

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**WILLIAM L. ATKINSON, II and
JAMES R. WALKER,**

Defendants.

Civil Action No. 04-1477

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges for its Complaint the following:

INTRODUCTION

1. This matter involves a fraudulent scheme conducted by defendants William L. Atkinson, II (“Atkinson”) and James R. Walker (“Walker”). From 1998 through April 2003, Atkinson and Walker defrauded public investors through the offer and sale of unregistered securities, in the form of investment contracts, issued by Family Heritage Estate Portfolio, Inc. (“Family Heritage” or the “Company”), a private company owned and controlled by the defendants. The defendants fraudulently raised \$6.34 million from approximately 324 investors, to whom they sold purported investments in automatic teller machines (“ATMs”). To date, investors have lost approximately \$4.3 million.

2. As described in detail in this Complaint, Atkinson and Walker, directly and through their salespersons, fraudulently induced individuals to purchase these securities by making numerous material misrepresentations and omissions. The defendants misled investors about, among other things, the cost of purchasing and installing each ATM, and the Company's high operating costs and corresponding lack of profitability. Walker also falsely told investors that their Family Heritage investment "could not lose money," and that their money could be withdrawn at any time. However, Family Heritage's ATM operations did not make money, and the defendants failed to tell investors two crucial facts: that new investor funds were being used to make monthly payments to other investors, and that, beginning in October 2001, defendants stopped purchasing ATMs but continued to accept investor funds.

3. During the course of the fraud, Atkinson, who was President of Family Heritage, and Walker, who was its Executive Vice-President, took \$408,727 and \$433,266, respectively, from Family Heritage, largely consisting of investor funds.

4. As a result of the conduct described in this Complaint, defendants Atkinson and Walker violated, and unless restrained and enjoined will continue to violate, 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), 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

5. The Commission brings this action pursuant to Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Sections 21(d) and 21(e) of the Exchange Act, 15 U.S.C. § 78u(d)

and 78u(e), to enjoin such acts, transactions, practices and courses of business; obtain disgorgement and civil penalties; and for other appropriate relief.

6. This Court has jurisdiction over this action 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.

7. Certain of the acts, transactions, practices, and courses of business constituting the violations alleged herein occurred within the Western District of Pennsylvania and elsewhere, and were effected, directly or indirectly, by making use of the means and instruments of transportation or communication in interstate commerce, or the means and instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange.

DEFENDANTS

8. William L. Atkinson, II, age 66, is a resident of Coraopolis, Pennsylvania. Atkinson founded and was an owner of Family Heritage and, at all times relevant to this Complaint, was Family Heritage's President, Chief Operating Officer, and a Director. Atkinson supervised Family Heritage's daily operations, knew the Company's financial condition, and determined the content of the offering documents used to sell the Company's securities, as described in this Complaint.

9. James R. Walker, age 68, is a resident of Mansfield, Ohio. Walker was an owner of Family Heritage, and was Executive Vice-President and a Director until October 2003. Walker sold Family Heritage's ATM investment contracts in Ohio, and was responsible for more than one-half of the Company's total investment contract sales. At all times relevant to this

Complaint, Walker was familiar with the financial condition of Family Heritage and the details of the ATM operations.

THE DEFENDANTS' FRAUDULENT CONDUCT

10. At all times material hereto, Family Heritage acted by and through defendants Atkinson and Walker.

11. Family Heritage solicited investors through various salespeople, including insurance agents, unregistered investment planners, and Walker. The salespeople offered and sold Family Heritage's ATM investment contracts, using documents and information, including offering packages, approved by Atkinson and supplied by Family Heritage.

12. Atkinson and Walker marketed and sold Family Heritage's ATM investment contracts in more than 20 states, and targeted mostly retired, elderly, and unsophisticated investors. Many investors were on fixed incomes and sought higher monthly income than they could earn from traditional retirement investments and Social Security.

13. Defendants effected the fraudulent sale of Family Heritage securities through two different, but similar, investment structures, neither of which was registered, as required by law. In connection with each of the investment structures, Family Heritage utilized, and investors were provided with, a collection of offering documents that were virtually identical and included, among other things, marketing brochures, a contract, and an offering statement (the "offering package").

The Investment Structures Employed

14. From 1998 through March 2001, the defendants raised approximately \$2.8 million from the sale of purported ATM franchises. All investors in the franchise offering elected a leaseback option under which Family Heritage was responsible for the purchase, installation, and operation of the ATMs. Investors played no role in any aspect of the ATM business or operations.

