

2. Phillips has induced at least 39 investors, including certain of his long-time Iron Street brokerage customers, to invest as much as \$2.5 million with Sagebrush, which he falsely portrays as a registered broker dealer with accounts insured by the Securities Investor Protection Corporation (“SIPC”). In fact, Phillips sends the investors sham Sagebrush account statements that bear the SIPC logo and set forth the purported investments that Phillips has supposedly purchased with their funds. These account statements falsely affirm that customer accounts are “protected up to \$3,000,000.”

3. Phillips lures investors to Sagebrush—many of whom are elderly and unsophisticated long-time friends and acquaintances—by promising them income-generating, safe investments.

4. During the course of his scheme Phillips periodically has made small payments to investors—in apparent *Ponzi* style—and satisfies investors’ liquidation requests with the recent deposits of new investors. Bank records also reveal that Phillips is treating the Sagebrush bank account as his personal account: in a three month period (December 29, 2004 through March 16, 2005), Phillips personally received over \$16,500 from the Sagebrush account.

5. It also appears that at least \$12,000 of investors’ funds flowed from the Sagebrush account to Phillips’s friend, Relief Defendant Kirby Curry.

6. Since learning of the discovery of his fraud in late March 2005, Phillips has withdrawn over \$75,000 of the \$532,000 in a Sagebrush bank account.

7. By reason of these activities, Defendant has 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]. The Commission, in the interest of protecting the public from any further fraudulent activity, brings this action against Defendant seeking temporary, preliminary and permanent injunctive relief, disgorgement of illicit profits, plus accrued prejudgment interest and a civil monetary penalty. Additionally, the Commission is seeking disgorgement, plus prejudgment interest, from the Relief Defendant, a person to which Phillips diverted investor funds, regarding all funds derived, directly or indirectly, from the Defendant’s fraudulent conduct. Finally, the Commission seeks an asset freeze against Defendant and Relief Defendant, an accounting and other incidental relief, including the appointment of a receiver to take possession of Defendant’s and Relief Defendant’s assets so that investor assets will not be further dissipated.

II. JURISDICTION

8. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. §78u(d)] to enjoin the Defendant from future violations of the federal securities laws. The Commission also seeks disgorgement of ill-gotten gains from the Defendant, plus prejudgment interest, and civil penalties 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)]. The Commission is also seeking disgorgement, plus prejudgment interest, from the Relief Defendant, regarding all funds derived, directly or indirectly, from the Defendant’s fraudulent conduct.

9. This Court has jurisdiction over this action pursuant to §22(a) of the Securities Act [15 U.S.C. §77v(a)] and §27 of the Exchange Act [15 U.S.C. §78(aa)] and Title 28 U.S.C. §1331. Defendant, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, practices and courses of business described in this *Complaint*.

10. Venue is proper because many of the transactions, acts, practices and courses of business described below occurred within the jurisdiction of the Northern District of Texas.

III. DEFENDANT

11. Philip D. Phillips, age 61, is a resident of Amarillo, Texas. Phillips has been a registered representative associated with Iron Street since January 2000. Prior to his association with Iron Street, Phillips was associated with various other registered broker dealers from 1985 to 2000. In April 1985, Phillips pled guilty to a misdemeanor criminal charge of making a false statement in connection with a bank fraud. Phillips operated his scheme through American Heartland Sagebrush Securities Investments Inc. and Sagebrush Securities, American Heartland, Inc., entities that are mere d/b/as created and controlled by Phillips, who fraudulently depicts them as registered broker-dealers.

IV. RELIEF DEFENDANT

12. Kirby J. Curry is a resident of Amarillo, Texas and the owner and operator of the R & R Bar, a local Amarillo tavern. The Commission believes that Curry received investor funds totaling *at least* \$12,000. Curry is not registered and is not associated with any entity registered with the Commission, and has no known disciplinary history.

V. STATEMENT OF FACTS

A. Background

13. Phillips's scheme came to light on March 24, 2005, when Iron Street conducted a unannounced inspection of its Amarillo branch office after being alerted that Phillips may have been generating bogus account statements.

