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ORIGINAL

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

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
MAY 31 2000
NANCY DOHERTY, CLERK
By _____ Deputy

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

Civil Action No.

vs.

GENE IRVING GARLAND, JR.

Individually and doing business as
ASSOCIATION FOR RETIRED PERSONS
FINANCIAL SERVICES; and

SHARLA DAWN HOLLAND,

Defendants.

3 - 00 CV 1149 - X

COMPLAINT

Plaintiff, Securities and Exchange Commission ("Commission"), for its Complaint against Defendants Gene Irving Garland, Jr. ("Garland"), individually and doing business as Association for Retired Persons Financial Services ("RPFS"), and Sharla Dawn Holland ("Holland") alleges and states as follows:

SUMMARY

1. From June 1995 through at least February 2000, the defendants engaged in a fraudulent scheme to offer and sell unregistered securities in the form of investment contracts, to elderly citizens.

2. In connection with the scheme, Garland and Holland raised more than \$1.8 million from approximately 60 elderly investors, residing primarily in Texas.

3. In the course of offering and selling the securities, Garland and Holland made numerous misrepresentations of material facts, and omitted to state material facts

concerning, among other things, the use of investor funds, the expected rate of return and the safety of the investment.

4. Rather than using investor funds as promised, Garland and Holland diverted approximately \$900,000 of investor funds for personal expenses.

5. Garland and Holland have continued to falsely represent to investors that their funds are safe and that they will be paid as originally promised.

6. By engaging in the conduct as detailed in this Complaint, Garland and Holland, directly or indirectly, singly or in concert, have engaged, and, unless enjoined and restrained, will again engage in transactions, acts, practices and courses of business that constitute violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 (“Securities Act”), [15 U.S.C. §§77e(a), 77e(c) and 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, [17 C.F.R. §240.10b-5] thereunder.

JURISDICTION AND VENUE

7. The investment contracts offered and sold by the defendants are “securities” under Section 2(1) of the Securities Act, [15 U.S.C. §77b] and Section 3(a)(10) of the Exchange Act, [15 U.S.C. §78c].

8. The Commission brings this action pursuant to the authority conferred upon the Commission by Section 20(b) of the Securities Act, [15 U.S.C. §77t(b)] and by Section 21(d) of the Exchange Act, [15 U.S.C. §78u(d)] to temporarily restrain and preliminarily and permanently enjoin Garland and to preliminarily and permanently enjoin Holland from future violations of the federal securities laws.

9. The Commission also seeks disgorgement of ill-gotten gains from Garland and Holland together with prejudgment interest, an asset freeze, an accounting a document preservation order and such other equitable relief that may be deemed appropriate.

10. In addition, the Commission seeks civil penalties pursuant to Section 20(d) of the Securities Act, [15 U.S.C. §77t(d)], and to Section 21(d) of the Exchange Act, [15 U.S.C. §78u(d)].

11. This Court has jurisdiction over this action, and venue is proper, 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) and (e) and 27 of the Exchange Act, [15 U.S.C. §§77u(d) and (e) and 78aa].

12. Garland and Holland, directly or indirectly, singly or in concert, made use of the means or instruments of transportation and communication in, and the means or instrumentalities of interstate commerce or of the mails, in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

13. Certain of the transactions, acts, practices and courses of business alleged herein took place in the Northern District of Texas.

PARTIES

14. Plaintiff 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)].

15. Defendant Gene Irving Garland, Jr., age 44, is a resident of Plano, Texas, and since at least 1995, has been doing business as RPFS. Garland, assisted by Holland, directed all business activity of RPFS. During investigative testimony before the

Commission staff, Garland asserted his Fifth Amendment right not to incriminate himself in response to questions concerning his sales of securities.

16. Defendant Sharla Dawn Holland (“Holland”), age 32, is a resident of Fort Worth, Texas, and as office manager of RPFS was responsible for the daily operations of the company, including depositing investor funds, issuing checks, and communicating with investors. Holland also solicited investors to purchase securities.

THE DEFENDANTS’ SCHEME TO DEFRAUD

17. Beginning in approximately 1995 and continuing through at least February 2000, defendants Garland and Holland, in combination and with others, solicited and caused to be solicited, numerous individuals to purchase what the defendants purported to be annuity contracts which were represented by the defendants to be safe investments, yielding at least 11 percent annually. The defendants represented to certain investors that the annuities’ “guaranteed” returns would be derived from the placement of investor funds with established insurance companies.

