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IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

PAULA A. FLOWERS, Commissioner of the Tennesseee Department of Commerce and Insurance,	)	
Plaintiff,	)	
v.	)	No. 03-316-III (IV)
VILLAGE LIFE, INC., FREDDIE LEE CARR, JENELLE CEDENO CARR and JAMIE WEST,	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

The Commissioner of the Tennessee Department of Commerce and Insurance respectfully submits this Memorandum of Law in support of her Motion for Summary Judgment.

I. INTRODUCTION AND BACKGROUND

This case involves an action by the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner") to restrain and temporarily and permanently enjoin the Defendants, Village Life, Inc., Freddie Lee Carr, Jenelle Cedeno Carr, and Jamie West, from engaging in further business activities in violation of the Tennessee Securities Act of 1980, Tenn. Code Ann. §§ 48-2-101, *et seq.* ("the Act").

On February 4, 2003, the Commissioner filed a Verified Complaint alleging that some or all of the Defendants, as unregistered broker-dealers and/or agents, had sold and/or solicited the sale of unregistered securities in and from the State of Tennessee in violation of the Act. The Commissioner further alleged that some or all of the Defendants had: (1) employed a device, scheme or artifice to defraud; (2) made untrue statements of material facts and/or omitted to state material facts necessary in order to make statements made, in light of the circumstances in which they were made, not misleading, in the sale or offer of sale of such unregistered securities and/or (3) engaged in an act, practice or course of business which operated or would operate as a fraud or deceit upon any person, in connection with the sale of purchase of the unregistered securities directly or indirectly, in violation of the Act.

Specifically, the complaint alleged that Defendant Village Life, Inc. ("VLI") was incorporated as a Tennessee corporation on May 30, 2002. Shortly thereafter, it began to offer membership in four different programs both through seminars and through its website on the Internet.[1] As a result of several inquiries, the Securities Division of the Tennessee Department of Commerce and Insurance opened an investigation on Defendant VLI on January 13, 2003.[2]

On January 30, 2003, two investigators with the Securities Division attended a seminar in Smyrna, Tennessee, held by Defendant VLI. At this seminar, the investigators were introduced to Defendants Freddie Carr and Jamie West. Defendant Carr was specifically introduced as President of VLI and Defendant West was introduced as the Office Manager of VLI, as well as the primary presenter of the seminar. During the course of the seminar, Defendants West and

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[1] *See* Exhibits C and D to Verified Complaint.

[2] *Id.*

Freddie Carr discussed the four different investment programs offered by VLI. These programs were: (1) the Home Ownership Program; (2) the Auto Ownership Program; (3) the Student Loan Program; and, (4) the Credit Card Program. Each of these programs was intended, as represented by Defendants West and Freddie Carr, to promote "debt-free living."[3]

As explained by Defendants West and Freddie Carr, individual investors are allowed to participate in each of these programs at the same time, but are prohibited from participating in the same program after completion, until a specific time period had elapsed. For example, an individual investor could only participate in the Home Ownership program every five (5) years. It was represented that churches, however, would be allowed to participate in the programs every year and would not have to pay any taxes.[4]

Defendants represented, both in the seminar and on their Internet website, that under the Home Ownership Program, once an individual's funds are available, the funds could be used toward the purchase of a home, to build a home or to pay off an existing mortgage, including a second mortgage and an early pay-off penalty. This program provides a range of plans ranging from $75,000 to $500,000 in available funds, depending upon the amount of the individual's down payment, which ranges from $375 to $2,500.[5] In order to participate in the Home Ownership Program, an individual must first choose the plan they want. For example, if the individual chooses a plan whereby $300,000 in funds are allegedly to be made available, then the corresponding required down payment is $1,500. After choosing the plan, an individual is

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[3] *Id.*

[4] *Id.*

[5] *See* Exhibit E to Verified Complaint. *See also* Exhibits C and D to Verified Complaint.

required to pay a $25.00 application fee; pay the initial investment of the down payment and then make monthly payments of $50 for six (6) months. Defendant VLI represents that the $50 monthly fees are the only funds used for operating costs.[6]

In addition to paying these multiple fees, an individual is also required to bring four new members into the Home Ownership Program.[7] Defendants also require individual investors to execute a contract in order to become an "independent member" of the Home Ownership Program. That contract provides, among other things, that only the down payment is refundable after the six month period, if the investor is not satisfied with the progression of the program. If, however, the investor chooses to continue the program after the sixth month, he or she forfeits the right to receive any refund of the downpayment. The contract further provides that the investor "is solely responsible for the signing of four members to be eligible for payout" and that if the investor has "not fulfilled [that] obligation of signing four after a period of one (1) year, [the] contract is void and no refund is applicable."[8]

Defendant VLI represents in the contract that it will provide "bona fide supervisory services and support to members, which may consists [sic] of personal service, correspondence, newsletter and or telephone contact" and that it "will provide literature and advertising aids on receipt of application and clearance funds." Investors are prohibited by the contract from using any materials except those provided by VLI; from advertising in any form without the prior

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[6] *Id.*

[7] *Id.*

[8] *See* Exhibit 1 to Exhibit E to Verified Complaint.

written approval of VLI; and, from making any statements, claims, warranties or representations concerning VLI which are not published in official VLI material.[9]

The contract also provides that as a VLI-member, an investor is "eligible for a (one) home built or purchased valued $75,000 - $500,000, which will be paid directly to whoever owns the deed to the property, and at no time will cash be issued." Finally, the contract provides that "VLI may change its Rules, Regulations, Policies, Procedures, and dollars spend [sic] when building the homes in order to maintain a viable marketing system and comply with changes in specific laws or economic conditions" and that the investor will abide by any such changes.[10]

During the January 30th seminar, Defendant West and/or Defendant Freddie Carr explained how the program would generate money using the "4 x 6" plan. In the example, it was assumed that everyone participating in the program would sign up for the least amount on the Home Ownership program - $375. The program would then work as follows:

Month 1	$375 x 4 = $1,500
Month 2	$1,500 x 4 = $6,000
Month 3	$6,000 x 4 = $24,000
Month 4	$24,000 x 4 = $ 96,000
Month 5	$ 96,000 x 4 = $384,000
Month 6	$384,000 x 4 = $1,536,000

The (4) represents the four individuals that each individual investor is required to sign up as new members.[11]

Defendants also represented at the seminar that the program was similar to an insurance company where the insurance premiums are pooled together and then anytime someone is

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[9] *Id.*

[10] *Id.*

[11] *See* Exhibits C and D to Verified Complaint.

involved in an accident, the money is taken out and given to that individual. As the Defendants explained it, this was why insurance companies could offer a $250,000 policy for only $80 per month.[12]

Defendants' other three programs operate in a similar manner. Defendants represent that with their Auto Ownership Program, you can have the title to a brand new car or pay off an existing auto loan in six months. This plan offers a number of plans with available funds ranging from $1,000 to $70,000 and the corresponding down payment ranging from $100 to $700. As with the Home Ownership Program, the individual is required to pay a $25 application fee, the initial down payment and then the $50 monthly payments for a period of six months, as well as bring four new members into the program. An individual investor can participate in this program every three (3) years.[13]

