

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
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CLERK DISTRICT COURT

DEPUTY

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
ISBN 3196

**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.

JACK LEE SMILEY,

Defendant.

Case No. CV07-2341

VERIFIED COMPLAINT

Fee category: Exempt

COMES NOW the State of Idaho, Department of Finance, Consumer Finance Bureau, Gavin M. Gee, Director, 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 the Idaho Commodity Code (the Act), Idaho Code § 30-1501, *et seq.*, and in particular, Idaho Code § 30-1510(2), wherein the Director is authorized to bring actions seeking injunctive and other relief when it appears to the Director that any

ASSIGNED TO
JUDGE HONANOK

person has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Act, or any rule or order promulgated thereunder.

2. The acts and practices herein comprising violations of law by the above-named Defendant occurred in Kootenai County and elsewhere in the State of Idaho.

FACTS

3. Defendant Jack Lee Smiley (Smiley), formerly known as Jack Cowart, has been a resident of Coeur d'Alene, Kootenai County, Idaho and has conducted business in Idaho during all times relevant herein. He has conducted business under various names, including Joint Venture Online Investments, SMG, Pristine Construction, Pristine Construction LLC, and Investments Unlimited LLC.

4. Beginning approximately January 1, 2005 and continuing to the present date, Smiley has solicited investors to participate in joint venture agreements for the purchase and subsequent sale of Iraqi Dinars, speculating that the Dinars will increase in value. Smiley accepts funds from investors, purchases Dinars and holds them awaiting some unspecified date when they are supposed to increase in value, at which time they will be sold. He does not deliver the Dinars to the investors. Smiley calls this enterprise "The Iraqi Investment" and "The Iraqi Currency Investment," hereafter referred to as the "Enterprise." Despite Smiley's representations, there is no viable market for Iraqi Dinars outside of Iraq.

5. Smiley made the following representations to investors, both verbally and in writing. Smiley did not disclose the basis for these representations, and all are false or so vague as to be misleading.

a. Investors would receive a return of 33 times the amount of their investment in the Enterprise.

b. A \$5,000 investment would result in a return of \$165,000, and a \$100,000 investment would result in a return of \$3,300,000.

c. The new currency, the new Dinar, will be tied to ten-year oil contracts.

d. The new currency will be issued "late March or later in the year," but the year is not specified.

e. The new currency will be "backed by the US, England and Israel."

f. "Halliburton [sic], Large Banks – Corporations, Politicians and the US Military are going to make millions when the new currency comes out (Just like it happened in Kuwait; 5% of the Americans became millionaires then)."

g. Smiley alleged that he was working with a 28 year old currency company registered with the US Treasury Department. He did not disclose the name of this company, but he described his "Business Associates" thus:

- Twenty eight years in the global currency business;
- Second generation of family in the business;
- Maintain three offices in the Middle East;
- "Runs" 15 million to 20 million dollars through a Zurich bank monthly,

but pays no taxes;

- Will buy back the Iraqi Dinars at any time;
- Believe the Iraqi Dinar will trade on the global currency market, starting at

.33 to .01, that is, a third of a US cent to one hundredth of a US cent.

6. Smiley personally guaranteed that investors would not lose any money if they invested in the Enterprise, and that he would not use "a nickel [of investors'] money until we succeed." Smiley offered no factual basis to prospective investors to support such statements.

7. Smiley offered a finder's fee of 10% for each \$5,000 of funds invested in the Enterprise.

8. Smiley represented that he would store the Dinars in a safe deposit box. He rented three safe deposit boxes for a short period, but closed all three and removed the contents. The current location of the Dinars is unknown, but a witness has seen a great many Dinars in the trunk of Smiley's car.

9. Smiley solicited investors and prospective investors to invest in the Enterprise both through seminars where he made presentations about the Enterprise, and through his direct contact with individuals for that purpose.

10. Smiley did not inform investors or prospective investors that he was not qualified under the Act to offer or sell any commodity under any commodity contract or under any commodity option, or to offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option.

11. Iraqi Dinars are foreign currency and constitute a commodity under Idaho Code § 30-1501(3).

12. Smiley's joint venture agreements are commodity contracts under Idaho Code § 30-1501(4).

13. During all times relevant herein, Smiley was not an exempt person under Idaho Code § 30-1503.

14. The joint venture agreements and commodity contracts described herein are not exempt transactions under Idaho Code § 30-1504.

15. On June 2, 2005 Plaintiff, the Idaho Department of Finance, issued and served a Summary Cease and Desist Order to Smiley, ordering him to immediately cease violating the

Act. Smiley did not comply with the Order and continued to violate the Act as described in this complaint.

VICTIMS

16. Smiley solicited and accepted money from the following victims, in the amounts shown, and on or near the dates shown. Smiley accepted \$628,700 in total from these victims. There may be more victims currently unknown to Plaintiff.

