

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

FILED
CHARLOTTE, NC
NOV 12 2008
U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

Civil Action No.

v.

5:08cv136

BILTMORE FINANCIAL GROUP, INC.,
JOSHUA VANCE HUFFMAN, JR. a/k/a J. V.
HUFFMAN, JR.,

Defendants,
GILDA BOLICK HUFFMAN,

Relief Defendant

COMPLAINT FOR INJUNCTIVE RELIEF

It appears to Plaintiff, Securities and Exchange Commission ("Commission"),
and it alleges, that:

OVERVIEW

1. This matter involves an unregistered offering of securities and
fraudulent conduct by Joshua Vance Huffman, Jr., a/k/a J.V. Huffman, Jr.

("Huffman") and Biltmore Financial Group, Inc. ("Biltmore"), a North Carolina corporation controlled by Huffman, and unjust enrichment received by Gilda Bolick Huffman ("G. Huffman"), his wife.

2. Huffman has been operating a Ponzi scheme since 1991 and has raised approximately \$25 million from hundreds of investors. Initially, Huffman offered investments in a program that vaguely purported to operate as a mutual fund. After September 11, 2001, in order to assure investors that their investments would not be affected by the volatility of the stock market, Huffman changed his claims to investors, and represented that Biltmore pooled investors' funds to purchase and sell mortgages for a profit. Biltmore's offering materials to prospective investors offered a variable, high return, larger than 13% in recent years, and claimed to investors that the investment was protected against loss. Huffman has continually represented to investors that their investments were making money,

3. Contrary to his representations, Huffman and Biltmore did not invest the funds as represented. Instead, Huffman spent investor funds to subsidize his lavish lifestyle. Returns to investors were paid from money invested by new

investors. The purported insurance protecting the investments did not exist and much of the principal has been dissipated or used to purchase real estate for Huffman and/or his wife, expensive automobiles or other luxuries.

VIOLATIONS

6. Defendants have engaged, and unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

JURISDICTION AND VENUE

7. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)], to enjoin the defendants from engaging in the transactions, acts, practices, and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties and for other equitable relief.

8. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act [15 U.S.C. 77v] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

9. Defendants, directly and indirectly, made use of the mails, the means and instruments of transportation and communication in interstate commerce and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

10. Certain of the transactions, acts, practices, and courses of business constituting violations of the Securities Act and the Exchange Act occurred in the Western District of North Carolina. In addition, defendant Huffman and relief defendant Gilda Huffman reside in the Western District of North Carolina. Defendant Biltmore maintains its office in the Western District of North Carolina.

DEFENDANTS

11. **Joshua V. Huffman, Jr.**, 45 years of age, resides in Claremont, North Carolina. Huffman has served as CEO and president of Biltmore since its incorporation in 1991.

12. Biltmore is a North Carolina corporation formed in 1991 that has its principal place of business in Claremont, NC. Biltmore is not registered with the Commission in any capacity.

RELIEF DEFENDANT

13. Gilda Bolick Huffman, approximately 45 years of age, resides with Huffman in Claremont, North Carolina.

THE FRAUDULENT SCHEME

14. Since 1991, Huffman, operating through Biltmore, has raised at least \$25 million from more than 500 investors located in North Carolina and in several other states.

15. Investors made investments with Biltmore in amounts as low as \$1,000. Investments were made pursuant to an "Investment Agreement" which promised profits that fluctuate at market rates and which are guaranteed "never to drop below 0%."

17. Huffman promised investors quarterly reports and told investors they could withdraw their money without penalty in no more than 30 days. Other

materials provided by the company claimed that the company's "approach is very conservative and tries to provide a healthy return at no risk."

18. In August 2008, Huffman sent a letter to investors which represented that Biltmore's investment program would not be affected by the emerging subprime crises because he only purchased mortgages with a "with a good five to seven year history and a minimum equity position of 20%."

19. Another document sent to investors and entitled "The Biltmore Financial Group Company Dossier" falsely reported that the interest rate paid to investors had varied from 10.15% in 1991 to 16.54% in 2007, with no intervening year's rate below 8.02%.

21. Huffman told investor that funds were to be pooled with the funds of other investors with profits to be generated from the efforts of Huffman and Biltmore.

22. Biltmore's offering literature, which was provided to investors and prospective investors by Huffman, also indicated that the investment was protected against loss. In a document entitled "Company Statistics" Biltmore, referring to investors' funds, stated that "measures are taken to insure against any

loss. Including but not limited to various forms of insurance from: State Farm, Thrivent Financial, American Express, Asset Guarantee, [and] Securities Investor Protection Corporation.” Similarly, in its “Company Dossier,” Biltmore stated that the “company’s assets are insured and secured by all of the following means in various ways.” The list included FDIC, SIPC, and Thrivent Financial Services.

