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DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY, IDAHO

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**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.

TONY SCOTT SELLERS,

Defendant.

Case No. CV-14-1074

AMENDED 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:

CASE SUMMARY

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.

The Department alleges that defendant Tony Scott Sellers (Sellers) offered or sold

securities in the form of charitable gift annuities from We the People, Inc. of the United States. These charitable gift annuities were sold to around twenty-four (24) Idaho investors in an aggregate amount of about four million dollars (\$4,000,000). Sellers received two hundred thirty-one thousand, four hundred ninety-one dollars (\$231,491) in commissions from the sale of these charitable gift annuities.

Sellers failed to register these securities, he failed to register as an issuer agent, and he failed to register as an investment adviser, all as required by law.

Sellers has been permanently enjoined from selling unregistered securities and from selling securities while he is not registered as a sales agent. His acts described below constitute the third time he has violated Idaho security law, and constitute a violation of a permanent injunction.

DEFENDANT

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. Tony Scott Sellers (Sellers) is an individual residing in Idaho Falls, Bonneville County, Idaho. The acts and practices herein comprising violations of law by the above-named defendant occurred primarily in Bonneville County, Idaho.

3. Sellers obtained an Idaho insurance license on February 12, 1998, and a Utah insurance license on May 16, 2002, and has since worked in the insurance industry.

4. Sellers formed Sellers Financial Advisors, Inc., and it was incorporated in Idaho

on April 11, 2002. Sellers operates his insurance business and sells other financial products through Sellers Financial Advisors, Inc. According to the Annual Report filed with the Idaho Secretary of State, Sellers is the company's President and his wife, Jeanette Sellers, is the Secretary.

5. Sellers has never registered as a securities agent, representative, or investment adviser.

6. On April 11, 1997, Plaintiff filed suit in the District Court of the Fourth Judicial District of the state of Idaho, Ada County, case number CV OC 9702109D, against various defendants alleging securities violations by soliciting money to purchase viaticals. On March 27, 1998, Plaintiff amended its complaint and added Sellers as a defendant, alleging that Sellers participating in the unlawful fund raising.

7. On February 15, 2000, Sellers was temporarily enjoined from transacting securities business in Idaho while not registered with Plaintiff.

8. On June 5, 2006, a permanent injunction was issued in case number CV OC 9702109D, permanently enjoining Sellers from transacting securities business in Idaho while not registered as a securities sales agent.

9. Sellers has testified that the 1997 law suit "made me look very closely especially – I mean the string of things that happened is unbelievable and it made me really, you know, think about the type of companies I'm dealing with, you know, and find out, you know, who was running these companies and what their background is."

10. Since the 2006 permanent injunction against Sellers was issued, Sellers has continued to sell unregistered securities in Idaho.

11. Sellers' last known residence was on W. Pleasanton Circle in Idaho Falls, Idaho.

FACTS

We the People, Inc. of the United States

12. We the People, Inc. of the United States, (WTP) was incorporated in Massachusetts on June 10, 1987 and in April 1988, was approved by the Internal Revenue Service as a tax-exempt organization. William Reeves took over operations of WTP in 2008 and has remained an officer since that time. WTP engages in the business of selling interests in investment contracts, which it refers to as “charitable gift annuities,” in exchange for investor assets such as cash, securities, annuities, and real estate.

13. After an investigation, the Securities and Exchange Commission (SEC) filed a complaint on February 4, 2013, against WTP alleging that WTP made misrepresentations and omitted material facts and engaged in acts of fraud and deceit in connection with the offer and sale of securities and for offering for sale unregistered securities.

14. On February 8, 2013, the United States District Court for the Southern District of Florida, Miami Division (the Court), entered a consent judgment in the enforcement action against WTP. WTP neither admitted nor denied the allegations in the SEC’s complaint. The judgment permanently enjoined WTP from violating the anti-fraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934, and permanently enjoined WTP from violating the securities registration requirements of the Securities Act of 1933.

