through a quit claim deed or 2) that U.S. Real Estate Partners had, just a few months earlier, acquired this land for a fraction of the “agreed value” contained in the offering documents.

51. To date, with the exception of clearing some brush and debris, no improvements have been made to the approximately 105 acres of property in Smith County. This is explained, in part, by the fact that the City of Lindale, Texas, where the property is located, denied an application to change the zoning of the property from commercial to residential.

52. Bank records show that Kennington received \$820,000 of investor funds from Big Pine Real Estate. The bank records further suggest that Big Pine Real Estate used \$6,667 to apparently make *ponzi*-like payments to investors in Prairie Lake Estates and that Big Pine Real Estate further made *ponzi*-like payments to investors in the Tyler Real Estate and Smith Mountain Lake offerings.

Other Activities

53. Brown negotiated for the payment of an income stream to investors that indicated a desire to receive such periodic payments. These payments were initially characterized as “income” and checks were made payable to investors on this basis. Subsequent to the offer and sale of the securities in the three offerings, investors received notices that the alleged “income” each received would be reclassified as a return of principal and their capital balances in each offering were adjusted accordingly. Afterwards, and because the flow of funds had all but ceased, in August 2004 investors in Tyler Real Estate received lulling letters stating that the joint venture partner, Model Properties, would not be able to continue making its monthly or quarterly distributions due to “low profit sales, back log at the modular homes plant and ongoing expenses of the model homes.” Shortly thereafter, investors in Smith Mountain Lake received similar

letters in which Country Lake Estates claimed the discontinuation of monthly or quarterly investor payments was due to “adverse weather conditions, construction setbacks etc.”

54. In addition, Ware on a periodic basis sent to Brown statements showing the construction of modular homes for which Tyler Real Estate or Smith Mountain Lake were suppose to receive a commission because the home was “sold though” a model home held in the name of the entity. Sherman sent similar letters about Pending deals to Brown. Ware and Sherman sent these letters to Brown for his use in communicating with investors. Additionally, on several occasions Brown sought to have the title of the property transferred to the LLCs or LP according to the terms of the offering documents. He was given assurances by Sherman that this issue would be addressed, but no title was ever delivered.

55. In addition to the discontinuation of monthly payments to investors, Brown caused the entities formed to manage Tyler Real Estate, Smith Mountain Lake and Prairie Lake Estates to be dissolved and cause a new entity he controlled, J P Brown Services Company, LLC, to be substituted as the manager of Tyler Real Estate and Smith Mountain Lake and as the general partner of Prairie Lake Estates.

56. Despite the fact that Fleder, Ware and Sherman have failed to perform on any obligation they allegedly agreed to under the terms of any of the offering documents, Brown still represents to investors in these projects that they will eventually realize a return on their investments.

CLAIMS

FIRST CLAIM

Violation of Section 10(b) of the Exchange Act and Rule 10b-5

57. Plaintiff Commission repeats and incorporates paragraphs 1 through 56 of this Complaint by reference as if set forth *verbatim*.

58. Defendants, directly or indirectly, singly or in concert with others, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (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 operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

59. As a part of and in furtherance of their scheme, Defendants, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which 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, those set forth in Paragraphs 1 through 56 above.

60. Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

61. By reason of the foregoing, Defendants 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].

SECOND CLAIM
Violations of Section 17(a) of the Securities Act

62. Plaintiff Commission repeats and incorporates paragraphs 1 through 56 of this Complaint by reference as if set forth *verbatim*.

63. Defendants, directly or indirectly, singly, in concert with others, 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: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or 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 (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

64. As part of and in furtherance of this scheme, Defendants, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material fact and which 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, those statements and omissions set forth in paragraph 1 through 56 above.

65. Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness with regard for the truth. Defendants were also negligent in their actions regarding the representations and omissions alleged herein.

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

THIRD CLAIM
Claims Against Relief Defendants as Custodian of Investor Funds

67. Plaintiff Commission repeats and incorporates paragraphs 1 through 56 of this Complaint by reference as if set forth *verbatim*.

68. Relief Defendants received funds and property from one or more of the Defendants, which are the proceeds, or are traceable to the proceeds, of the unlawful activities of Defendants, as alleged in paragraphs 1 through 56 above.

69. Relief Defendants obtained the funds and property alleged above as part of and in furtherance of the securities violations alleged in paragraphs 1 through 56 and under *SEC v. Jack A. Brown, et al.*

circumstances in which it is not just, equitable or conscionable for them to retain the funds and property. As a consequence, Relief Defendants were unjustly enriched.

RELIEF REQUESTED

The Commission seeks the following relief:

70. An order of the Court preliminarily and permanently enjoining the Defendants, their agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the 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)], and Section 10(b) the Exchange Act, [15 U.S.C. § 78j(b)], and of Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

71. An order of the Court directing Defendants to disgorge an amount equal to the funds and benefits obtained illegally as a result of the violations alleged, plus prejudgment interest on that amount.

72. An order of the Court directing Defendants to file with the Court and serve upon the Commission an accounting, under oath, detailing all benefits received based upon the sales of the securities identified in this Complaint.

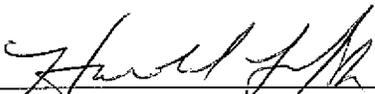
73. An order of the Court directing Defendants to pay civil monetary penalties in an amount determined as appropriate by the Court pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] for their violations of the federal securities laws as alleged herein.

74. An order of the Court directing Relief Defendants to disgorge an amount equal to the funds and benefits obtained illegally as a result of the violations alleged.

75. All further relief as the Court may deem just and proper.

Respectfully submitted,

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Harold R. Loftin, Jr.
Attorney-in-Charge
Texas Bar No. 12487490
U.S. Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, TX 76102-6882
(817) 978-6450
(817) 978-4927 (fax)
Loftinh@sec.gov