18. The defendants utilized marketing or “lead” lists in conducting a general solicitation to locate potential investors for their scheme. To attract investors and gain their confidence, the defendants offered estate-planning services such as the preparation of “revocable living trusts” for elderly individuals in the Dallas/Fort Worth area. By offering this service, the defendants were able to obtain detailed financial information about potential investors, including the extent and nature of their assets.

19. After acquiring personal financial information concerning prospective investors, the defendants mailed offering documents that solicited investments in a “limited issue private annuity” or “private split annuity” to substantially all persons who

indicated an interest in the defendants' trust program. These documents represented that the "private annuities" offered interest rates of not less than 11 percent and stated that higher rates were anticipated.

20. Investors were encouraged to liquidate legitimate investments, such as bank certificates of deposit and money market accounts, and withdraw retirement funds from IRA and other savings accounts to invest in RPFS. As an incentive to liquidate an IRA or pension plan, potential investors were offered a ten percent bonus, purportedly added to the principal investment amount they invested.

21. The defendants gave investors the option to receive their promised interest payments monthly, however they encouraged them to defer their receipt until maturity of the purported annuity.

22. The defendants used funds from later investors to make scheduled interest payments to certain earlier investors who chose not to defer receipt of interest until maturity, and to repay the principal of certain other investors.

23. The defendants prepared and mailed to investors fictitious quarterly investor statements which purportedly reflected interest earned by RPFS for investors.

24. As their annuities purportedly matured, Holland solicited investors to renew or rollover their investment into a new annuity or add funds to an existing annuity.

25. The defendants did not use investor funds as represented. Rather, of \$1.8 million raised from investors, they diverted approximately \$900,000 for their personal use, including automobiles, mortgage and rent payments, utility bills, credit card payments, college tuition payments, golf clubs, furniture, hotel bills, liquor bills and tattoos.

26. The defendants and RPFS had minimal business operations, which were insufficient to generate revenue necessary to pay investors the promised returns.

27. By October 1999, Garland and Holland were having difficulty raising funds sufficient to make interest payments or to return principal to investors seeking to liquidate their investments.

28. Investors who called to speak to Garland were “lulled” by Holland with a myriad of false representations as to why their payments or distributions had been delayed, and were routinely assured of the continued safety of their funds.

**THE DEFENDANTS’ MISREPRESENTATIONS
OF MATERIAL FACTS**

29. The written promotional literature and other documents concerning the investment program which the defendants provided to investors and prospective investors, and the defendants’ oral solicitations, included numerous misrepresentations of material facts. Examples of such misrepresentations are outlined below.

a. RPFS “annuities” were falsely represented to be an “income producing and principal conservation vehicle” that provided “contractually guaranteed returns.”

b. The defendants sales literature falsely claimed that the performance of a RPFS “private annuity” was superior to most mutual funds and that an investor would have to purchase a bank certificate of deposit paying interest of over 17 percent to equal the private annuity’s guaranteed return.

c. The defendants falsely represented that the RPFS annuities were safe and risk-free.

d. Garland falsely represented to certain investors that RPFS used the “annuity” proceeds to invest in several life insurance companies.

e. In response to investor inquiries concerning the defendants’ failure to make scheduled payments of interest or principal, the defendants provided false excuses and false assurances of the safety of investor funds.

THE DEFENDANTS’ OMISSIONS OF MATERIAL FACTS

30. The written promotional literature and other documents concerning the investment program which the defendants provided to investors and prospective investors, and the defendants’ oral solicitations, included numerous omissions of material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Examples of such omissions are outlined below.

a. The business operations and investments of RPFS were insufficient to generate the revenue necessary to pay investors the promised returns.

b. Investor funds were not used to purchase annuities or similar products for the benefit of investors.

c. A portion of funds obtained from later investors was used to make principal and interest payments to certain earlier investors.

d. The defendants diverted a material portion of investor funds for their personal purposes.

DEFENDANT GARLAND’S CONTINUING CONDUCT

31. Upon information and belief, the Commission has determined that Garland is likely engaged in a solicitation of elderly persons in connection with another investment scheme.

32. In February 2000, Garland appeared at the Commission's offices in Fort Worth, Texas, pursuant to subpoena, to give testimony concerning his sale of the above-described private annuity investments. As stated in paragraph 15, above, Garland asserted his Fifth Amendment right not to incriminate himself in response to questions concerning his sale of securities.

33. In March 2000, Garland closed the Fort Worth office of RPFS located at 7305 Grapevine Highway #206.

34. In April 2000, Garland purchased a marketing list containing 5,008 names of individuals between the ages of 65 and 80, who reside in the Dallas area. The list was delivered to Garland at 2300 Chula Vista Drive, Plano, Texas.

