

DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY, IDAHO
12 OCT -1 PM 4: 27

LAWRENCE G. WASDEN
Attorney General

ALAN CONILOGUE
Deputy Attorney General
State of Idaho
P. O. Box 83720
Boise, ID 83720-0031
Telephone: 208.332.8093
Fax: 208.332.8016
ISBN 3196
alan.conilogue@finance.idaho.gov

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR BONNEVILLE COUNTY**

STATE OF IDAHO, DEPARTMENT OF
FINANCE, SECURITIES BUREAU,

Plaintiff,

vs.

KYLE D. BENNETT, individually and
dba ENLIGHTENED PARADIGM and
dba FIRST TETON FINANCIAL, LLC,
and BART TED TAYLOR, individually
and dba FIRST TETON FINANCIAL,
LLC,

Defendants.

Case No. CV-12-5564

COMPLAINT

Fee category: Exempt

COMES NOW the State of Idaho, Department of Finance, Gavin M. Gee, Director, (the Department), by and through its counsel, Alan Conilogue, Deputy Attorney General, and upon information and belief, complains and alleges as follows:

This action is brought pursuant to Idaho's Uniform Securities Act (2004), Idaho Code § 30-14-101 *et seq.* (the Act), and in particular Idaho Code § 30-14-603, wherein the Department is authorized to bring actions seeking injunctive and other relief against persons who have either

violated or are about to violate provisions of the Act or any rule promulgated thereunder.

VENUE

1. The acts and practices alleged herein comprising violations of law by the above-named Defendants occurred primarily in Bonneville County, but also elsewhere in Idaho. Defendants resided or were located in Bonneville County, Idaho when the alleged acts constituting violations of the Act were committed.

JURISDICTION

2. Defendants, in connection with the offer and sale of securities, made material misrepresentations and omitted material information in connection with the offer or sale of such securities, and engaged in a course of business that operated as a fraud or deceit on other persons, in violation of Idaho's Uniform Securities Act (2004), Idaho Code § 30-14-101 *et seq.* Jurisdiction is conferred under the provisions of that Act.

3. The acts and practices herein comprising violations of law by the below-named defendants occurred in Bonneville County and elsewhere in the state of Idaho.

DEFENDANTS AND RELATED PARTIES

4. Defendant **Kyle D. Bennett** (Bennett) is an individual residing in Ammon, Bonneville County, Idaho who sometimes conducted business under the assumed business name of Enlightened Paradigm (Paradigm), and sometimes under the name First Teton Financial, LLC (Teton). Teton is a limited liability company formed under the laws of the State of Idaho, with a primary place of business in Idaho Falls, Bonneville County, Idaho. Paradigm is an assumed business name of Bennett

5. Bennett has been licensed to sell insurance in Idaho since December, 2004, and has been doing business as Paradigm since May, 2006. He was also an organizer of Teton with

Defendant Taylor, below.

6. Bennett has never been registered with the Department as a broker-dealer, a broker-dealer or issuer agent, an investment adviser, or an investment adviser representative.

7. Bennett's Paradigm business card says he is "Creating Freedom, Security and Wealth." The card also offers "Personal Coaching for Life," and "Protection • Savings • Growth" and "Life Insurance • Disability Insurance • Health Insurance • Annuities."

8. Defendant **Bart Ted Taylor** (Taylor) is an individual residing in Ammon, Bonneville County, Idaho who also sometimes conducted business under the Teton name.

9. Taylor has been licensed to sell insurance in Idaho since 2009, and has been doing business with Bennett and Teton since then.

10. Taylor has never been registered with the Department as a broker-dealer, a broker-dealer or issuer agent, an investment adviser, or an investment adviser representative.

CASE SUMMARY

11. The statements in this Summary of the Case are not part of the allegations supporting the Department's causes of action, but are simply intended to provide a framework for understanding this regulatory enforcement lawsuit.

12. Bennett and Taylor offered and sold securities in the form of promissory notes to around twenty-four (24) investors, in an aggregate amount of around one million three hundred thousand dollars (\$1,300,000).

13. Between April 2008 and July 2011, Bennett and Taylor solicited and accepted investor money and sent it to a Utah company named Horizon Auto Funding, LLC (Horizon Auto), supposedly to be used to fund loans to automobile purchasers. Horizon Auto filed for Chapter 11 bankruptcy protection on October 12, 2011, and investors have been unable to obtain

return of their invested monies.

14. Bennett and Taylor defrauded investors by misrepresenting the safety and value of the investment, and by omitting from their solicitations certain material information.

15. Bennett and Taylor failed to register as agents of the issuer of these securities, as required by law.

16. In the course of their insurance business and while advising investors to invest in Horizon Auto, Bennett and Taylor acted as investment advisors, but failed to register as investment advisors, as required by law.