The Student Loan and Credit Card Programs are similar. The Student Loan program represents that it will pay off existing student loans in the individual investor's name, with available funds ranging from $5,000 to $50,000 and the corresponding down payment ranging from $50 to $1,000. The Credit Card program represents that it will pay off existing credit card debts owed prior to the date of application and the applicant must be the primary card holder. The range of funds available and corresponding down payment amounts are the same as for the Student Loan program. This program requires the same application fee, down payment and

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[12] *Id.*

[13] *See* Exhibit 1 to Exhibit E to Verified Complaint.

monthly fees, as well as the signing of four new members, as required by the other two programs. Individual investors can participate in these programs once every four years.[14]

During the January 30th seminar, Defendant West represented that she had a brand new 2003 Infiniti G-35 as a result of participating in the Auto Ownership Program and that since November, 2002, at least one (1) house and two (2) automobiles had been purchased through the Home Ownership and Auto Ownership Programs. Defendant West further represented that a 2003 Cadillac CTS had been obtained on January 29, 2003 (the day before the seminar) through the Auto Ownership Program. At the conclusion of the seminar, this Cadillac was parked directly in front of the building so that it could be seen by everyone exiting the seminar.[15]

On January 23, 2003, the Virginia State Corporation Commission issued an Order for Temporary Injunction against Defendant VLI, alleging that VLI had sold unregistered securities in Virginia.[16] This Order was based upon the facts set forth in the Affidavit of a Senior Investigator for the Virginia Division of Securities and Retail Financing, concerning representations made by Defendant Freddie Carr during seminars conducted in Richmond and Hopewell, Virginia in early January, 2003. Defendant Freddie Carr had represented, among other things, that Defendant VLI was set up as a debt consolidation company and, therefore, not subject to regulation; that the money paid into the programs is not invested, but simply placed in a trust account at SunTrust Bank; that the program had already paid out on three (3) cars and one house that was pending; that the program is in fourteen (14) states, twenty-two (22) cities and has

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[14] *Id.*

[15] *See* Exhibits C and D to Verified Complaint.

[16] *See* Exhibit 2 to Exhibit E to Verified Complaint.

approximately 2400 members; and, that due to the processing and gathering of information, members are not immediately paid at the end of the six month period.[17] During the course of the January 30th seminar in Smyrna, Tennessee, Defendants did not disclose this Order of Temporary Injunction, nor did they disclose it on their Internet website.[18]

Prior to attending the January 30th seminar, the Securities Division conducted an undercover telephone conversation with a female representative of Defendant VLI, who is believed to have been Defendant Jenelle Carr. This conversation was recorded by the Securities Division. During the course of that conversation, the VLI representative stated that they were conducting four seminars a week at the Smyrna office; that they now had 2,500 members from Tennessee to Hawaii; and, that they have had about 2,000 new members in the last two months. The VLI representative stated that the company was based on "collective activity by a lot of people who want to do the same thing" and that it "worked like a group insurance policy." She further represented that Defendant VLI depends upon "word of mouth to advertise" its programs and that "***[w]e have to be able to have new people to sign up, for people to be able to benefit.***"[19]

On February 4, 2003, this Court granted the Commissioner an order temporarily restraining the Defendants, and all others holding assets of the Defendants, their respective officers, directors, agents, financial institutions, servants, employees, attorneys, successors, accountants and assigns, and those persons in active concert or participation with them from directly or indirectly:

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[17]*See* Exhibit 3 to Exhibit E to Verified Complaint.

[18]*See* Exhibits C and D to Verified Complaint.

[19]*See* Exhibit E to Verified Complaint.

1. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any books, records, accounts, or any other papers or recordings of any kind of the defendants, including but not limited to removing them from the jurisdiction of this Court.

2. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating or otherwise disposing of any assets, funds, or property which is owned, controlled, in the possession of or in which an interest is held or claimed by the defendants and derived from, related to, or arising out of the activities described in the Verified Complaint;

3. Conducting any business under the Tennessee Securities Act of 1980, Tenn. Code Ann. §§ 48-2-101, *et seq.*

4. Receiving directly or indirectly in any manner whatsoever any investment for the purpose of participating and/or investing in any investment plan of the defendants.

5. Conducting in any manner whatsoever, activity of the nature described in the preliminary findings of fact in this temporary restraining order.

On February 14, 2003, this Court granted the Commissioner an agreed temporary injunction restraining the Defendants from those activities listed in the February 4, 2003 Temporary Restraining Order.

On March 18, 2003, this Court entered an agreed order appointing Commissioner Flowers as Receiver for the safekeeping, collection management and disposition of assets of Defendant Village Life, Inc., and of the assets of Defendants Freddie Lee Carr, Jenelle Cedeno Carr and Jamie West, which related to, arose out of or were derived from the activities described in the Verified Complaint, pursuant to Tenn. Code Ann. § 48-2-119(b). That Receivership is still ongoing.

II. STANDARD OF REVIEW FOR SUMMARY JUDGMENT

Under Tenn.R.Civ.P. 56.03, summary judgment shall be rendered "if the pleadings, depositions, answers to interrogatories, and admissions on files, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

The Tennessee Supreme Court, in the case of *Bryd v. Hall*, reviewed the summary judgment procedure and set out the standards to be applied by courts in deciding such motions.[20] The Supreme Court first noted that the purpose of the summary judgment procedure is to rid the courts of thoses cases that do not justify the time and expense of trial.[21] In addition, the Supreme COurt noted that summary judgment is not a disfavored procedure, but rather a valuable instrument for resolving those cases that can and should be decided solely on the legal issues.[22]

Next, the Supreme Court stated that in evaluating a motion for summary judgment, there are three issues that lie at the heart of the matter: (1) whether a *factual* dispute exists; (2) whether the disputed fact is *material* to the outcome of the case; and, (3) whether the disputed fact creates a *genuine* issue for trial.[23]

As to the first issue, the Supreme Court held that "when there is no dispute over the evidence establishing the facts that control the application of a rule of law, summary judgment is

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[20]847 S.W.2d 208 (Tenn. 1993).

[21]*Id.* at 210.

[22]*Id.*

[23]*Id.* at 214.

a proper means of deciding that issue.[24] Secondly, if there is a disputed fact, in order to preclude summary judgment, it must be a material fact. A disputed fact is material "if it must be decided in order to resolve the substantive claims or defense at which the motion is directed."[25] Finally, if the evidence establishes a disputed fact and that fact is material, it still must create a genuine issue within the meaning of Tenn.R.Civ.P. 56.03. The test for determining a "genuine issue" is "whether a reasonable jury could legitimately resolve the fact in favor of one side or the other. If the answer is yes, summary judgment is inappropriate."[26] The Supreme Court went on to specifically note that the "genuine issue" requirement applies to disputed material facts and not to the mere legal conclusions to be drawn from those facts.[27]

The party seeking summary judgment must prove that there is an absence of a genuine issue of material fact and that he or she is entitled to judgment as a matter of law. When a properly supported motion has been made, the burden then shifts to the party opposing the motion to "set forth specific facts, not legal conclusions, by using affidavits or the discovery materials listed in Rule 56.03, establishing that there are indeed disputed, material facts creating a genuine issue."[28] *Moreover, the nonmoving party may not rely upon the allegations or denials of his pleadings in carrying out this burden.*[29]

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[24] *Id.*

[25] *Id.* at 215.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.* (Emphasis added).