15. On February 8, 2013, the Court issued an Order Appointing Receiver and WTP was placed in receivership.

16. Although WTP offered and sold the securities in an allegedly fraudulent manner, the underlying charitable gift annuities are real, and have value. They are currently being held by the Receiver.

17. The WTP Charitable Gift Annuities (CGAs) were never registered in Idaho as a security.

Defendant Sellers

18. Sellers offered or sold securities in the form of charitable gift annuities from WTP. Sellers sold these charitable gift annuities (CGAs) to around twenty-four (24) investors¹, nineteen of whom are in Idaho and most of whom are elderly, in an aggregate amount of four million six hundred thirty-five dollars and seventy-four cents (\$4,635,000.74). Sellers received two hundred thirty-one thousand, four hundred ninety-one dollars and twenty-four cents (\$231,491.24) in commissions from the sale of these charitable gift annuities.

19. Sellers became acquainted with WTP through WTP's advertisements in insurance industry magazines, which were used to solicit insurance sales agents to sell its CGAs. On August 20, 2010, Sellers entered into a contract with WTP to sell CGAs.

20. Sellers held seminars in order to promote WTP's CGAs, but only his existing insurance clients purchased them.

21. Sellers did not pitch the CGAs as a charitable donation and few, if any, of Sellers' clients were interested in the philanthropic aspect of purchasing the CGAs.

22. Sellers assisted his clients with financial and estate planning and made claims that the CGAs would offer them significant tax write-offs.

23. Sellers, at all times material herein, was not registered with the Department or the Financial Industry Regulatory Authority (FINRA) as a broker-dealer, or as a broker-dealer agent.

24. Sellers has never been registered with the Department as an investment adviser.

25. The securities sold by Sellers were not registered with the Department.

Investors

¹ Exact numbers depends on whether a married couple is counted as one or two investors.

26. Beginning around October 2010, and continuing for about a year, Sellers solicited, offered and/or sold unregistered securities to around twenty-four investors, nineteen of whom live or lived in Idaho.

27. Investors CB and MB bought a CGA from Sellers on or about May 27, 2011, by donating an annuity with an accumulated value of \$329,563.53.

a. The annuity constituted over 50% of their investable assets.

b. CB and MB bought the CGA for estate planning purposes, and did not understand that they were making a donation to WTP.

c. Sellers assisted CB and MB in developing a financial plan.

d. MB was about 81 years old at the time of the investment.

e. Sellers received a commission of \$16,995.19 from this sale.

28. Investors RC and PC bought a CGA from Sellers on or about May 25, 2011, by donating an annuity with an accumulated value of \$61,796.10.

a. The annuity constituted between 10% and 25% of their investable assets.

b. RC and PC bought the CGA for tax benefits and estate planning purposes.

c. Sellers assisted RC and PC in developing a financial plan, and provided them with investment alternatives.

d. RC was about 78 years old at the time of the investment.

e. Sellers received a commission of \$3,349.79 from this sale.

29. Investors JF and VF bought two CGAs from Sellers on or about December 3, 2010, by donating two annuities with accumulated values of \$135,559.18 and \$51,460.50, for a total of \$187,019.68.

a. The annuities constituted over 50% of their investable assets.

- b. JF and VF bought the CGA to get higher returns on their investable assets.
 - c. Sellers told JF and VF that he had personally invested with WTP, which gave JF and VF confidence in the safety of the investment.
 - d. VF was about 77 years old at the time of the investment.
 - e. Sellers received total commissions of \$10,401.38 from these sales.
30. Investor MG bought a CGA from Sellers on or about March 1, 2011, by donating an annuity with an accumulated value of \$30,552.49.
- a. The annuity constituted less than 10% of his investable assets.
 - b. MG bought the CGA for tax benefits.
 - c. Sellers assisted MG in developing a financial plan, and provided him with investment alternatives.
 - d. MG was about 81 years old at the time of the investment.
 - e. Sellers received a commission of \$2,138.67 from this sale.
31. Investor SG bought a CGA from Sellers around October 2011, by donating an annuity with an accumulated value of \$42,996.85.
- a. The annuity constituted between 26% and 50% of her investable assets.
 - b. SG bought the CGA for tax benefits.
 - c. Sellers told SG that he had personally invested with WTP, which gave her confidence in the safety of the investment.
 - d. SG was around 68 years old at the time of the investment.
 - e. Sellers received a commission of \$2,540.82 from this sale.
32. Investors GH and RH bought a CGA from Sellers on or about January 3, 2011, by donating an annuity with an accumulated value of \$1,106,521.15.