14. When Iron Street's President, Robert Hamman, arrived at Phillips's one-man office, Phillips signed the standard inspection checklist Hamman presented to him, in which Phillips certified that he was not engaging in any "outside business activities." The inspection, however, quickly uncovered that Phillips was operating another business that appeared to be an illegal investment scheme.

15. Hamman found a check register for an account at First Bank Southwest Amarillo under the name "Sagebrush Securities, American Heartland, Inc.," a name Hamman did not recognize, and a separate folder containing a stack of account statements—most of them handwritten on a copied form, but some of them typed with a typewriter—issued by "American Heartland Sagebrush Securities Investments Inc."

16. The letterhead on the account statements listed the Sagebrush address as Iron Street's Amarillo address, bore the SIPC logo, and listed Phillips as the representative.

17. In fact, Sagebrush is not a registered broker-dealer nor a SIPC member.

18. When confronted with this evidence (hours after he certified that he was conducting no outside business activities), Phillips declared that it was a "private deal" that he "started twenty years ago." Phillips stated that the securities purportedly purchased for

Sagebrush customers were held in certificate form—in Phillips’s name—and were located in his safety deposit box. Phillips told Hamman that he kept no records of Sagebrush’s investment activity, preferring to keep the information “in his head.”

19. To explain the recent securities transactions listed on some of the account statements (for which certificates could not have been issued), Phillips stated that one of his friends, Curry, a local bar owner who received a \$12,000 loan from Sagebrush, conducted Sagebrush’s trading through an on-line discount broker.

20. Phillips told Hamman that the securities purchased for Sagebrush customers were being held in Curry’s name. Curry subsequently advised Hamman that he did, in fact, trade for Sagebrush, but that he did not own a computer and relied on others to place the trades. Subsequently, Phillips admitted that he “may not have all of the [stock] certificates,” but he would make “a cash deposit in place of them.”

21. Phillips has been totally uncooperative in the Commission’s investigation refusing to produce documents as required by law. Phillips dodged the Commission’s attempts to meet with him at his office—in one instance actually denying his identity to a Commission staff member. On the phone, he refused to answer questions, but stated that Sagebrush is “a corporation that does stocks.”

22. When Phillips finally showed up to meet with the Commission staff at his office in Amarillo, he refused to talk, stating only that he was represented by counsel. His counsel has advised that Phillips will assert his 5th privilege and refuse to provide testimony or documents to the Commission.

23. Most critically, Phillips has begun to deplete the Sagebrush account. On March 22, 2005, the balance in the Sagebrush account was \$532,205.00. As of April 1, 2005, the balance had declined to \$456,483.38. Since the discovery of his fraud, Phillips has withdrawn over \$75,000 from the Sagebrush account.

B. Phillip's Fraudulent Scheme

24. Possibly as early as twenty years ago, Phillips began pitching his investment scheme to his brokerage customers and to non-customers, apparently by word-of-mouth. Based on a review of the account statements, which may not accurately reflect the magnitude of the amount of money invested and which cover a limited time period, Phillips and Sagebrush appear to have raised approximately \$2.5 million.

25. The essence of Phillips's pitch is his promise that Sagebrush will invest in safe, income-producing investments. Phillips apparently speaks to investors about specific securities, and recommends specific stocks, mutual funds, and other securities. Phillips assures the investors that their funds will remain safe, claiming that their funds are SIPC insured.

26. On a monthly or quarterly basis, as evidence of the success and safety of the investments, Phillips disburses cash dividends and interest payments. There is no indication that the investor funds, which are deposited into the Sagebrush account, have ever been used to purchase securities.

27. According to investors, Phillips controls every aspect of Sagebrush. Phillips, unaccompanied, meets with prospective investors to discuss the investment. After he consults with the customer, Phillips chooses the purported investment and directs the flow of funds.

28. Moreover, Phillips prepares sham investor account statements, which he handwrites on a form and later either types or directs others to type. After preparing and typing the statements, Phillips mails them or hand delivers them to Sagebrush's investors on a monthly or quarterly basis.