FACTS

17. Bennett and Taylor are independent insurance agents and, during all times relevant herein, wrote life insurance contracts through Horizon Financial and Insurance Group (Horizon), a Utah company controlled and owned by Dee Randall (Randall). Horizon provided office support, such as marketing and payroll operations, for Bennett and Taylor

18. Randall also formed Horizon Auto Funding, LLC (Horizon Auto), to raise funds to finance automobile loans. Investments in Horizon Auto were securities, which Randall admitted in notice filing documents filed with the Department in 2007.

19. Several of Bennett's and Taylor's clients invested in Horizon Auto.

20. The economic downturn beginning in 2008 put strains on Randall's operation, and eventually caused him to file for personal bankruptcy protection, in December, 2010. Horizon, Horizon Auto and other related Horizon entities filed for bankruptcy protection in October, 2011.

21. It is yet unclear whether investors can recover all or any of their investment, but prospects are not good.

22. Bennett and Taylor referred their clients to Horizon Auto, helped them invest in

it, and received compensation for these referrals.

23. Bennett referred about ten investors to Horizon Auto. These investors invested about \$621,999. Bennett received at least \$7,887.80 in commissions from these investments.

24. Taylor referred about fourteen investors to Horizon Auto. These investors invested about \$687,534. Taylor received at least \$26,700 in commissions from these investments.

25. Neither Bennett nor Taylor were ever registered with the State of Idaho or the National Association of Securities Dealers (NASD) (now known as the Financial Industry Regulatory Authority, or FINRA) as a broker-dealer, or as a broker-dealer agent.

26. Neither Bennett nor Taylor were ever registered with the State of Idaho as an investment adviser or as an investment advisor representative.

27. A description of investors, investments and the misrepresentations and omissions made by Bennett and Taylor in the course of promoting the investment follows. This is not an exhaustive list of investors or the statements made to them.

Bennett Investors

28. **J.R. and G.R.** invested a total of \$145,184.77 in Horizon Auto through Bennett, in April 2011. Bennett introduced J.R. and G.R. to Randall, and was present during Randall's sales pitch. Thereafter, Bennett brought investment paperwork to J.R. and G.R. at their home, and after obtaining their signatures, he left with it. Bennett did not tell J.R. and G.R. that Randall had filed for personal bankruptcy protection before they invested.

29. **K.T. and A.T.** invested a total of \$151,021.14 in Horizon Auto through Bennett, in April and May, 2008, and in March, 2011. Bennett was paid a commission on part or all of this investment in an unknown amount, but was paid at least \$2,887. Bennett provided the

specific details of the Horizon Auto investment to K.T. and A.T. In order to induce them to invest, Bennett told them that the Horizon Auto-related car business dealership was stable, was doing very well, and that it was a low risk investment. Bennett did not tell K.T. and A.T. that Randall had filed for personal bankruptcy protection before they made March 2011 investment. Bennett also assisted K.T. and A.T. with financial planning.

30. **C.T. and S.T.** invested a total of \$77,936.23 in Horizon Auto through Bennett, in 2010 and 2011. Bennett assisted C.T. and S.T. with developing a financial plan, and during that process Bennett recommended the Horizon Auto investment. C.T. and S.T. got the details of the Horizon Auto investment from Bennett and talked with Randall only after initially investing through Bennett. In order to induce them to invest, Bennett told them the Horizon Auto-related car business dealership was doing very well, and that it was a low risk investment. Bennett told them that he was an investor with Randall, and that the investment had been going well for a long time. Bennett provided the investment paperwork to C.T. and S.T. Bennett did not tell C.T. and S.T. that Randall had filed for personal bankruptcy protection before they made 2011 investments.

31. **A.B.** invested \$52,446.52 in Horizon Auto through Bennett in March 2009. Bennett assisted A.B. with developing a financial plan, and during that process, Bennett recommended that A.B. diversify his investments by pulling out of the stock market and placing half of his funds in the Horizon Auto investment and the other half in an annuity. Bennett gave A.B. the details of the investment, said it was a low risk investment, and helped him with the paperwork for it.

32. **B.D.** invested \$165,702.56 in Horizon Auto through Bennett in July 2011. Bennett assisted B.D. with developing a financial plan, and helped B.D. complete the paperwork

for the Horizon Auto investment. Bennett did not tell B.D. before she invested that Randall had filed for personal bankruptcy.

Taylor Investors

33. **L.S. and J.S.** invested \$219,741.99 in Horizon Auto through Taylor, in September and October, 2010. Taylor was paid a commission of 7% on part or all of this investment. In order to induce them to invest, Taylor told them that Horizon Auto was a safe investment paying a high rate of return. Taylor told L.S. and J.S. that he had “looked at” the Horizon Auto-related car dealership and that he had “done the leg work” to determine that it was a safe investment.