- a. The annuity constituted between 26% and 50% of their investable assets.
 - b. GH and RH bought the CGA for tax benefits and estate planning purposes.
 - c. GH was about 80 years old at the time of the investment.
 - d. Sellers received a commission of \$66,477.65 from this sale.
33. Investor AH bought a CGA from Sellers on or about August 11, 2011, by donating an annuity with an accumulated value of \$91,313.30.
- a. The annuity constituted over 50% of her investable assets.
 - b. AH bought the CGA for tax benefits.
 - c. AH was about 74 years old at the time of the investment.
 - d. Sellers received a commission of \$4,860.22 from this sale.
34. Investor JH bought a CGA from Sellers on or about January 3, 2011, by donating an annuity with an accumulated value of \$137,979.34.
- a. The annuity constituted between 26% and 50% of her investable assets.
 - b. JH bought the CGA for tax benefits.
 - c. JH was about 79 years old at the time of the investment.
 - d. Sellers received a commission of \$7,968.31 from this sale.
35. Investors BK and SK bought a CGA from Sellers on or about July 15, 2011, by donating an annuity with an accumulated value of \$17,309.28.
- a. BK and SK bought the CGA for a better return, tax benefits and estate planning purposes.
 - b. SK was about 75 years old at the time of the investment.
 - c. Sellers received a commission of \$898.15 from this sale.
36. Investors NK and LK bought a CGA from Sellers on or about October 12, 2011,

- b. TW bought the CGA for tax benefits.
- c. TW was about 60 years old at the time of the investment.
- d. Sellers received a commission of \$7,214.00 from this sale.

Misrepresentations

40. To induce investors to invest, Sellers made certain false representations.

- a. Sellers told investors that he had personally invested into WTP's CGAs.

However, Sellers never invested his own funds with WTP.

- b. Sellers told investors the investment was issued and/or guaranteed by an insurance company. This was false because the issuing entity, WTP, was not an insurance company.

- c. Sellers told investors the investment was low risk and/or no risk. This was false because the investments have been placed under the control of a receiver and the outcome is uncertain.²

Material Omissions

41. Sellers 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 Sellers. Sellers failed to disclose the following material information:

- a. Information about WTP's financial condition or operating history, or
 - i. that it had not sold CGAs until 2008;
 - ii. that prior to 2008 it was a moribund company with few assets and little income;
 - iii. that its original purpose was to promote nuclear safety.
- b. That Richard Olive was a senior executive with WTP who had prior regulatory

² It does appear that the receiver will be able to return a significant portion of the investments

sanctions against him for fraudulently selling similar products at a company known as National Foundation of America;

c. That Olive had been indicted in Tennessee for theft on February 8, 2010;

d. The amount and type of compensation paid to Sellers;

e. That Sellers was not registered as an agent to sell the securities, as required by Idaho's Uniform Securities Act (2004);

f. That the CGAs issued by WTP were securities, but were not registered as required by Idaho's Uniform Securities Act (2004); and

g. That Sellers was not registered as an investment adviser as required by Idaho's Uniform Securities Act (2004).

COUNT ONE
(Fraud - False and Misleading Statements)

42. The allegations of paragraphs 1 through 41 above are realleged and incorporated herein as if set forth verbatim.

43. 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.

44. Sellers's misrepresentations to investors and prospective investors, as set forth in paragraph 40 and its subparagraphs, were made in connection with the offer, sale or purchase of securities. Sellers's misrepresentations were false and misleading, constituting violations of Idaho Code § 30-14-501(2) as to each misrepresentation to each investor.

45. Sellers's omissions of material facts and failures to disclose to investors and prospective investors, as set forth in paragraph 41 and its subparagraphs, were made in

by donating an annuity with an accumulated value of \$86,428.73.