29. The spurious Sagebrush statements are a critical component of the Commission's evidence. Because the bogus statements provide individualized securities information, Phillips generates the impression that the investors own securities in their names. In reality, the stocks and securities—if they exist at all, which belies the evidence—are all held in either Phillips's or Curry's name. Furthermore, the bogus account statements falsely claim that investor accounts are “protected up to \$3,000,000.”

C. Investors

1. Leasa Taylor

30. Leasa Taylor, a resident of Amarillo, is a recent Sagebrush investor. In November 2004, Taylor invested \$87,000 with Phillips and Sagebrush.

31. According to Ms. Taylor's November 30, 2004 Sagebrush account, Phillips represented that he invested all of the funds in “Advance Government Resources.” However, there is no evidence that Taylor's funds were used to acquire securities.

2. Dorothy Van Deventer

32. Dorothy Van Deventer of Amarillo, is another Sagebrush investor. Her late husband had been one of Phillips's long-time customers. After her husband passed away, she

asked Phillips for investment advice, telling him that she wanted to generate income in a safe investment vehicle.

33. Phillips recommended that he purchase on her behalf "Viking Royalty." He told her the investment was safe and insured, and that it was paying well. Relying on his investment experience and recommendation, she opened an account with Phillips and purportedly purchased Viking Royalty shares.

34. In October 2004, Ms. Van Deventer gave Phillips and Sagebrush \$4,665 to purchase "Petro Fund," another security that she discussed with Phillips. He again assured her that her investment was safe.

35. While her account statements reflect that she owns 2,850 shares of Viking Royalty and 600 shares of Petro Fund, there is no indication that either of these securities are held in her name.

D. Use of Investors' Proceeds

36. Although the Commission is not certain of the disposition of all investor funds, some of the funds were initially deposited into the Sagebrush account. Phillips is an authorized signatory on the account.

37. While bank records show no evidence of securities purchases or sales, they do reveal that Phillips is misusing investor's funds. For example, the Sagebrush check registry establishes that on December 29, 2004, Phillips issued check #6270 to himself in the amount of \$10,000. The next day, December 30, 2004, Phillips's *personal* checking account registry reflects a deposit in the same amount.

38. In less than a three month period, Phillips personally received over \$16,500 from the Sagebrush account. Moreover, it appears from the notations on the Sagebrush check registry that Phillips is using Sagebrush funds to pay bills, such as cable, water, and insurance. Finally, the Commission's review of the Sagebrush check registry indicates that Curry has received at least \$12,000 from Sagebrush. That figure is consistent with Phillips's earlier revelation to Hamman that Sagebrush had loaned Curry \$12,000 to open a bar.

E. Ongoing Activities

39. According to the investors interviewed by the Commission, Phillips is still contacting investors and attempting to raise additional funds. For example, in late March 2005, just days before the unannounced inspection by Hamman, Dorothy Van Deventer, an elderly woman, met with the manager of her variable life insurance annuity, seeking to liquidate the her investment to obtain additional funds to invest with Phillips and Sagebrush.

40. Similarly, early last month, Leasa Taylor invested an additional \$7,000 with Phillips and Sagebrush..

41. Finally, Phillips continues to lull investors by preparing and issuing false investor statements.

CLAIMS

FIRST CLAIM

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

Plaintiff Commission repeats and incorporates paragraphs 1 through 41 of this *Complaint* by reference as if set forth *verbatim*.

42. Defendant, 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) has employed devices, schemes and artifices to defraud, (b) has 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) has engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

43. As a part of and in furtherance of his scheme to defraud, Defendant, directly and indirectly, prepared, disseminated, used, issued and made oral presentations, false and misleading account statements, written offering documents, promotional materials, investor and other correspondence, 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.

44. Defendant made these misrepresentations and omissions knowingly or with reckless disregard for the truth.

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

SECOND CLAIM

Violations of Section 17(a) of the Securities Act

46. Plaintiff Commission repeats and incorporates paragraphs 1 through 41 of this *Complaint* by reference as if set forth *verbatim*.

47. Defendant, directly or indirectly, singly or 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, has (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.