35. In May 2000, Garland advised a former RPFS employee that he was in need of money and had recently "done some mailings" in the local area. Garland stated that he was waiting for the recipients to send back reply cards so that he could set up appointments with these "customers."

CAUSES OF ACTION

COUNT ONE

Violations of Section 10(b) of the Exchange Act and of Rule 10b-5, thereunder

The Commission re-alleges and restates the matters set forth in Paragraphs 1 through 35 of this Complaint and incorporates by reference those matters as if set forth herein *verbatim*.

Garland and Holland, 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 (a) have employed devices, schemes and artifices to defraud, (b) have made untrue statements of material facts and have 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) have engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

As a part of and in furtherance of their scheme to defraud, Garland and Holland, 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 above.

Garland and Holland made these misrepresentations and omissions knowingly or with reckless disregard for the truth.

By reason of the foregoing, Garland and Holland 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, [17 C.F.R. §240.10b-5] thereunder.

COUNT TWO

Violations of Section 17(a)(1) of the Securities Act

The Commission re-alleges and restates the matters set forth in Paragraphs 1 through 35 of this Complaint and incorporates by reference those matters as if set forth herein *verbatim*.

Garland and Holland, 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 employed devices, schemes or artifices to defraud.

As part of and in furtherance of this scheme, Garland and Holland, 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 above.

Garland and Holland made the above-referenced misrepresentations and omissions knowingly or with reckless disregard for the truth.

By reason of the foregoing, Garland and Holland 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 THREE

Violations of Section 17(a)(2) and (3) of the Securities Act

The Commission re-alleges and restates the matters set forth in Paragraphs 1 through 35 of this Complaint and incorporates by reference those matters as if set forth herein *verbatim*.

Garland and Holland, 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 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 light of the circumstances under which they were made, not misleading.

Garland and Holland, 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 engaged in transactions, practices and courses of business that operated and will operate as a fraud and deceit upon purchasers.

As part of and in furtherance of this scheme, Garland and Holland 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 above.

Garland and Holland, 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, made the above-referenced misrepresentations and omissions negligently.

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

COUNT FOUR

Violations of Section 5(a) and 5(c) of the Securities Act

The Commission re-alleges and restates the matters set forth in Paragraphs 1 through 35 of this Complaint and incorporates by reference those matters as if set forth herein *verbatim*.

46. Defendants Garland and Holland, directly or indirectly, have been offering to sell, selling and delivering after sale, certain securities, and have been, directly and indirectly: (a) making use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, through the use of written contracts, offering documents and otherwise; (b) carrying and causing to be carried through the mails and in interstate commerce by the means and instruments of transportation, such securities for the purpose of sale and for delivery after sale; and (c) making use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

47. As described above, the investments in RPFS' purported annuity programs were offered and sold to the public through a general solicitation of investors. No registration statements have been filed with the Commission or are otherwise in effect with respect to these securities.

48. By reason of the foregoing, Garland and Holland have violated and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. 77e(a) and 77e(c)].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Securities and Exchange Commission respectfully requests that this Court:

I.

Enter an Order temporarily restraining and preliminarily and permanently enjoining defendant Garland, his agents, servants, employees, attorneys and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C. §77e(a), 77e(c) and 77q(a)], and 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];

II.

Enter an Order preliminarily and permanently enjoining defendant Holland, her agents, servants, employees, attorneys and all persons in active concert or participation with her who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C. §77e(a), 77e(c) and 77q(a)], and Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder;

III.

Enter an Order *instantly* freezing the assets of defendant Garland, individually and doing business as RPFS, and defendant Holland, and directing that all financial or depository institutions comply with the Court's Order;

IV.

Enter and order *instanter* that defendant Garland, individually and doing business as RPFS, and defendant Holland file with the Court and serve upon Plaintiff Commission, no later than five (5) 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;

V.

Enter and order *instanter* that defendants Garland and Holland 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;

VI.

Enter an order that the parties may commence discovery immediately, and that notice periods be shortened to permit the parties to require production of documents or to take oral depositions on seventy-two (72) hours notice by facsimile or personal service;

VII.

Enter an order requiring defendants Garland and Holland to disgorge an amount equal to the funds and benefits they obtained illegally as a result of the violations alleged, plus prejudgment interest on that amount;

VIII.

Enter an order imposing civil penalties against defendants Garland and Holland, 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

IX.

Enter an order for such further relief as the Court may deem just and proper.

Dated this 31st day of May 2000.

A handwritten signature in black ink, appearing to read "MARSHALL GANDY", is written over a horizontal line.

MARSHALL GANDY

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