34. Taylor recommended that L.S. and J.S. sell some securities they owned, specifically, State Farm mutual funds, in order to fund the Horizon Auto investment. Taylor assured L.S. and J.S. that they would recoup the early withdrawal penalty from the higher return expected from the Horizon Auto investment.

35. **B.B.** invested \$104,004.43 in Horizon Auto through Taylor, in April, 2010 and February, 2011. Taylor was paid a commission of 7% on this investment. Taylor put B.B. in contact with Randall and served as a point of contact between the two. Taylor also helped B.B. develop a financial plan. Taylor did not tell B.D. before he made the February, 2011 investment that Randall had filed for personal bankruptcy.

36. **G.N.** invested \$35,407.91 in Horizon Auto through Taylor, in April, 2010 and was paid a 10% commission on this investment. Taylor helped G.N. develop a financial plan, and recommended that he invest in Horizon Auto. Taylor gave G.N. the specific details of the investment, and took care of the related paperwork. G.N. and his wife talked only with Taylor, and thus got all their information about the investment from Taylor, including that the

investment was low risk. Taylor guaranteed G.N. at least a 10% return on the investment.

37. L.G. invested \$75,000 on December 17, 2010, and an additional amount later. Taylor received a 7% commission on the \$75,000 investment. Taylor gave G.N. the specific details of the investment, and told L.G. that he, Taylor, had successfully invested with Horizon Auto.

Misrepresentations

38. To induce investors to invest, Bennett and Taylor made certain false representations. The misrepresentations were made in the days and weeks preceding any particular investment, and were made to persuade the client to invest. The misrepresentations were made over the telephone, in investors' homes, and in Bennett's and Taylor's offices.

a. Bennett and Taylor represented to some investors that the investment was low risk. This was false because the investment was not low risk, which is evident in that all investors have lost all their money. Further, Bennett and Taylor had no good faith basis to assert that the investment was low risk because they conducted insufficient due diligence research to determine the risk. Thus, when they recommended the investment after Randall had filed for bankruptcy protection, either they did not know of the filing, and therefore obviously did not conduct due diligence research, or they did know of it but withheld that from clients.

b. Bennett told investors that the Horizon Auto-related car business dealership was stable and was doing very well. This was false because a few months after this misrepresentation, Horizon Auto filed for bankruptcy protection.

c. Taylor told investors L.S. and J.S. that he had personally researched the Horizon Auto investment, and had determined that it was safe. This was false because he either did not research or did not adequately research the business, or, did research it and misrepresented its

viability.

Material Omissions

39. Bennett and Taylor did not tell potential investors certain information that would be necessary to make other statements not misleading, and that an investor would likely consider as material to a decision to invest with in Horizon Auto. Bennett and Taylor failed to disclose the following material information:

- a. Information about Randall's and Horizon Auto's financial condition or operating history;
- b. That Randall filed for bankruptcy protection;
- c. That Bennett and Taylor were not registered as agents to sell the securities, as required by Idaho's Uniform Securities Act (2004);
- d. That Bennett and Taylor were required to be registered to sell the Horizon Auto securities;
- e. That they were required to register as investment advisers, but were not registered.

COUNT ONE
(Fraud - False and Misleading Statements)

40. The allegations of paragraphs 1 through 10, and 17 through 39 above are realleged and incorporated herein as if set forth verbatim.

41. Idaho Code § 30-14-501(2) provides that it is unlawful for any person, directly or indirectly, in connection with the offer, sale or purchase of a security, to make an untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

42. Bennett's and Taylor's misrepresentations to prospective investors, as set forth in

paragraphs 28 through 38, were made in connection with the offer, sale or purchase of securities. Bennett's and Taylor's misrepresentations were false and misleading, constituting violations of Idaho Code § 30-14-501(2) as to each misrepresentation to each investor.

43. Bennett's and Taylor's omissions of material facts and failures to disclose to prospective investors as set forth in paragraph 39 and its subparts were made in connection with the offer, sale or purchase of securities. Their omissions of material facts and failures to disclose constitute violations of Idaho Code § 30-14-501(2) as to each omission and failure to disclose to each investor.

COUNT TWO
(Fraudulent Conduct)

44. The allegations of paragraphs 1 through 10, and 17 through 39 above are realleged and incorporated herein as if set forth verbatim.