With these standards in mind, the Commissioner submits that there are no genuine issues of material fact, and that as a matter of law, she is entitled to summary judgment, granting the relief requested in the Verified Complaint.

III. ARGUMENT

A. Defendants Have Violated The Tennessee Securities Act of 1980 by the Marketing, Soliciting and/or Sale of Unregistered Securities in and from the State of Tennessee.

The Tennessee Securities Act of 1980 is remedial in character, designed to prevent frauds and impositions upon the public and consequently should be liberally construed to effectuate its purposes.[30] Tenn. Code Ann. § 48-2-104 states that it is "unlawful for any person to sell any security in this state" unless it is registered or exempt from registration under § 48-2-103. The Act defines "security" as:

> any note, stock, treasury stock, bond, debenture, evidence of indebtedness, a life settlement contract, as defined in § 56-50-102, or any fractional or pooled interest in a life insurance policy or life settlement contract, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, ***investment contract***, voting trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest of instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.[31]

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[30] *DeWees v. State*, 216 Tenn. 104, 310 S.W.2d 241, 242 (1965).

[31] Tenn. Code Ann. § 48-2-102(12) (Supp. 1998)(emphasis added).

The term "investment contract" is not defined in the statute, however, in a recent decision the Tennessee Supreme Court has set forth the appropriate test to be applied in determining whether a particular transaction constitutes an investment contract under the Tennessee Securities Act.[32] The Court stated the test for an investment contract as follows:

> An "investment contract" is created whenever:
>
> (1) A party furnishes initial value to an owner.operator of an enterprise;
> (2) A portion of this initial value is subjected to the risks of the enterprise;
> (3) The furnishing of the initial value is induced by the owner/operator of the enterprises' promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value, will accrue to the party as a result of the operation of the enterprise; and
> (4) The party does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise. The right to exercise such control remains with the owner/operator of the enterprise.[33]

Application of Definition of Investment Contract to Present Facts.

The existence of a security is not a matter of particular form. Rather, it is a function of a set of characteristics and a relationship between parties involving aspects of ownership and control, access to information that is necessary to assess risk, and legitimate perceptions and expectations.[34] Keeping this in mind, and applying the test articulated in *King v. Pope*, the investment interests in Defendants' Home Ownership; Auto Ownership; Student Loan and Credit

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[32]*King v. Pope*, 91 S.W.3d 314 (Tenn. 2002).

[33]*King* at (citing *State v. Brewer*, 932 S.W.2d 11, 14 (Tenn.Crim.App. 1996)).

[34]Sowards & Hirsch, *Blue Sky Regulations*, Vol. 11C, § 2.01.

Card Programs meet all four prongs of the test and without question, are investment contracts which constitute securities as defined in the Tennessee Securities Act of 1980.

a. Furnishing Initial Value

The first prong of the test requires a party to furnish some initial value to an owner/operator of an enterprise. This prong is clearly satisfied in that Defendants' Solicitation Materials and contract require a non-refundable application fee, a down payment, and non-refundable monthly fees of $50 for six months in order to participate in the plan.[35]

b. Initial Value Subject To The Risks Of The Enterprise

The second prong of the test requires that the initial value, or at least a portion thereof, be subjected to the risks of the enterprise. Again, this aspect of the test is clearly satisfied. Defendants specifically represented to potential investors that their funds would be pooled — similar to an insurance company or group insurance policy. Defendants further represented that available funds would be achieved through utilization of the "4 x 6 plan". Defendants' explanation of this "4 x 6 plan" clearly decmonstrates that the enterprise depended upon each individual's initial investment and subsequent solicitation of four new members.[36] Indeed, a representative of Defendant VLI specifically represented that VLI had "to be able to have new people to sign up, for people to be able to benefit."[37] Finally, it was represented to investors that

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[35]*See* Exhibits B and C to Verified Complaint.

[36]*See* Exhibits C and D to Verified Complaint.

[37]*See* Exhibit E to Verified Complaint.

they would be eligible for funds under their chosen plan, only after they had paid all their fees and solicited their four new members.[38]

Accordingly, in light of Defendants' own descriptions of their investment plans and how they operate (i.e., investors' funds are pooled) and given that each investor's funds are completely subject to the risks of any actions of the Defendants, it is obvious that these investments in the Home Ownership; Auto Ownership; Student Loan; and Credit Card Programs meet the second prong of the test.

c. Initial Value Induced By Promises Of Benefits In Excess Of Initial Value

The third prong of the test adopted in *King v. Pope* requires that the furnishing of the initial value be induced by the owner/operator of the enterprise's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value, will accrue to the party as a result of the operation of the enterprise. In other words, a party is induced to invest in an enterprise or venture based upon the owner/operator's representations that he can expect a benefit or return on his investment.[39]

Here, there is no question but that Defendants made representations or promises to prospective investors of substantial returns on their investments. Specifically, Defendants represented that with a minimum investment of as little as $375 in the Home Ownership Program (along with the $25 application fee and $50 monthly fee for six months), an investor could have the deed to his or her home free and clear in six months or their money back.[40] With an

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[38] *Id.*

[39] *King v. Pope*, at (citing *State v. Brewer*, 932 S.W.2d at 14).

[40] *See* Exhibit 1 to Affidavit of Dale Clements, Exhibit E to Verified Complaint. *See also* Exhibits C and D to Verified Complaint.

investment of only $2,500, Defendants represented that an investor would have $500,000 in funds available for the purchase of a new home or to build a new home, or even to pay off an existing mortgage.[41] Defendants made similar representations with respect to investments in its Auto Ownership, Student Loan and Credit Card programs.

From these representations, it is obvious that the sole reason an individual would invest in any of Defendants' Programs is the prospect of a substantial return on his or her investment, and accordingly, the third prong of the test is satisfied.

d. Right To Exercise Control.

The final prong of the test requires that the party furnished the initial value not receive the right to exercise practical and actual control over the managerial decisions of the enterprise. With respect to this aspect of the test, it has been said that:

> The most essential consistency in the cases which have considered the meaning of "investment contract" is the emphasis on whether or not the investor has substantial power to affect the success of the enterprise. When his success requires professional or managerial skill on his part, and he has authority corresponding with his responsibility, his investment is not a security within the meaning of the securities act. When he is relatively uniformed and unskilled and then turns over his money to others, essentially depending upon their representations and their honesty and skill in managing it, the transaction is an investment contract.[42]

As with the other three prongs of the test to determine whether the investment interests in Defendants' Home Ownership, Auto Ownership, Student Loan and Credit Card Programs are investment contracts, this prong is clearly met. It is readily apparent that investors in these

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[41] *Id.*

[42] *S.E.C. v. Glenn W. Turner Enterprises, Inc.*, 348 F.Supp. 766, 775 (D.Or. 1972), *aff'd,* 474 F.2d 476 (9th Cir.), *cert. denied*, 414 U.S. 821, 94 S.Ct. 117, 38 L.Ed.2d 53 (1973).

