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CLERK DISTRICT COURT

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**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR KOOTENAI COUNTY**

STATE OF IDAHO, DEPARTMENT OF
FINANCE, SECURITIES BUREAU,

Plaintiff,

vs.

KENNETH PATRICK PETTICOLAS,

Defendant.

Case No. CV 12-7217

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:

1. 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.

2. Kenneth Patrick Petticolas (Petticolas) is an individual residing in Hayden, Kootenai County, Idaho. The acts and practices herein comprising violations of law by the above-named defendant occurred primarily in Kootenai County, Idaho.

CASE SUMMARY

3. The statements in this Case Summary 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.

4. The Department alleges that Petticolas sold securities in the form of life settlement contracts issued by Retirement Value, LLC (RV), of Texas, and was paid a commission for the sale.

5. Petticolas was well compensated for selling the life settlement contract to investors, but his investors received no return on their investment, and may have lost the investment. Despite demand, the invested funds have not been returned.

6. Petticolas offered and sold unregistered RV securities in Idaho, which is prohibited by law.

7. Also, as a registered agent of a broker-dealer, Petticolas engaged in selling away.

DEFENDANT

8. Defendant Kenneth Patrick Petticolas began his financial services career at least by 1983. Petticolas has maintained an Idaho insurance license since August 1, 1983, through the date of this complaint.

9. Petticolas passed a Series 6 securities exam on September 10, 1990, and passed a

Series 63 securities exam a month later.

10. During all times relevant here, Petticolas conducted an insurance and securities business under the name “Petticolas & Son.”

11. Petticolas was a registered agent of The O. N. Equity Sales Company (ONESCO) in Idaho from January, 2007, through March, 2011¹. ONESCO terminated Petticolas on March 28, 2011 for participating in outside business activity that was not disclosed to ONESCO, activity which would not have been approved by ONESCO had it been disclosed, specifically, for selling life settlements.

12. Petticolas’s last known address is on East Loch Haven Drive in Hayden, Idaho.

FACTS

Retirement Value, LLC

13. Retirement Value, LLC (RV) is a Texas limited liability company formed by Richard H. Gray (Gray) to engage in the business of selling investments in the death benefits of life insurance policies, which policies are also referred to as “life settlement contracts,” or “viatical settlements.” RV marketed and referred to the investments as its “Re-Sale Life Insurance Policy Program.”

14. After an investigation, on March 29, 2010, the Texas Securities Commissioner entered an Emergency Cease and Desist Order against RV and others for engaging in fraud in connection with the offer and sale of securities, for offering for sale unregistered securities and for offering for sale securities without being registered as a dealer or agent.

15. On April 9, 2010, the Texas Insurance Commissioner entered an Emergency Cease and Desist Order against RV and Gray for committing fraudulent and dishonest acts

¹ Petticolas had been registered with ONESCO earlier, from May, 1990, though June, 2004.

and/or engaging in unfair and deceptive acts or practices in the business of insurance.

16. On May 5, 2010, the State of Texas filed a lawsuit against RV, Gray, and others, alleging violations of the Texas Securities Act, to include that the defendants offered and sold unregistered securities; that the defendants and various agents were not registered as dealers, agents or salesman as required by law; that the defendants engaged in fraud and fraudulent practices in connection with the sale of securities; and that the defendants violated the Texas Deceptive Trade Practices Act. RV was placed in receivership because of this action. As of the date of this complaint, the suit is currently pending.

17. Although Gray and RV offered and sold the securities in an allegedly fraudulent manner, the underlying life settlement policies are real, and have value. These are now held by the Receiver. The Receiver has estimated that if it holds the RV Life Settlements to maturity, the investors could obtain 100% return of their investment, give or take 20%. However, this plan was complicated by a subsequent bankruptcy filing. Additionally, holding the securities to maturity entails certain risks, among them that the insured individuals will outlive the paid up premiums, and new premiums will need to be paid to keep the policies in force. The ultimate return to investors is unknown and speculative.

18. In November, 2009, Petticolas entered into a licensee agreement with RV. This agreement provided that Petticolas would receive a 10% commission of client funds placed with RV, and additional small percentages based on other occurrences.

Petticolas' Sales of Unregistered Securities

19. Petticolas had longstanding clients E.W. and E.W. In April 2005, Petticolas helped E.W. and E.W. purchase a Jackson National Life Variable Annuity.

20. On or about November 7, 2007, Petticolas recommended that E.W. and E.W.

replace the Jackson National Life Variable Annuity, then valued at \$643,871, with an annuity at Allianz Life Insurance Company. E.W. and E.W. paid a surrender charge of \$35,500 for this change. Petticolas earned a commission on this transaction

21. On or about March 15, 2010, Petticolas recommended that E.W. and E.W. replace the Allianz annuity with RV's Re-Sale Life Insurance Policy Program. At the time of Petticolas' recommendation, E.W. and E.W. were 69 and 64 years old, respectively.

22. Based on Petticolas' representations of the product, E.W. and E.W. transferred money from their Allianz annuity into RV's Re-Sale Life Insurance Policy Program, in the total amount of \$455,925.