VICTIM INITIALS	INVESTED	DATE	VICTIM INITIALS	INVESTED	DATE
J.D.	\$5,000.00	2/18/2005	B. W.	\$15,000.00	5/8/2005
D.H.	\$1,000.00	3/9/2005	D. D.	\$1,000.00	5/9/2005
S.S.	\$5,000.00	3/11/2005	R. D.	\$1,000.00	5/9/2005
D.C.	Unknown	3/11/2005	R. R.	\$5,000.00	5/9/2005
R. & D. P.	\$500.00	3/15/2005	R. R.	\$5,000.00	5/9/2005
S. & D. Z.	\$500.00	3/16/2005	M. S.	\$1,000.00	5/9/2005
R. & M. S.	\$2,500.00	3/23/2005	C. J.	\$500.00	5/11/2005
N. & B. S.	\$5,000.00	3/25/2005	J. B.	\$16,000.00	5/13/2005
I.B.	\$800.00	3/28/2005	B. F.	\$301,000.00	6/7/2005
B. S.	\$5,000.00	3/29/2005	J. F.	\$5,500.00	8/25/2005
I. S.	\$1,500.00	3/30/2005	C. W.	\$5,000.00	9/9/2005
T. (Business)	\$10,500.00	4/4/2005	B. M.	\$5,000.00	10/27/2005
M. M.	\$10,000.00	4/6/2005	E. E. (Business)	\$3,000.00	12/29/2005
W. N.	\$500.00	4/6/2005	S. & D. Z.	\$1,000.00	1/3/2006
M. R.	\$2,000.00	4/9/2005	S.H.	\$37,000.00	1/17/2006
J. F.	\$500.00	4/13/2005	A. H.	\$7,000.00	1/17/2006
W. W.	\$1,000.00	4/15/2005	L. M.	\$2,000.00	1/ /2006
S. A.	Unknown	4/15/2005	J. & D. L.	\$5,500.00	1/25/2006
R. K.	\$1,000.00	4/19/2005	D.C.	\$125,000.00	Unknown
R. P.	\$500.00	4/29/2005	R. B.	\$3,500.00	2/3/2006
F. & B. F.	\$500.00	4/27/2005	K. T.	\$10,000.00	10/24/2006
L. & L. J.	\$1,000.00	5/4/2005	L. H.	\$10,000.00	10/30/2006
N. D.	\$15,000.00	5/5/2005			

17. On Saturday, January 14, 2006 Smiley represented to victim S.H. that the Dinar was on the verge of being released as an international currency, and that the release could occur by the

following Monday. S.H. believed the matter was urgent and wired Smiley \$37,000 the same day. After Smiley received the wired money, he faxed S.H. the joint venture agreement. S.H. noted the provision that Smiley would keep 50% of profits from the joint venture and that Smiley would also keep 50% of S.H.'s investment, or \$18,500. Smiley did not tell S.H. of these provisions before S.H. wired his money. S.H. called Smiley and asked for his money back, and Smiley asserted that because he had received S.H.'s money the contract became binding. Smiley agreed to dissolve the contract but asserted his right to keep, and kept, \$18,500.

18. Victim D.C. gave Smiley \$125,000 on an unknown date, believed to be in the summer of 2006. On August 16, 2006 D.C.'s wife wrote to Smiley demanding the return of half of the \$125,000, asserting that half was hers under Idaho community property law. Smiley wrote to D.C. on the same day giving D.C. notice of Smiley's intent to dissolve the joint venture agreement, "Due to continued harassment by you and your wife...". Smiley has not returned any of the \$125,000.

19. Smiley did not use all of the money given him to buy Dinars, but instead used some of the money for his personal expenses, contrary to his representation that he would not use any of the invested money until the Enterprise succeeded.

COUNT ONE

(Violation of Idaho Code § 30-1502)

20. The allegations of paragraphs (1) through (19) are realleged and incorporated herein as if fully set forth.

21. The definition of "commodity" in Idaho Code § 30-1501(3) includes "foreign currency." Iraqi currency constitutes a commodity pursuant to that definition.

22. Idaho Code § 30-1501(4)(a) defines “commodity contract” to include “[a]ny account, agreement or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption of the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract or otherwise.” Idaho Code § 30-1501(4)(a) further provides that “[a]ny commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes ...”

23. The Enterprise to invest in Iraqi currency offered and sold by Smiley for investment purposes constitutes a “commodity contract” within the meaning of Idaho Code § 30-1501(4)(a).

24. Idaho Code § 30-1502 provides that no person shall sell or purchase or offer to sell or purchase any commodity under any commodity contract or under any commodity option or offer to enter into or enter into as seller or purchase any commodity contract or any commodity option, except as provided in Idaho Code §§ 30-1503 or 30-1504.

25. Idaho Code §§ 30-1503 and 30-1504 set forth exemptions from the requirements of § 30-1502 for certain persons and transactions. Based on the information before the Department, neither Smiley nor the Enterprise qualify for such exemptions.

26. Smiley’s offer and sale of investments to Idaho residents in the Enterprise, constituting a commodity contract within the meaning of Idaho Code § 30-1501(4)(a), without Smiley qualifying for an exemption pursuant to Idaho Code §§ 30-1503 or 30-1504, constitutes a violation of Idaho Code § 30-1502 as to each victim, for a total of at least 45 violations.