Programs are depending upon the representations of the Defendants, as well as their honesty and skill in dealing with the funds.

Moreover, an investor clearly has no control over when or if their funds will be made available. Rather, with respect to the Home Ownership Program, they are simply told that once they have complied with the terms of the contract they are "eligible for a (one) home built or purcahses valued $75,000 - $500,000, which will be paid directly to whoever owns the deed to the property."[43] However, the Home Ownership Program contract specifically provides that "VLI may changes its Rules, Regulations, Policies, Procedures, and dollars spend [sic] when building the homes in order to maintain a viable marketing system, and comply with changes in specific laws or economic conditions" and that the investor "agree[s] to abide by such changes."[44] Thus, in reality, investors have no control over their investment whatsoever, including whether they even receive any sort of return on their investment, as Defendant VLI has specifically reserved to itself the authority to change its policies and procedures, including the amount of money it will pay out.[45]

In conclusion, it is undisputed that Defendants' Home Ownership, Auto Ownership, Student Loan and Credit Card Programs meet all four prongs of the test articulated in *King v. Pope* for determining what is an investment contract. Accordingly, these investment programs are securities as such is defined in the Tennessee Securities Act of 1980. Moreover, it is undisputed that these securities have never been registered with the Securities Division of the

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[43]*See* Exhibit 1 to Affidavit of Dale Clements, Exhibit E to Verified Complaint. *See also* Exhibit C to Verified Complaint.

[44]Exhibit 1 to Affidavit of Dale Clements, Exhibit E to Verified Complaint.

[45]*Id.*

Tennessee Department of Commerce and Insurance[46] and, therefore, the sale or offer of sale of these unregistered securities by the Defendants is in violation of the Tennessee Securities Act of 1980.

B. Defendants Freddie Lee Carr and Jamie West Have Acted As Unregistered Agents In Connection With the Offer And/Or Sale of Securities In Violation Of Tenn. Code Ann. § 48-2-109.

The Tennessee Securities Act of 1980 provides that it is "unlawful for any person to transact business from or in this state as [an] . . . agent unless such person is registered" with the Securities Division of the Tennessee Department of Commerce and Insurance.[47] Furthermore, it is "unlawful for any broker-dealer to employ an agent to transact business as an agent unless the agent is registered . . ." as such.[48] The term "agent" is defined as follows:

> [A]ny individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities from, in or into this tate. A partner, officer, director or manager of a broker-dealier, or a person occupying similar status or performing similar functions, is an agent only if such person otherwise comes within this definition or receives compensation specifically related to purchases or sales of securities from, in or into this state. "Agent" does not include such other persons not within the intent of this subdivision as the commission may, by rule, exempt from this definition as not in the public interest and necessary for the protection of investors.[49]

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[46]*See* Exhibit F to Verified Complaint.

[47]Tenn. Code Ann. § 48-2-109(a) (2003 Supp.).

[48]Tenn. Code Ann. § 48-2-109(b) (2003 Supp.)..

[49]Tenn. Code Ann. § 48-2-102(2)(2003 Supp.).

It is undisputed that Defendants Freddie Lee Carr and Jamie West have effected or attempted to effect the sale and/or purchase of securities in and from the State of Tennessee and that such soliciation and/or sale was made as the representative of Defendant Village Life, Inc.[50] It is further undisputed that neither Defendant Freddie Lee Carr or Jamie West has ever registered as an agent with the Securities Division of the Department of Commerce and Insurance, and yet both have been acting as agents of Defendant Village Life, Inc.[51] Accordingly, Defendants Freddie Lee Carr and Jamie West have acted as unregistered agents in connection with the sale and/or offer of sale of investment interests in Defendant VLI's Home Ownership, Auto Ownership, Student Loan and Credit Card Programs in violation of the Tennessee Securities Act.

C. Defendants Village Life, Inc., Freddie Lee Carr And Jamie West Have Violated The Tennessee Securities Act By Engaging In Fraud In Connection With The Sale And/Or Offer Of Sale Of Unregistered Securities.

The Tennessee Securities Act provides that

> [i]t is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to:
>
> (2) Make any untrue statement of a 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 are made, not misleading; or
> (3) Engage in any act, practice or course of business which operates or would operate as a fraud or deceipt upon any person.[52]

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[50] *See* Exhibits C and D to Verified Complaint.

[51] *See* Collective Exhibit B to Verified Complaint.

[52] Tenn. Code Ann. § 48-2-121(a) (2002).

It is undisputed that in making the offer of sale of securities (i.e., the Home Ownership, Auto Ownership, Student Loan and Credit Card Programs), Defendants VLI, Freddie Lee Carr and Jamie West omitted to state the following material facts:

1. The market for the investment;
2. Financial statements;
3. The identify of the principals in the investment along with their experiences in this type of investment;
4. Any involvement of the issuer, promoters or the principals in certain legal proceedings, including civil suits and prior violation of state laws;
5. The current capitalization of the issuer;
6. The minimum capitalization needed to proceed with the investment;
7. The disposition of any investments received if the minimum capitalization is not achieved;
8. The liquidity of the investment;
9. The nature of the competition in this type of investment;
10. Any conflicts of interest;
11. That this investment opportunity was not registered with the Tennessee Divisions of Securities, nor was it exempt from registration;
12. That none of the Defendants were licensed to sell securities in Tennessee.[53]

Defendants VLI, Freddie Lee Carr and Jamie West also failed to disclose that on January 23, 2003, the Virginia State Corporation Commission had issued an Order for Temporary Injunction against Defendant VLI, alleging that VLI had sold unregistered securities in Virginia.[54] This Order was based upon the facts set forth in the Affidavit of a Senior Investigator for the Virginia Division of Securities and Retail Financing, concerning representations made by

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[53]*See* Affidavit of _____ attached to Motion for Summary Judgment.

[54]*See* Exhibit 2 to Exhibit E to Verified Complaint.

Defendant Freddie Carr during seminars conducted in Richmond and Hopewell, Virginia in early January, 2003.[55]

Furthermore, at the January 30, 2003 seminar, Defendant West represented that she had a brand new 2003 Infiniti G-35 as a result of participating in the Auto Ownership Program and that since November, 2002, at least one (1) house and two (2) automobiles had been purchased through the Home Ownership and Auto Ownership Programs. Defendant West further represented that a 2003 Cadillac CTS had been obtained on January 29, 2003 (the day before the seminar) through the Auto Ownership Program.[56]

In making these representations to potential investors, however, Defendant Jamie West failed to disclose that she had never personally participated in the Auto Ownership Program[57] and that her 2003 Infiniti G-35 had been purchased with investor funds. Defendant West further failed to disclose that the house that had been purchased through the Home Ownership Program was the personal residence of Defendants Freddie Lee and Jenelle Cedeno Carr and that the other and that the 2003 Cadillac CTS had been purchased for the personal use and benefit of Defendant Freddie Lee Carr.[58]

Similarly, Defendant Freddie Lee Carr failed to disclose to potential investors that the house purchased through the Home Ownership Program was his own personal residence and that

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[55]*See* Exhibit 3 to Exhibit E to Verified Complaint.