23. On March 25, 2010, Petticolas was paid \$50,151.75 in commissions and bonuses for selling the investment.

24. The RV life settlements were never registered in Idaho as a security.

25. The \$455,925 that E.W. and E.W. invested in RV constituted a substantial portion of all of their liquid assets.

26. The RV investment was not a liquid investment because it would not pay off until the insured died.

27. The payoff date of the RV investment was uncertain, because it was based on mortality dates of various individuals who had purchased the underlying life insurance policies.

Petticolas' Violation of ONESCO Policies, aka, Selling Away

28. In January 2007, Petticolas became re-affiliated with the Ohio National Equity Sales Company (ONESCO)².

29. While employed by ONESCO, Petticolas was required to complete an annual

² Petticolas had been affiliated with ONESCO from May, 1990 through June, 2004.

questionnaire to determine his compliance with ONESCO policies and general securities law and regulations. On August 24, 2009 and November 16, 2010, Petticolas answered “no” to the question of whether he had engaged in any previously undisclosed outside business activity. Further, on the November 16, 2010 compliance questionnaire, Petticolas answered “no” to the question of whether he had engaged, in the last year, in the sale or solicitation of any private securities transactions away from ONESCO.

30. On August 24, 2009 and November 16, 2010, Petticolas acknowledged and accepted ONESCO’s general prohibitions. Specifically, Petticolas acknowledged and agreed to:

a. Not participate in any private transactions of a nature that could be interpreted in any manner to involve the creation, sale or marketing of a security without having first obtained the written approval and consent of ONESCO.

b. Not receive any form of payment, i.e., remuneration, commissions, compensation, finder’s fee, etc., related to securities transactions of any kind from any source other than ONESCO without prior written approval of ONESCO.

c. Not be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his or her relationship with ONESCO unless he or she has provided prompt written notice to ONESCO.

31. On August 24, 2009, Petticolas disclosed to ONESCO that he would “market Life, Health & Investments out of this location. Branch office location for my Securities Transactions have (sic) been changed to this location.”

32. Although the general disclosure was sufficient for most outside business activity (compensated activity not affiliated with ONESCO), ONESCO required that “Life Settlements are the exception and do require the disclosure of the product sponsor name and the specific

product being offered.”

33. Petticolas violated ONESCO’s policies by selling RV’s Re-Sale Life Insurance Policy Program to E.W. and E.W. without having made the required disclosures to ONESCO, and as a result, was terminated by ONESCO on March 28, 2011.

COUNT ONE
(Unregistered Securities)

34. The allegations of paragraphs 1, 2, and 8 through 33 above are realleged and incorporated herein as if set forth verbatim.

35. Petticolas offered or sold in Idaho securities in the form of life settlement contracts. Such securities were not registered with the Department as required by Idaho Code § 30-14-301.

36. Petticolas’ offering or selling of unregistered securities constituted violations of Idaho Code § 30-14-301.

COUNT TWO
(Fraud - Selling Away)

37. The allegations of paragraphs 1, 2, and 8 through 33 above are realleged and incorporated herein as if set forth verbatim.

38. IDAPA section 12.01.08, Rule 104.01, provides that a person who engages in any of the practices enumerated in IDAPA 12.01.08, Rule 104.02 through 104.48 is deemed to engage in acts, practices, or courses of business that operate or would operate as a fraud or deceit upon another person pursuant to Idaho Code § 30-14-501(3).

39. Rule 104.46 provides that any agent associated with a broker-dealer registered under the Act shall not engage in business activities, for which he receives compensation either

directly or indirectly, outside the scope of his regular employment unless he has provided prior written notice to his employer firm.

40. Petticolas entered into an agreement with RV to sell and sold RV's Re-Sale Life Insurance Policy Program without receiving prior written approval from ONESCO, his then-employer, as described in paragraphs 29 through 34 above. His conduct as described in paragraphs 29 through 34 constitutes engaging in selling away, in violation of IDAPA 12.01.08.104.46, which in turn is a violation of Idaho Code § 30-14-501(3) as to each victim.

PRAYER FOR RELIEF

41. WHEREFORE, the Department prays for judgment in favor of the Department and against Petticolas as follows:

42. That Petticolas be adjudged to have violated Idaho's Uniform Securities Act (2004), Idaho Code § 30-14-101 *et seq.*, as to Counts One and Two alleged above, as well as any additional counts proven at trial.

43. That Petticolas 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 he be permanently enjoined from selling or offering for sale securities in any form in the state of Idaho.

44. That Petticolas 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 \$20,000, and that the Court award a money judgment in favor of the Department in such amount.

45. That Petticolas be ordered to disgorge commissions paid as a result of the sale of RV's Re-Sale Life Insurance Policy Program to E.W. and E.W., pursuant to Idaho Code § 30-14-

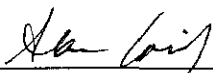
603(b)(2)(C) in the amount of \$50,151.75; that Petticolos pay that amount to the Department, to be held for the benefit of and to be delivered to E.W. and E.W.; that the Court award a money judgment in favor of the Department in such amount; and that such disgorgement be deemed not an asset of the Department.

46. That the Department be awarded attorney fees and costs incurred in the preparation and prosecution of this action, pursuant to Idaho Code §§ 26-3106(1)(c) and 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 \$5,000 is a reasonable sum for the same.

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

DATED this 28 day of September, 2012.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



ALAN CONILOGUE
Deputy Attorney General