15. Each franchise investment cost \$25,000, although investors also could invest in \$5,000 increments. Investors who invested less than \$25,000 co-owned their ATM with other investors.

16. As outlined in the offering package, under the franchise/leaseback contracts, Family Heritage was to pay investors the equivalent of either a 12% or 15% annual return on their investment, which payments were to be made on a monthly basis. These monthly payments were not dependent upon the profitability, or lack of profitability, of ATM operations. The investment contract also entitled an investor to receive additional profits once the investor's ATM transactions reached a minimum threshold, although few investors ever received more than the guaranteed investment return.

17. In 1999, the Pennsylvania Securities Commission instituted an enforcement action against Family Heritage, and Family Heritage consented to cease and desist from selling the unregistered sale/leaseback agreements in Pennsylvania. As a result of this action by the Pennsylvania Securities Commission, the defendants restructured Family Heritage's investments,

calling the new investment vehicle “partnerships.”

18. From November 2000 through April 2003, Atkinson and Walker raised approximately \$3.54 million in additional investor funds from the sale of these purported partnerships. In reality, these ATM investments were securities in the form of investment contracts, and, as with the previous offering, the defendants did not register the offering of these securities.

19. The partnership investment contracts operated in the same way as the franchise/leaseback investment contracts and were not, in fact, partnerships. Under this “new” structure, Family Heritage and investors entered into a “partnership agreement.” Investors contributed \$25,000 per partnership for ownership of one ATM, and Family Heritage contributed goodwill and management services. Like the prior investment structure, investors could invest in \$5,000 increments to co-own their ATMs with other investors.

20. The partnership investment contracts guaranteed that Family Heritage would pay each investor a fixed 12% annual return, payable monthly. These monthly returns were not dependent upon the profitability or lack of profitability of ATM operations. Investors also were entitled to 60% of partnership net income, although few, if any, investors ever received such profit payments.

21. The “partnership agreements” between investors and Family Heritage did not accurately reflect the actual investment arrangements. The agreements characterized the investor as the “majority partner,” with the right and ability to control partnership decisions. In fact, like the franchise/leaseback investment structure, Family Heritage controlled all aspects of the

investment, and was responsible for the purchase, installation, and operation of the ATMs.

Investors played no role in any aspect of the ATM business or operations.

22. Family Heritage's payments to investors were not dependent upon income generated by an investor's specific ATM. Rather, the defendants pooled all investor funds and used these commingled funds to make these payments, consisting primarily of new investor funds, together with some minimal ATM-generated revenue realized from all Family Heritage ATMs in operation.

**Defendants Misled Investors By Misrepresenting Material Facts
and Failing To Disclose Material Information**

23. In general, Family Heritage purchased ATMs for approximately \$1,500 to \$2,500. Installation costs ranged from \$5,000 to \$6,000.

24. Family Heritage's costs for maintaining and operating the ATMs were high and, from the beginning of ATM operations, revenues generated from ATM operations were insufficient to pay those costs. As a result, the ATM operations were not profitable.

25. In fact, between late 1998 and the end of 2000, more than 90% of the company's sales revenue came from investor funds. In 2001 and 2002, investor funds provided at least 76% of Family Heritage's total sales revenue. In reality, continued ATM business operations, as well as monthly payments to investors, depended upon the Company's receipt of new investor funds. The defendants never told investors this crucial fact.

26. Beginning in October 2001, the defendants stopped acquiring or installing ATMs for new investors. However, Atkinson and Walker never told investors that they had done so, and ultimately accepted money from 89 investors for the purchase of non-existent ATMs.

Defendants used these funds to either make promised payments to existing investors, or to pay for Company operations, including their own salaries and bonuses.

27. Atkinson caused Family Heritage to send false and untrue letters to these new investors, which stated that information identifying their newly-purchased ATM would follow, giving the false impression that the Company intended to acquire, install, and operate new ATMs for those investors.

28. Until May 2003, Atkinson authorized Family Heritage to mail the promised payments to investors each month despite the lack of profitability from ATM operations and the Company's financial difficulties. Indeed, Atkinson was responsible for Family Heritage's practice of making those payments immediately after receiving a new investor's funds, even though the ATMs did not generate revenue for months, if ever. In fact, even prior to suspending the acquisition of ATMs, Atkinson knew that the Company often delayed the purchase, installation, and operation of ATMs for months.