[56]*See* Exhibits C and D to Verified Complaint.

[57]Defendant VLI's records do not contain any evidence that Defendant West paid the $25 application fee, down payment and six (6) monthly fees of $50 to participate in the Auto Ownership program, or that she signed a contract for participation in that program. *See* Affidavit of Max Theodore attached to Motion for Summary Judgment.

[58]*See* Affidavit of Max Theodore attached to the Motion for Summary Judgment.

neither he nor his wife had personally participated in that Program.[59] Defendant Freddie Carr also failed to disclose that the 2003 Infinit G-35 and 2003 Cadillac CTS purchased through the Auto Ownership program had been purchased for himself and Defendant West, neither of whom had personally participated in the Auto Ownership program.[60]

In addition to failing to disclose this material information, Defendant Freddie Lee Carr misrepresented to potential investors that Defendant VLI was a debt consolidation company and, therefore, not subject to any state regulation.[61] Moreover, Defendant VLI and Defendant Freddie Carr, as President of VLI, misrepresented to potential investors that VLI was a licensed entity and that its programs were guaranteed.[62] Finally, these Defendants represented that their investment programs had a money back guarantee, when in fact, the only funds that were refundable were the down payment and only if the investor chose not to continue in the program after six months.[63]

What constitutes a material fact depends upon the importance reasonable investors would attach to the withheld or misrepresented information.[64] If there is a "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available," courts have held it to be

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[59]Again, Defendant VLI's records contain no evidence that either Defendant Freddie Lee Carr or Jenelle Cedeno Carr ever paid the $25 application fee, down payment and montly fees of $50, much less entered into a contract, for participation in the Home Ownership Program. *Id.*

[60]*Id.*

[61]*See* Exhibit 3 to Exhibit E to Verified Complaint.

[62]*See* Exhibit 1 to Exhibit E to Verified Complaint.

[63]*Id.*

[64]*See United States v. Smith*, 155 F.3d 1051, 1064 (9th Cir. 1998).

material.[65] Clearly, the information set out above which Defendants VLI, Freddie Lee Carr and Jamie West failed to disclose would have been viewed by the reasonable investor as having "significantly altered the total mix of information made available" and, therefore, constitutes material facts. In particular, had these Defendants disclosed that the house and automobiles ostensibly purchased through the investment programs actually belonged to the individual defendants and not any investors, it is highly unlikely that any investor would have chosen to invest in the Home and Auto Ownership Programs.

Accordingly, by omitting to disclose these material facts in connection with the sale and/or offer of sale of investments in the Home Ownership, Auto Ownership, Student Loan and Credit Card Programs, Defendants VLI, Freddie Lee Carr and Jamie West have violated Tenn. Code Ann. § 48-2-121(a)(2). By representing to potential investors that the Home and Auto Ownership Programs have successfully purchased one residence and three automobiles for investors, when in fact the residence and automobiles had been purchased for the Defendants themselves, Defendants VLI, Freddie Lee Carr and Jamie West have also engaged in an act, practice or course of business which operated or would operate as a fraud or deceit on potential investors in connection with the sale of investments in their Programs in violation of Tenn. Code Ann. § 48-2-121(a)(3).

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[65]*See Basic, Inc. v. Levinson*, 485 U.S. 234, 238, 108 S.Ct. 978, 99 L.Ed.2d 194 (1988)(internal quotation and citation omitted); *see also In re Stac Electronics Sec. Litig.*, 89 F.3d 1399, 1408 (9th Cir. 1996).

C. Defendants Should Be Required To Disgorge All Monies Received While Operating Illegally in the State of Tennessee.

As set forth in the affidavit of Max Theodore, Defendants received approximately $$799,823.500 in investor funds from approximately 1700 investors over an eight month time period. Of that amount, approximately $278,443.01 was frozen in Defendant VLI's bank accounts as a result of this Court's Temporary Restraining Order and subsequent Temporary Injunction.[66] Defendant VLI's financial and other records demonstrate that the remaining funds were used by the Defendants as follows:

- Approximately $168,980.67 was used by Defendants Freddie Lee and Jenelle Cedeno Carr to pay of the mortage on their personal residence located at 695 Forest Ridge Drive, LaVergne, Tennessee 37086.
- Approximately $31,386.06 was used by Defendants Freddie Lee Carr, Jenelle Cedeno Carr and Jamie West to purchase a 2003 Infiniti G-35 for the personal use and benefit of Defendant West.
- Approximately $36,689.73 was used by Defendant Freddie Lee Carr to purchase a 2003 Cadillac CTS for his personal use and benefit.
- Approximately $18,736.78 was used by Defendant Jenelle Cedeno Carr to purchase a 2003 PT Cruiser for the use and benefit of Benita Lenoir, a VLI investor.
- Approximately $253,409.81 was used by Defendants Freddie Lee and Jenelle Cedeno Carr for their personal living expenses, including travel expenses for the purpose of soliciting potential investors, during 2002 and January 2003.[67]

---

[66]Additionally, these funds were subsequently paid over to the Receiver as part of the assets of the Defendants pursuant to the Agreed Order of Receivership.

[67]*See* Affidavit of Max Theodore and exhibits thereto.

Tenn. Code Ann. § 48-2-119 provides that:

> (a) Whenever it appears to the commissioner that any person has engaged in or is about to engage in any act or practice constituting a violation of any provisions of this part or any rule or order hereunder, the commissioner may, in the commissioner's direction, bring an action in the chancery court of any county in this state to enjoin the acts or practices and to enforce compliance with this part or any rule or order hereunder.
> (b) Upon a proper showing, a permanent or temporary injunction, restraining order, writ of mandamus, disgorgement or other proper equitable relief shall be granted and a receiver or conservator may be appointed for the defendants or the defendant's assets.

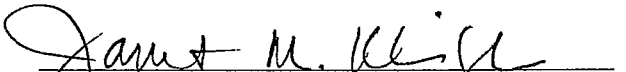
As established in the previous sections, it is undisputed that Defendants, acting as unregistered agents, have sold or offered to sell unregistered securities in and from the State of Tennessee in violation of the Tennessee Securities Act. Furthermore, it is undisputed that Defendants have engaged in fraud in connection with the sale and/or offer of sale of these unregistered securities, either directly or indirectly, in violation of the Tennessee Securities Act. As such, Defendants should not be allowed to profit from their fraudulent and illegal activities in violation of the Tennessee Securities Act and should be required to disgorge to the court-appointed receiver all monies received while operating illegally in this State. Accordingly, the Commissioner requests that this Court order Defendants to disgorge all such monies and enter a judgment against the Defendants, jointly and severally, in the amount of $509,203.10, for which execution may occur.

IV. CONCLUSION

For these reasons, the Commissioner submits that there are no genuine issues of material fact and that the Commissioner is entitled to a judgment in her favor as a matter of law. Accordingly, the Commissioner respectfully requests that this Court grant her motion for summary judgment.