COUNT TWO

(False and Misleading Statements)

27. The allegations of paragraphs (1) through (19) above are realleged and incorporated herein as if fully set forth.

28. Idaho Code § 30-1506(1)(b) provides that it is unlawful for any person, directly or indirectly, in connection with a commodity contract or commodity option, to make any false report, enter any false record or make any 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.

29. Smiley's representations set forth in paragraphs 5 and 6 above to prospective investors in the Enterprise had no basis in fact, and therefore were untrue statements of material fact, constituting violations of Idaho Code § 30-1506(1)(b) as to each representation to each investor.

30. Smiley's failure to provide investors or prospective investors with financial information concerning the program, and his own personal financial information as guarantor of such program, constitutes an omission to state a material fact in connection with the offer or sale of a commodity contract or commodity option, constituting a violation of Idaho Code § 30-1506(1)(b) as to each victim, for a total of at least 45 violations.

COUNT THREE

(Device, Scheme or Artifice to Defraud)

31. The allegations of paragraphs (1) through (19) above are realleged and incorporated herein as if fully set forth.

32. Idaho Code § 30-1506(1)(a) provides that it is unlawful for any person, directly or indirectly, in connection with a commodity contract or commodity option, to employ any device, scheme or artifice to defraud.

33. Smiley's conduct giving rise to the violations of the Act as alleged in this complaint, constitutes a device, scheme or artifice to defraud investors or prospective investors in the Enterprise, in violation of Idaho Code § 30-1506(1)(a) as to each victim, for a total of at least 45 violations..

COUNT FOUR
(Fraudulent Conduct)

34. The allegations of paragraphs (1) through (19) above are realleged and incorporated herein.

35. Idaho Code § 30-1506(1)(c) provides that it is unlawful for any person, directly or indirectly, in connection with a commodity contract or commodity option, to engage in any transaction, act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

36. Smiley's conduct giving rise to the violations of the Act alleged in this complaint, 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 the Enterprise, in violation of Idaho Code § 30-1506(1)(c) as to each victim, for a total of at least 45 violations.

COUNT FIVE
(Violation of Cease and Desist Order)

37. The allegations of paragraphs (1) through (19) above are realleged and incorporated herein.

38. Idaho Code § 30-1511(1) provides that upon a showing by the Director of the Department of Finance that a person has violated an order of the Director, the court may grant appropriate legal or equitable.

39. Smiley did not comply with the Summary Cease and Desist Order issued by the Director of Idaho Department of Finance on June 2, 2005, thereby entitling the Department to the relief sought in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, the Department prays for a judgment in favor of the Department and against Smiley as follows:

1. That Smiley be adjudged to have violated the Idaho Commodity Code, Idaho Code § 30-1501 *et seq* rules promulgated thereunder, and other applicable federal laws and regulations as proven at trial, as to Counts One through Five alleged above, as well as any additional counts proven at trial.

2. That Smiley be adjudged to have violated the Cease and Desist Order issued by the Director of the Idaho Department of Finance.

3. That Smiley be permanently enjoined from engaging in any act or practice violating any provision of the Idaho Commodity Code or any rule promulgated thereunder, or any applicable federal laws or regulations, pursuant to Idaho Code § § 30-1510(2)(b) and 30-1511(1)(a).

4. That Smiley be ordered to pay a civil penalty of up to \$5,000 for each violation of the Act as the Court deems appropriate, pursuant to Idaho Code § 30-1511(1)(b)(i), for total penalties of at least \$10,000, and that the court award a money judgment in favor of Plaintiff in such amount.

5. That Smiley be ordered to disgorge all money rightfully belonging to the victims, in amounts to be proven at trial, pursuant to Idaho Code § 30-1511(1)(b)(ii).

6. That Smiley be ordered to make restitution to investors wishing restitution, pursuant to Idaho Code § 30-1511(1)(b)(iv).

7. That Plaintiff 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 Plaintiff in such amount. Should judgment be taken by default herein, Plaintiff asserts that \$5,000 is a reasonable sum for the same.

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

DATED this 29th day of MARCH, 2007.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



ALAN CONILOGUE
Deputy Attorney General

VERIFICATION

STATE OF IDAHO)
)ss.
County of Ada)

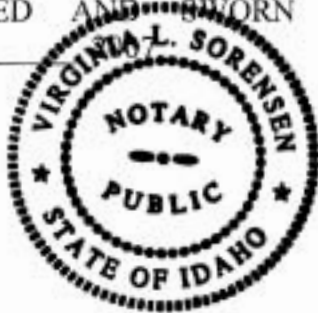
MARILYN T. CHASTAIN, Bureau Chief of the Securities Bureau of the Department of Finance, State of Idaho, being first duly sworn, deposes and says:

I have read the foregoing Verified Complaint, and know the contents thereof; and that the same are true to the best of my knowledge and belief.

DATED this 28th day of March, 2007.

Marilyn T. Chastain
MARILYN T. CHASTAIN

March SUBSCRIBED AND SWORN



to before me this 28th day of

Virginia L. Sorensen
Notary Public for Idaho
Residing at: Caldwells
My Commission Expires: 4/5/2012