45. Idaho Code § 30-14-501(3) provides that it is unlawful for any person, directly or indirectly, in connection with the offer, sale or purchase of a security, to engage in an act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

46. Bennett's and Taylor's acts, as set forth in paragraphs 1 through 10, and 17 through 39 above, were made in connection with the offer, sale or purchase of securities. Their conduct as described in paragraphs 1 through 10, and 17 through 39 constituted engaging in transactions, acts, practices, or courses of business which operated as a fraud or deceit upon investors or prospective investors, in violation of Idaho Code § 30-14-501(3) as to each victim. The fraud was accomplished by luring people into the investment with misrepresentations and omissions, particularly when Defendants were not properly licensed or registered, all as alleged in paragraphs 1 through 10, and 17 through 39 above.

COUNT THREE
(Failure to Register as an Agent)

47. The allegations of paragraphs 1 through 10, and 17 through 39 above are realleged and incorporated herein as if set forth verbatim.

48. Idaho Code § 30-14-102(2) states that any individual who represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities is an agent under the Act.

49. Idaho Code § 30-14-402(a) states that it is unlawful for an individual to transact business in Idaho as an agent unless registered with the Department as such.

50. Bennett and Taylor transacted business in Idaho as agents of issuer Horizon Auto when they offered and sold Horizon Auto securities to their clients. At the time of these transactions, neither was registered as an agent with the Department as required by Idaho Code § 30-14-402(a), thereby violating that statute.

COUNT FOUR
(Failure to Register as an Investment Adviser)

51. The allegations of paragraphs 1 through 10, and 17 through 39 above are realleged and incorporated herein as if set forth verbatim.

52. Idaho Code § 30-14-102(15) defines investment adviser as any person who, for compensation, engages in the business of advising others as to the value of securities or the advisability of investing in, purchasing, or selling securities.

53. Idaho Code § 30-14-403(a) states that it is unlawful for a person to transact business in Idaho as an investment adviser unless registered with the Department as such.

54. Bennett and Taylor transacted business in Idaho as investment advisers when they recommended Horizon Auto securities to their clients. Bennett transacted business as an

investment adviser when he recommended that A.B. pull out of the stock market and place half of the proceeds of the sale in the Horizon Auto investment. Taylor transacted business as an investment adviser when he recommended that L.S. and J.S. sell mutual funds in order to fund the Horizon Auto investment.

55. At the time of these transactions, neither was registered as an investment adviser with the Department as required by Idaho Code § 30-14-403(a), thereby violating that statute.

PRAYER FOR RELIEF

WHEREFORE, the Department prays for judgment in favor of the Department and against Bennett and Taylor as follows:

1. That Bennett and Taylor be adjudged to have violated Idaho's Uniform Securities Act (2004), Idaho Code § 30-14-101 *et seq.*, rules promulgated thereunder, and other applicable federal laws and regulations as proven at trial, as to Counts One through Four alleged above, as well as any additional counts proven at trial.

2. That Bennett and Taylor be permanently enjoined from engaging in any act or practice violating any provision of the Act or any rule promulgated thereunder, pursuant to Idaho Code § 30-14-603(b)(1), and in particular, that they be permanently enjoined from selling or offering for sale securities in any form in the state of Idaho.

3. That Bennett be ordered to make restitution to investors, pursuant to Idaho Code § 30-14-603(b)(2)(C) in the amount of six hundred twenty-one thousand nine hundred ninety-nine dollars (\$621,999); that Bennett pay the restitution amount to the Department, to be held for the benefit of and to be delivered to the investors in the most equitable fashion, as determined by the Department in good faith; that the Court award a money judgment in favor of the Department in such amount; and that such restitution be deemed not an asset of the Department.

4. That Taylor be ordered to make restitution to investors, pursuant to Idaho Code § 30-14-603(b)(2)(C) in the amount six hundred eighty-seven thousand five hundred thirty-four dollars (\$687,534); that Bennett pay the restitution amount to the Department, to be held for the benefit of and to be delivered to the investors in the most equitable fashion, as determined by the Department in good faith; that the Court award a money judgment in favor of the Department in such amount; and that such restitution be deemed not an asset of the Department.


5. That Bennett and Taylor each be ordered to pay a civil penalty of up to \$10,000 for each violation of Idaho's Uniform Securities Act (2004) as the Court deems appropriate, pursuant to Idaho Code § 30-14-603(b)(2)(C), for total penalties of at least \$40,000 for each Defendant, and that the Court award a money judgment in favor of the Department in such amount.

6. That the Department be awarded attorney fees and costs incurred in the preparation and prosecution of this action, pursuant to Idaho Code § 12-121, and that the Court award a money judgment in favor of the Department in such amount. Should judgment be taken by default herein, the Department asserts that five thousand dollars (\$5,000) is a reasonable sum for the same.

7. For such further relief as this Court may deem just and equitable under the circumstances.

DATED this 23 day of September, 2012.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



ALAN G. GUE
Deputy Attorney General