Respectfully submitted,

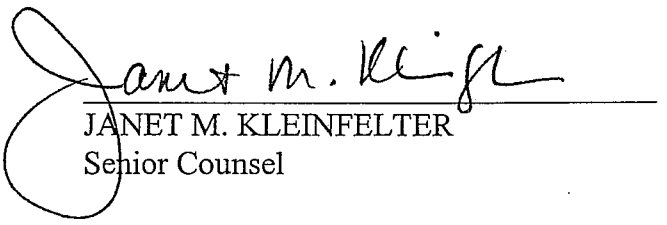
PAUL G. SUMMERS
Attorney General and Reporter



JANET M. KLEINFELTER (BPR 13889)
Senior Counsel
Financial Division
425 5th Avenue North
Nashville, Tennessee 37243
(615) 741-7403
[FAX] (615) 532-8223

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum has been sent by first class U.S. mail, postage prepaid, to: W. Gary Blackburn, Blackburn & McCune, PLLC, 201 4th Avenue North, Suite 1700, Nashville, Tennessee 37219, this 21st day of July, 2004.



JANET M. KLEINFELTER
Senior Counsel

FILED

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

2004 JUL 21 PM 1:53

CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

PAULA A. FLOWERS, Commissioner of the Tennesseee Department of Commerce and Insurance, Plaintiff, v. VILLAGE LIFE, INC., FREDDIE LEE CARR, JENELLE CEDENO CARR and JAMIE WEST, Defendants.	)))))))))))))	No. 03-316-III (IV)

MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Tennessee Rules of Civil Procedure, the Commissioner respectfully requests that this Court grant summary judgment in her favor against the Defendants, Village Life, Inc., Freddie Lee Carr, Jenelle Cedeno Carr and Jamie West. This motion is supported by an accompanying memorandum of law and statement of undisputed facts.

Respectfully submitted,

PAUL G. SUMMERS
Attorney General and Reporter

JANET M. KLEINFELTER (BPR 13889)
Senior Counsel
Financial Division
425 5th Avenue North
Nashville, Tennessee 37243
(615) 741-7403
[FAX] (615) 532-8223

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been sent by first class U.S. mail, postage prepaid, to: W. Gary Blackburn, Blackburn & McCune, PLLC, 201 4th Avenue NOrth, Suite 1700, Nashville, Tennessee 37219, this 21st day of July, 2004.

JANET M. KLEINFELTER
Senior Counsel

NOTICE OF HEARING

THIS MOTION IS SET FOR HEARING ON THE COURT'S REGULARLY SCHEDULED MOTION DOCKET FOR FRIDAY, September 10, 2004 at 9:00 *A.M.*

IF NO RESPONSE IS TIMELY FILED AND SERVED, THE MOTION SHALL BE GRANTED AND COUNSEL OR PRO SE LITIGANT NEED NOT APPEAR IN COURT AT THE TIME AND DATE SCHEDULED FOR THE HEARING. *See*, Rule 26.04(f) of the Davidson County Local Rules of Practice.

FILED
2004 JUL 21 PM 1:54
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.
D.C.&M.

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

PAULA A. FLOWERS, Commissioner of the Tennessee Department of Commerce and Insurance,	)	
Plaintiff,	)	
v.	)	No. 03-316-III
VILLAGE LIFE, INC., FREDDIE LEE CARR, JENELLE CEDENO CARR and JAMIE WEST,	)	
Defendants.	)	

AFFIDAVIT OF MAX THEODORE
ADMINISTRATIVE ASSISTANT TO THE RECEIVER, PAULA A. FLOWERS

COMES NOW, MAX THEODORE, and being first duly sworn, deposes and says.

1. I am Max Theodore, and I am over the age of 21, and am otherwise in all respects competent to give the within affidavit. I have personal knowledge of the matters stated in this affidavit.

2. I am the president of Sterling Consulting Group, Inc. ("SCG"), which is a Florida corporation currently contracted with the Receiver, Paula A. Flowers, Commissioner of the Tennessee Department of Commerce and Insurance ("Receiver"), to provide administrative support services for the receivership of Village Life, Inc. ("VLI").

3. As the president of SCG and a contractor for the receivership of VLI, my responsibilities include processing of proof of claim information submitted by investors and creditors to the Receiver, handling of routine calls involving instructions on the completion of the proof of claims, and analysis and oversight of the bank accounts and other assets seized

by the Receiver in the course of her receivership of VLI.

4. I have conducted a review of the financial records and bank accounts of VLI for the 2002 and 2003 calendar years relative to certain transactions made by VLI for the benefit of Freddie Lee Carr ("F. Carr"), Jenelle Cedeno Carr ("J. Carr") and Jaime West ("West"), among others. In the course of my review, I have discovered the following facts:

a. During the 2002-2003 calendar years, VLI received approximately seven hundred ninety-nine thousand eight hundred twenty-three dollars and fifty cents ($799,823.50) in investor funds from approximately seventeen hundred (1700) investors nationwide over an eight (8) month period;

b. Of that amount, approximately two hundred seventy-eight thousand four hundred forty-three dollars and one cent ($278,443.01) was frozen in VLI's bank account at Bank of America as a result of the Temporary Restraining Order and subsequent Temporary Injunction entered by the Davidson County Chancery Court, Part III;

c. Of the funds that VLI received from investors during the 2002-2003 calendar years, approximately one hundred sixty-eight thousand nine hundred eighty dollars and sixty-seven cents ($168,980.67) was used by F. Carr and J. Carr to pay off the mortgage for their personal residence at 695 Forest Ridge Drive, LaVergne, Tennessee 37086;

d. Of the funds that VLI received from investors during the 2002-2003 calendar years, approximately thirty-one thousand three hundred eighty-six dollars and six cents ($31,386.06) was used by F. Carr and J. Carr to purchase a 2003 Infiniti G-35 automobile for the personal use of West;

e. Of the funds that VLI received from investors during the 2002-2003 calendar years, approximately thirty-six thousand six hundred eighty-nine dollars and seventy-three cents ($36,689.73) was used by F. Carr to purchase a 2003 Cadillac CTS automobile for his personal use and benefit;

f. Of the funds that VLI received from investors during the 2002-2003 calendar years, approximately eighteen thousand seven hundred thirty-six dollars and seventy-eight cents ($18,736.78) was used by J. Carr to purchase a 2003 PT Cruiser automobile for the use of Benita Lenoir ("Lenoir"), a VLI investor;

g. Of the funds that VLI received from investors during the 2002-2003 calendar years, approximately two hundred fifty-three thousand four hundred nine dollars and eighty-one cents ($253,409.81) was used by F. Carr, J. Carr and West for their personal expenses, including travel expenses used for the purpose of soliciting potential investors.

5. Of the assets belonging to the Receiver, the Receiver is currently in possession of two hundred seventy-seven thousand three hundred twenty-eight dollars and twenty-nine cents ($277,328.29) seized from the bank accounts of VLI as of 5/31/2004. The amount owing the Receiver from the assets currently in control of F. Carr, J. Carr, West, Lenoir and others is approximately five hundred nine thousand two hundred three dollars and ten cents ($509,203.10).

6. The automobiles and the personal residence of F. Carr and J. Carr described herein are not in the Receiver's possession at this time.

7. True and correct copies of the financial documents upon which the above-described monetary figures are based are attached hereto.

Further deponent saith not.

Max Theodore

Sworn and subscribed before me this 21st day of July, 2004.

