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SHARON WIDNER 8:40 A. M.
Clerk District Court
By /s/ Jeanette Anderson Deputy

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR WASHINGTON COUNTY**

STATE OF IDAHO, DEPARTMENT OF)
FINANCE, SECURITIES BUREAU,)
)
Plaintiff,)
)
vs.)
)
ELLIS G. MARTIN,)
)
Defendant.)
_____)

Case No. CV 01-00405

VERIFIED COMPLAINT

Fee category: Exempt

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

1.

This action is brought pursuant to the Idaho Securities Act, Title 30, Chapter 14, Idaho Code (the Act), and in particular, Idaho Code § 30-1442, wherein the Director is authorized to

bring actions seeking injunctive and other relief against defendants who have either violated or are about to violate provisions of the Idaho Securities Act or any rule promulgated thereunder.

2.

The acts and practices alleged herein comprising violations of law by the above-named Defendant occurred in the conduct of trade and commerce in Washington County, Idaho, and elsewhere in the state of Idaho.

3.

Defendant Ellis G. Martin is an Idaho resident whose last known address is 1559 Scheloski Road, Weiser, Idaho. Defendant is the sole proprietor of a health club business known as The Body Shop Fitness Centers, with facilities located in Weiser and Payette, Idaho, and in Ontario and Vale, Oregon.

4.

Beginning on a date uncertain, but at least since November of 1999, the Defendant offered and sold to Idaho residents investments in various business ventures, including The Body Shop Fitness Centers, in the form of investment contracts or promissory notes. The Defendant represented to the Idaho investors that such investments would pay a return of up to forty-five percent (45%) per quarter.

COUNT ONE: FAILURE TO REGISTER SECURITIES

5.

The allegations set forth in paragraphs 1 through 4 above are fully incorporated herein by this reference.

6.

The securities offered and sold by the Defendant to Idaho investors were not registered with the Department as required by Idaho Code § 30-1416.

7.

The Defendant's failure to register such securities constitutes a violation of Idaho Code § 30-1416.

**COUNT TWO: FAILURE TO REGISTER AS
SECURITIES SALESMAN**

8.

The allegations set forth in paragraphs 1 through 7 above are fully incorporated herein by this reference.

9.

At all times relevant to this complaint, the Defendant was not registered by the Department as a salesman to offer for sale securities, as required by Idaho Code § 30-1406. The Defendant's acts of transacting business in the state of Idaho as a securities salesman without having been properly registered constitutes a violation of Idaho Code § 30-1406.

**COUNT THREE: VIOLATIONS OF THE ANTIFRAUD PROVISIONS
OF THE IDAHO SECURITIES ACT - MISREPRESENTATIONS**

10.

The allegations set forth in paragraphs 1 through 9 above are fully incorporated herein by this reference.

11.

The Defendant violated Idaho Code § 30-1403(2), an antifraud provision of the Act, in that he made untrue statements of material facts in connection with the offer and sale of securities in Idaho. The Defendant's misrepresentations included but were not limited to the representation that the securities purchased by investors were collateralized by gym equipment, when in fact no security interest existed in such property.

**COUNT FOUR: VIOLATIONS OF THE ANTIFRAUD PROVISIONS
OF THE IDAHO SECURITIES ACT - OMISSIONS**

12.

The allegations set forth in paragraphs 1 through 11 above are fully incorporated herein by this reference.

13.

The Defendant violated Idaho Code § 30-1403(2), an antifraud provision of the Act, in that he 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. The Defendant's omissions include, but were not limited to, the following:

- (A) The Defendant failed to inform offerees and/or investors of his financial condition and how investor proceeds would be applied;
- (B) The Defendant failed to disclose the nature and amounts of any compensation or other remuneration accruing to the Defendant through the investment programs;
- (C) The Defendant failed to disclose the risks associated with the investment;

- (D) The Defendant failed to disclose that the securities were not registered with the Department, as required by Idaho Code § 30-1416;
- (E) The Defendant failed to disclose that he was not registered with the Idaho Department of Finance as a securities salesman, as required by Idaho Code § 30-1406.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a Judgment in favor of Plaintiff and against Defendant as follows:

- (1) That the Defendant be adjudged to have violated the Idaho Securities Act;
- (2) That the Defendant be permanently enjoined from engaging in any acts, practices, or omissions which would constitute violations of the Idaho Securities Act, Title 30, Chapter 14, Idaho Code, and in particular, that he be permanently enjoined from:

- (A) Selling or offering for sale nonexempt securities in any form in the state of Idaho until such time as the securities have been registered with the Idaho Department of Finance in accordance with Title 30, Chapter 14, Idaho Code;
- (B) Selling or offering for sale nonexempt securities in any form in the state of Idaho until such time as Defendant has registered as a broker-dealer or salesman for a broker-dealer or issuer with the Idaho Department of Finance, in accordance with Title 30, Chapter 14, Idaho Code;
- (C) While engaged in or in connection with the offer, sale or purchase of any security:
 - (1) Employing any device, scheme or artifice to defraud any investors or prospective investors;

- (2) Making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;
- (3) Engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person;
- (4) Aiding, abetting, counseling, inducing or causing any other person to engage in any of the types of conduct described in paragraphs (C)(1), (C)(2), or (C)(3) above.

(3) That the Defendant be prohibited from claiming the availability of, using, or offering or selling securities under any exemptions set forth in the Idaho Securities Act without receiving the prior written consent of the Director;

(4) That the Defendant be ordered to restore to each person in interest any consideration which may be been acquired or transferred in violation of the Idaho Securities Act, and that the court award a money judgment in the amount of at least \$569,183.00, or such amount as is proved at trial, as restitution for the victims of the Defendant's violation(s) of the Idaho Securities Act, pursuant to Idaho Code § 30-1442(3)(a);


(5) That the Defendant be ordered to pay a civil penalty to the Plaintiff in the amount of \$10,000 for each violation of the Idaho Securities Act, pursuant to Idaho Code § 30-1442(3)(b);

(6) That Plaintiff be awarded attorney fees and costs incurred in the preparation and prosecution of this action and reimbursement for investigative efforts, pursuant to Idaho Code § 30-1442(3)(c). If judgment is taken by default herein, that \$5,000 is a reasonable sum for the same;

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

DATED this 26th day of September, 2001.

OFFICE OF THE ATTORNEY GENERAL


A. RENÉ MARTIN
Deputy Attorney General

VERIFICATION

STATE OF IDAHO)
)ss.
County of Ada)

MARILYN CHASTAIN, Bureau Chief of the Securities Bureau of the Department of Finance, State of Idaho, being first duly sworn, deposes and says:

That she has read the foregoing verified complaint, that she knows the contents thereof, and that the same are true to the best of her knowledge and belief.


DATED this 26th day of September, 2001.



MARILYN T. CHASTAIN

SUBSCRIBED AND SWORN to before me this 26th day of September, 2001.





Notary Public for Idaho
Residing at: Kuna, Id
My Commission Expires 7/7/07