48. As part of and in furtherance of this scheme, Defendant, directly and indirectly, prepared, disseminated, used, issued and made oral presentations, false and misleading account statements, written offering documents, promotional materials, investor and other correspondence, 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.

49. Defendant made the above-referenced misrepresentations and omissions knowingly or with reckless disregard for the truth. Defendant, in addition, was negligent in connection with their offer and sale of the securities alleged in this *Complaint*.

50. By reason of the foregoing, the Defendant 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 the Relief Defendant as Custodian of Investor Funds

51. Plaintiff Commission repeats and incorporates paragraphs 1 through 41 of this *Complaint* by reference as if set forth *verbatim*.

52. Relief Defendant received, directly or indirectly, funds and/or other benefits from the Defendant, which either are the proceeds of, or are traceable to the proceeds of, the unlawful activities alleged herein and to which they have no legitimate claim to these funds and property.

53. Relief Defendant obtained the funds and property as part of and in furtherance of the securities violations alleged and under circumstances in which it is not just, equitable or conscionable for him to retain the funds and property, and accordingly, he has been unjustly enriched.

54. The Commission is entitled to an order requiring that Relief Defendant disgorge these funds and property plus prejudgment interest thereon.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

I.

Enter a temporary restraining order restraining Defendant from continuing violations of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] and 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].

II.

Enter a preliminary injunction enjoining Defendant from further violations of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] and 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].

III.

Permanently enjoin Defendant and 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 Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] and 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].

IV.

Require a full and accurate accounting and an interim asset freeze of all assets of Defendant and Relief Defendant until a full and accurate accounting can be made of all investor monies raised in this scheme and a determination made as to the disposition of those assets.

V.

Enter and order *instanter* that Defendant and Relief Defendant 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.

Order Defendant to disgorge an amount equal to the funds and benefits he obtained as a result of the violations alleged, plus prejudgment interest on that amount, and Relief Defendant to disgorge an amount equal to the funds and benefits he obtained directly or indirectly, from the Defendant, which either are the proceeds of, or are traceable to the proceeds of, the unlawful activities alleged herein, plus prejudgment interest on that amount.

VIII.

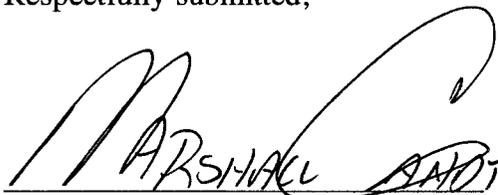
Order civil penalties against Defendant pursuant to Section 20(d) of the Securities Act, Section 21(d)(3) of the Exchange Act for violations of the federal securities laws as alleged herein; and

IX.

Such other and further relief as the Commission may show itself entitled.

DATED: April 7, 2005.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "MARSHALL GANDY". The signature is stylized with large, sweeping loops.

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CIVIL COVER SHEET

2-05CV-107-J

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I.(a) PLAINTIFFS

SECURITIES AND EXCHANGE COMMISSION

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U S PLAINTIFF CASES)

(c) ATTORNEY (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Marshall Gandy, Esq. Securities & Exchange Commission Burnett Plaza, Suite 1900 801 Cherry Street, Unit #18 Fort Worth, TX 76102-6882 (817) 978-6464

DEFENDANTS

PHILIP D. PHILLIPS, individually and doing business as AMERICAN HEARTLAND SAGEBRUSH SECURITIES INVESTMENTS, INC. and SAGEBRUSH SECURITIES, AMERICAN HEARTLAND, INC. and KIRBY J. CURRY, Relief Defendant

County of Residence of First Listed Defendant: Potter (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business in Another State, Foreign Nation

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (Specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judge

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

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") and Rule 10b-5 thereunder [15 U.S.C. §78j(b) and 17 C.F.R. §240.10b-5]

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND

VIII. RELATED CASE(S) (See Instructions):

IF ANY JUDGE DOCKET NUMBER DATE APRIL 7, 2005 SIGNATURE OF ATTORNEY OF RECORD MARSHALL GANDY

FOR OFFICE USE ONLY Receipt # AMOUNT APPLYING IFP JUDGE MAG JUDGE