Stephanie Childers

Notary Public

My Commission Expires: 5/17/06

11:20 AM
07/19/04
Accrual Basis

Paula Powers Receiver for Village Life, Inc.
Balance Sheet
As of May 31, 2004

	May 31, 04
ASSETS	
Current Assets	
Checking/Savings	
Bank of America-7607	35,389.61
Bank of America-8303	198,625.06
Bank of America-8316	33,164.40
Bank of America-8329	10,149.22
Total Checking/Savings	277,328.29
Total Current Assets	277,328.29
TOTAL ASSETS	277,328.29
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
Claims Payable	
Claims Payable-Auto Account	312,275.20
Claims Payable-House Acct	1,417,876.00
Claims Payable-Other	39,801.18
ClaimsPayable-St. Loan & Cr. Ca	40,125.20
Total Claims Payable	1,810,077.58
Total Other Current Liabilities	1,810,077.58
Total Current Liabilities	1,810,077.58
Total Liabilities	1,810,077.58
Equity	
Opening Bal Equity	278,443.01
Retained Earnings	-1,807,658.57
Net Income	-3,533.73
Total Equity	-1,532,749.29
TOTAL LIABILITIES & EQUITY	277,328.29

11:22 AM
07/19/04
Accrual Basis

Paula Powers Receiver for Village Life, ...

Profit & Loss

January through May 2004

	Jan - May 04
Ordinary Income/Expense	
Income	
Checks-Seizure of Assets	14,915.00
Interest Income 8303	535.31
Interest Income 8316	66.71
Interest Income 8329	16.21
Total Income	15,533.23
Expense	
Bank Service Charges	39.50
Consulting-Contract	15,848.75
Newspaper-Liquidation Notice Pu	1,604.01
Printing and Reproduction	1,219.70
Temporary Staffing	355.00
Total Expense	19,066.96
Net Ordinary Income	-3,533.73
Net Income	-3,533.73

FILED
2004 JUL 21 PM 1:54
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

RECEIVED
JUL 23 2004
Commerce & Insurance
Commissioner's Office

PAULA A. FLOWERS, Commissioner of the Tennessee Department of Commerce and Insurance,	)	
Plaintiff,	)	
v.	)	No. 03-316-III(14)
VILLAGE LIFE, INC., FREDDIE LEE CARR, JENELLE CEDENO CARR, and JAMIE WEST,	)	
Defendants.	)	

STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Pursuant to Tenn.R.Civ.P. 56.03, the Commissioner respectfully submits this Statement of Undisputed Facts in support of her motion for summary judgment.

1. Defendant Village Life, Inc. ("VLI"), is a Tennessee corporation, with its business address located at 429 Nissan Dr., Suite 102, Smyrna, Tennessee 37167. (Verified Complaint, ¶ 4).

2. Defendant VLI has never registered with the Securities Division of the Tennessee Department of Commerce and Insurance as a broker-dealer or agent pursuant to Tenn. Code Ann. §§ 48-2-109-110. (Affidavit of Larry Burton attached as Exhibit A to Verified Complaint).

3. Defendant Freddie Lee Carr is a citizen and resident of Rutherford County, Tennessee and is the President and a Co-Owner of Defendant VLI. (Verified Complaint, ¶ 5).

4. Defendant Freddie Carr has never registered with the Securities Division of the Tennessee Department of Commerce and Insurance as a broker-dealer or agent, pursuant to Tenn. Code Ann. §§ 48-2-109-110. (Affidavits of John Perry Warden attached as Collective Exhibit B to Verified Complaint).

5. Defendant Jenelle Cedeno Carr is a citizen and resident of Rutherford County, Tennessee and is a Co-Owner of Defendant VLI. (Verified Complaint, ¶ 6).

6. Defendant Jenelle Carr has never registered with the Securities Division of the Tennessee Department of Commerce and Insurance as a broker-dealer or agent, pursuant to Tenn. Code Ann. §§ 48-2-109-110. (Exhibit B to Verified Complaint).

7. Defendant Jamie West is a citizen and resident of Rutherford County, Tennessee and is the Office Manager of Defendant VLI. (Verified Complaint, ¶ 7).

8. Defendant West has never registered with the Securities Division of the Tennessee Department of Commerce and Insurance as a broker-dealer or agent, pursuant to Tenn. Code Ann. §§ 48-2-109-110. (Exhibit B to Verified Complaint).

9. Defendant VLI was incorporated as a Tennessee corporation on May 30, 2002. Shortly thereafter, it began to offer membership in four different programs both through seminars and through its website on the Internet. (Affidavits of Stuart Huffman and Eddie Davis attached as Exhibits C and D to Verified Complaint).

10. As a result of several inquiries, the Securities Division of the Tennessee Department of Commerce and Insurance opened an investigation on Defendant VLI on January 13, 2003. (Exhibits C and D to Verified Complaint).

11. On January 30, 2003, two investigators with the Securities Division attended a seminar in Smyrna, Tennessee, held by Defendant VLI. At this seminar, the investigators were introduced to Defendants Freddie Carr and Jamie West. Defendant Carr was specifically introduced as President of VLI and Defendant West was introduced as the Office Manager of VLI, as well as the primary presenter of the seminar. (Exhibits C and D to Verified Complaint).

12. During the course of the seminar, Defendants West and Freddie Carr discussed the four different investment programs offered by VLI. These programs were: (1) the Home Ownership Program; (2) the Auto Ownership Program; (3) the Student Loan Program; and, (4) the Credit Card Program. Each of these programs was intended, as represented by Defendants West and Freddie Carr, to promote "debt-free living." (Exhibits C and D to Verified Complaint).

13. Individual investors are allowed to participate in each of these programs at the same time, but are prohibited from participating in the same program after completion, until a specific time period had elapsed. For example, an individual investor could only participate in the Home Ownership program every five (5) years. It was represented that churches, however, would be allowed to participate in the programs every year and would not have to pay any taxes. (Exhibits C and D to Verified Complaint).

14. Defendants represented, both in the seminar and on their Internet website, that under the Home Ownership Program once an individual's funds are available, the funds could be used toward the purchase of a home, to build a home or to pay off an existing mortgage, including a second mortgage and an early pay-off penalty. This program provides a range of plans ranging from $75,000 to $500,000 in available funds, depending upon the amount of the

individual's down payment, which ranges from $375 to $2,500. (Affidavit of Dale Clements attached as Exhibit E to Verified Complaint; Exhibits C and D to Verified Complaint).

15. In order to participate in the Home Ownership Program, an individual must first choose the plan they want. For example, if the individual chooses a plan whereby $300,000 in funds are allegedly to be made available, then the corresponding required down payment is $1,500. After choosing the plan, an individual is required to pay a $25.00 application fee; pay the initial investment of the down payment and then make monthly payments of $50 for six (6) months. Defendant VLI represents that the $50 monthly fees are the only funds used for operating costs. (Exhibits C, D and E to Verified Complaint).

16. In addition to paying these multiple fees, an individual is also required to bring four new members into the Home Ownership Program. (Exhibits C, D and E to Verified Complaint).