- a. The annuities constituted less than 10% of their investable assets.
- b. NK and LK bought the CGA for tax benefits and to get higher returns on their investable assets.
- c. Sellers assisted NK and LK in developing a financial plan, and offered them investments in annuities.
- d. NK was about 75 years old at the time of the investment.
- e. Sellers received a commission of \$4,463.23 from this sale.

37. Investors JT and MT bought a CGA from Sellers on or about June 30, 2011, by donating an annuity with an accumulated value of \$66,956.53.

- a. The annuities constituted more than 50% of their investable assets.
- b. JT and MT bought the CGA for estate planning purposes, tax benefits and to get higher returns on their investable assets.
- c. JT was about 76 years old at the time of the investment.
- d. Sellers received a commission of \$3,558.58 from this sale.

38. Investor LW bought a CGA from Sellers on or about August 11, 2011, by donating an annuity with an accumulated value of \$76,616.56.

- a. LW bought the CGA for estate planning purposes, and to obtain more income.
- b. LW was about 81 years old at the time of the investment.
- c. Sellers received a commission of \$4,308.60 from this sale.

39. Investor TW bought a CGA from Sellers on or about October 18, 2010, by donating an annuity with an accumulated value of \$114,508.05.

- a. The annuity constituted between 10% and 25% of her investable assets.

connection with the offer, sale or purchase of securities, and constitute violations of Idaho Code § 30-14-501(2) as to each omission and failure to disclose to each investor.

COUNT TWO
(Fraudulent Conduct)

46. The allegations of paragraphs 1 through 41 above are realleged and incorporated herein as if set forth verbatim.

47. 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.

48. Sellers's acts as set forth in paragraphs 1 through 41 above were made in connection with the offer, sale or purchase of securities. His conduct as described in those paragraphs constitutes engaging in transactions, acts, practices, or courses of business which operate or would operate 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, all as alleged in paragraphs 1 through 42 above.

49. Sellers furthered the fraud by giving investment advice when he was not licensed to do so.

COUNT THREE
(Failure to Register as an Investment Adviser)

50. The allegations of paragraphs 1 through 41 above are realleged and incorporated herein as if set forth verbatim.

51. 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.

52. 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.

53. Sellers advised his clients to purchase the WTP securities by exchanging their assets for charitable gift annuities.

54. By giving this advice, Sellers transacted business in Idaho as an investment adviser. Sellers was not registered as an investment adviser with the Department as required by Idaho Code § 30-14-403(a).

55. Sellers's investment advice to his clients while not registered as an investment adviser with the Department constituted violations of Idaho Code § 30-14-403(a).

COUNT FOUR
(Unregistered Securities)

56. The allegations of paragraphs 1 through 41 above are realleged and incorporated herein as if set forth verbatim.

57. Sellers sold or offered for sale in Idaho securities in the form of charitable gift annuities. Such securities were not registered with the Department as required by Idaho Code § 30-14-301.

58. Sellers's selling or offering of unregistered securities constituted violations of Idaho Code § 30-14-301.

COUNT FIVE
(Failure to Register as an Agent)

59. The allegations of paragraphs 1 through 41 above are realleged and incorporated herein as if set forth verbatim.

60. 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.

61. 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.

62. Sellers transacted business in Idaho as an agent of issuer WTP when he offered and sold WTP securities to his clients. At the time of these transactions, Sellers was not registered as an agent with the Department as required by Idaho Code § 30-14-402(a), thereby violating that statute.

PRAAYER FOR RELIEF

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

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

65. That Sellers 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.

66. That Sellers be enjoined for the period of five years from working in the financial services industry in Idaho, including selling insurance, pursuant to Idaho Code § 30-14-603(b)(1).

67. For an Order holding Sellers in contempt for violating the prior permanent

injunction.

68. That Sellers 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 \$50,000, and that the Court award a money judgment in favor of the Department in such amount.

69. 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.

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

DATED this 25th day of February, 2014.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



ALAN CONILOGUE
Deputy Attorney General