23. These representations were false with regard to at least Thrivent Financial. Biltmore never was an owner, insured or a beneficiary of a Thrivent policy.

24. Initially, Huffman told investors that Biltmore operated like a mutual fund. However, after September 11, 2001, Huffman changed his claims to investors by representing that Biltmore generated profits from buying and selling mortgages at a premium price.

25. Huffman never invested client funds as he represented and used new investor funds to pay profits to earlier investors.

26. Huffman used investor funds to fund his lavish lifestyle and spent investor funds to pay for the large and expensive structures on his property, to make extravagant automobile purchases and to purchase the extensive home

theater and computer networks in his home and office. Huffman also purchased several rental properties and vacation properties.

27. Although Biltmore consistently represented to investors that their investments were making money, in fact, most of the investor funds have been dissipated.

28. No registration statement has ever been filed with the Commission in connection with the offering of securities.

30. Relief defendant Gilda Huffman has received benefits from the fraudulent scheme, including but not limited to an interest in real estate purchased with investor funds. Relief defendant Gilda Huffman was thereby unjustly enriched.

COUNT I—FRAUD

Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]

31. Paragraphs 1 through 30 are hereby realleged and are incorporated herein by reference.

32. From in or about 1991 through the present, defendants Huffman and Biltmore, in the offer and sale of the securities described herein, by the use of means

and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above.

33. Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

34. While engaging in the course of conduct described above, the defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

35. By reason of the foregoing, the defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II—FRAUD

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act[15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

36. Paragraphs 1 through 30 are hereby realleged and are incorporated herein by reference.

37. From in or about 1991 through the present, defendants Huffman and Biltmore, in the offer and sale of the securities described herein, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

a. obtained money and property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

b. engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

38. By reason of the foregoing, the defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT III—FRAUD

**Violations of Section 10(b) of the Exchange Act
[15 U.S.C. § 78j(b)]and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]**

39. Paragraphs 1 through 30 are hereby realleged and are incorporated herein by reference.

40. From in or about 1991 through the present, defendants Huffman and Biltmore, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- a. employed devices, schemes, and artifices to defraud;
- b. made untrue statements of material facts and 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; and
- c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

41. The defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, the

defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

42. By reason of the foregoing, the defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

COUNT IV — UNREGISTERED OFFERING OF SECURITIES

Violations of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)]

43. Paragraphs 1 through 30 are restated and incorporated herein by reference.

43. No registration statement has been filed or is in effect with the Commission pursuant to the Securities Act and no exemption from registration exists with respect to the transactions described herein.

44. From at least 1991 to the present, defendants Huffman and Biltmore, singly and in concert, have:

(a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise;

(b) carried securities or caused such securities to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or for delivery after sale; and

(c) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy securities, through the use or medium of any prospectus or otherwise, without a registration statement having been filed with the Commission as to such securities.

45. By reason of the foregoing, defendants, directly and indirectly, singly and in concert, have violated Sections 5(a) and 5(c) of the Securities Act [15 S.C. §§ 77e(a) and 77e(c)].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully prays for:

I.

Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that the defendants named herein committed the violations alleged herein.

II.

Permanent injunctions enjoining the defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, by personal service or otherwise, and each of them, from violating, directly or indirectly, Sections 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] promulgated thereunder.

III.

An order requiring disgorgement by the defendants and the relief defendant of all ill-gotten gains or unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws.

IV.

An order pursuant to Section 20(d) of the Securities Act [15 U.S.C. 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. 78u(d)(3)] imposing civil penalties against the defendants.

V.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

Dated this 12 th day of November, 2008.

Respectfully submitted,



/s/ William P. Hicks

William P. Hicks

District Trial Counsel

Georgia Bar No. 351649

E-mail: hicksw@sec.gov

(404) 842-7675



/s/ Robert K. Gordon

Senior Trial Counsel

Ga. Bar No. 302482

Securities and Exchange Commission

3475 Lenox Rd. NE, Suite 1000

Atlanta, Georgia 30326

Emial: GordonR@sec.gov

Tel: (404) 842-7600

Counsel for Plaintiff
Securities and Exchange Commission
3475 Lenox Road, N.E., Suite 1000
Atlanta, Georgia 30326-1232
Facsimile: 404-842-7679