29. In the Family Heritage offering packages and otherwise, Atkinson and Walker intentionally or recklessly misled investors about the risks of the Family Heritage ATM partnership investment.

30. In the Family Heritage offering packages and otherwise, Atkinson and Walker intentionally or recklessly failed to disclose to potential investors that the cost of acquiring and installing an ATM was only a fraction of the \$25,000 investment cost.

31. In the Family Heritage offering packages and otherwise, Atkinson and Walker intentionally or recklessly failed to disclose to investors that the ATMs were not profitable

because operational costs were high and the ATMs did not produce sufficient revenue to cover those costs.

32. In the Family Heritage offering packages and otherwise, Atkinson and Walker intentionally or recklessly failed to disclose to investors that new investor funds were the primary source of revenues used by Family Heritage to pay investors their guaranteed monthly investment return.

33. In the Family Heritage offering packages and otherwise, Atkinson and Walker intentionally or recklessly failed to disclose to investors that, beginning in October 2001, Family Heritage stopped acquiring and installing ATMs.

34. In the Family Heritage offering packages and otherwise, Atkinson and Walker intentionally or recklessly failed to disclose that the primary and largest source of the Company's revenue was not the ATM business, but, rather, investor funds. In addition, in the offering packages and otherwise, Atkinson and Walker reported profits in each year of Family Heritage's operations, when, in fact, Family Heritage's ATM business was never profitable.

35. Defendant Walker spoke to prospective investors in person and by telephone, using the Family Heritage offering documents in his solicitations. In addition to the material misrepresentations and omissions in the written offering documents, Walker intentionally or recklessly falsely told investors that they "could not lose" their money if they invested in Family Heritage and that they could withdraw their invested principal from Family Heritage at any time.

36. During the course of the fraud, Atkinson took salary, bonuses, and purported loans totaling \$408,727 from Family Heritage. Walker received salary and bonuses totaling

\$413,227 from Family Heritage. From May 2000 through June 2002, Family Heritage also paid Walker's insurance agency \$20,039 for consulting services.

37. To date, investors have lost approximately \$4.3 million. In October 2003, the Court of Common Pleas of Allegheny County, Pennsylvania, appointed a receiver for Family Heritage, and the receiver has operated the Company since that time.

FIRST CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder

38. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 37, above, as if the same were fully set forth herein.

39. From 1998 through April 2003, as a result of the conduct alleged herein, defendants Atkinson and Walker, in connection with the offer, purchase, or sale of securities, directly or indirectly, by use of the means or instruments of transportation or communication in interstate commerce, or the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

- (a) employed devices, schemes, or artifices to defraud;
- (b) obtained money or property by means of, or made, untrue statements of material fact, or omitted 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; and
- (c) engaged in acts, transactions, practices, or courses of business which operated as a fraud or deceit upon offerees, purchasers, and prospective purchasers of securities.

40. By reason of the foregoing, Atkinson and Walker violated 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, thereunder.

SECOND CLAIM FOR RELIEF

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

41. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 40, above, as if the same were fully set forth herein.

42. From 1998 through April 2003, defendants Atkinson and Walker, directly or indirectly, offered for sale and sold securities in the form of investment contracts, and made use of the means and instruments of transportation and communication in interstate commerce, and of the mails, to sell and offer to sell such securities. Atkinson and Walker caused such securities to be carried through the mails and in interstate commerce, by the means and instruments of transportation, for the purpose of sale and delivery after sale.

43. With respect to the securities sold by Atkinson and Walker, no registration statements were filed with the Commission or were in effect at the time of the conduct described herein, and no valid exemption from registration was available.

44. By reason of the foregoing, Atkinson and Walker violated Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue an injunction permanently restraining and enjoining defendants Atkinson and Walker from violating Sections 5(a), 5(c) and 17(a) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c), and 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, thereunder.

II.

Order defendants Atkinson and Walker to disgorge the ill-gotten gains, including, but not limited to, salaries, bonuses, commissions and loans, that they derived from the activities set forth in this Complaint, together with prejudgment interest.

III.

Order defendants Atkinson and Walker to pay civil penalties, pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C.

§ 78u(d)(3), in an amount to be determined by the Court, as a result of the violations set forth herein.

IV.

Order such other and further relief as this Court may deem just and appropriate.

Respectfully submitted,

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