17. Defendants also require individual investors to execute a contract in order to become an "independent member" of the Home Ownership Program. That contract provides, among other things, that only the down payment is refundable after the six month period, if the investor is not satisfied with the progression of the program. If, however, the investor chooses to continue the program after the sixth month, he or she forfeits the right to receive any refund of the downpayment. The contract further provides that the investor "is solely responsible for the signing of four members to be eligible for payout" and that if the investor has "not fulfilled [that] obligation of signing four after a period of one (1) year, [the] contract is void and no refund is applicable." (Exhibit 1 to Exhibit E to Verified Complaint).

18. Defendant VLI represents in the contract that it will provide "bona fide supervisory services and support to members, which may consists [sic] of personal service, correspondence, newsletter and or telephone contact" and that it "will provide literature and advertising aids on receipt of application and clearance funds." Investors are prohibited by the contract from using any materials except those provided by VLI; from advertising in any form without the prior written approval of VLI; and, from making any statements, claims, warranties or representations concerning VLI which are not published in official VLI material. (Exhibit 1 to Exhibit E to Verified Complaint).

19. The contract also provides that as a VLI-member, an investor is "eligible for a (one) home built or purchased valued $75,000 - $500,000, which will be paid directly to whoever owns the deed to the property, and at no time will cash be issued." (Exhibit 1 to Exhibit E to Verified Complaint).

20. Finally, the contract provides that "VLI may change its Rules, Regulations, Policies, Procedures, and dollars spend [sic] when building the homes in order to maintain a viable marketing system and comply with changes in specific laws or economic conditions" and that the investor will abide by any such changes. (Exhibit 1 to Exhibit E to Verified Complaint).

21. During the January 30th seminar, Defendant West and/or Defendant Freddie Carr explained how the program would generate money using the "4 x 6" plan. In the example, it was assumed that everyone participating in the program would sign up for the least amount on the Home Ownership program - $375. The program would then work as follows:

Month 1	$375 x 4 = $1,500
Month 2	$1,500 x 4 = $6,000
Month 3	$6,000 x 4 = $24,000

Month 4	$24,000 x 4 = $ 96,000
Month 5	$ 96,000 x 4 = $384,000
Month 6	$384,000 x 4 = $1,536,000

The (4) represents the four individuals that each individual investor is required to sign up as new members. (Exhibits C and D to Verified Complaint).

22. Defendants also represented at the seminar that the program was similar to an insurance company where the insurance premiums are pooled together and then anytime someone is involved in an accident, the money is taken out and given to that individual. As the Defendants explained it, this was why insurance companies could offer a $250,000 policy for only $80 per month. (Exhibits C and D to Verified Complaint).

23. Defendants' other three programs operate in a similar manner. Defendants represent that with their Auto Ownership Program, you can have the title to a brand new car or pay off an existing auto loan in six months. This plan offers a number of plans with available funds ranging from $1,000 to $70,000 and the corresponding down payment ranging from $100 to $700. As with the Home Ownership Program, the individual is required to pay a $25 application fee, the initial down payment and then the $50 monthly payments for a period of six months, as well as bring four new members into the program. An individual investor can participate in this program every three (3) years. (Exhibit 1 to Exhibit E to Verified Complaint).

24. The Student Loan and Credit Card Programs are similar. The Student Loan program represents that it will pay off existing student loans in the individual investor's name, with available funds ranging from $5,000 to $50,000 and the corresponding down payment ranging from $50 to $1,000. The Credit Card program represents that it will pay off existing credit card debts owed prior to the date of application and the applicant must be the primary card

holder. The range of funds available and corresponding down payment amounts are the same as for the Student Loan program. This program requires the same application fee, down payment and monthly fees, as well as the signing of four new members, as required by the other two programs. Individual investors can participate in these programs once every four years. (Exhibit 1 to Exhibit E to Verified Complaint).

25. During the January 30th seminar, Defendant West represented that she had a brand new 2003 Infiniti G-35 as a result of participating in the Auto Ownership Program and that since November, 2002, at least one (1) house and two (2) automobiles had been purchased through the Home Ownership and Auto Ownership Programs. Defendant West further represented that a 2003 Cadillac CTS had been obtained on January 29, 2003 (the day before the seminar) through the Auto Ownership Program. (Exhibits C and D to Verified Complaint).

26. On January 23, 2003, the Virginia State Corporation Commission issued an Order for Temporary Injunction against Defendant VLI, alleging that VLI had sold unregistered securities in Virginia. (Exhibit 2 to Exhibit E to Verified Complaint).

27. This Order was based upon the facts set forth in the Affidavit of a Senior Investigator for the Virginia Division of Securities and Retail Financing concerning representations made by Defendant Freddie Carr during seminars conducted in Richmond and Hopewell, Virginia in early January, 2003. Defendant Freddie Carr had represented, among other things, that Defendant VLI was set up as a debt consolidation company and, therefore, not subject to regulation; that the money paid into the programs is not invested, but simply placed in a trust account at SunTrust Bank; that the program had already paid out on three (3) cars and one house that was pending; that the program is in fourteen (14) states, twenty-two (22) cities and has

approximately 2400 members; and, that due to the processing and gathering of information, members are not immediately paid at the end of the six month period. (Exhibit 3 to Exhibit E to Verified Complaint).

28. During the course of the January 30th seminar in Smyrna, Tennessee, Defendants did not disclose this Order of Temporary Injunction, nor have they disclosed it on their Internet website. (Exhibits C and D to Verified Complaint).

29. In making the offer of sale of securities (*i.e.*, the Home Ownership, Auto Ownership, Student Loan and Credit Card Programs), Defendants VLI, Freddie Lee Carr and Jamie West failed to state the following material facts:

1. The market for the investment;
2. Financial statements;
3. The identify of the principals in the investment along with their experiences in this type of investment;
4. Any involvement of the issuer, promoters or the principals in certain legal proceedings, including civil suits and prior violation of state laws;
5. The current capitalization of the issuer;
6. The minimum capitalization needed to proceed with the investment;
7. The disposition of any investments received if the minimum capitalization is not achieved;
8. The liquidity of the investment;
9. The nature of the competition in this type of investment;
10. Any conflicts of interest;
11. That this investment opportunity was not registered with the Tennessee Divisions of Securities, nor was it exempt from registration;
12. That none of the Defendants were licensed to sell securities in Tennessee.

(Affidavit of _____ in support of Motion for Summary Judgment).

30. Defendant Jamie West failed to disclose that she had never personally participated in the Auto Ownership Program and that her 2003 Infiniti G-35 had been purchased with investor funds. Defendant West further failed to disclose that the house that had been purchased through the Home Ownership Program was the personal residence of Defendants Freddie Lee and Jenelle Cedeno Carr and that the 2003 Cadillac CTS purchased through the Auto Ownership Program was purchased for the personal use and benefit of Defendant Freddie Lee Carr. (Affidavits of _____ and Max Theodore in support of Motion for Summary Judgment).

31. Defendant Freddie Lee Carr failed to disclose to potential investors that the house purchased through the Home Ownership Program was his own personal residence and that neither he nor his wife had personally participated in that Program. Defendant Freddie Carr also failed to disclose that the 2003 Infiniti G-35 and 2003 Cadillac CTS purchased through the Auto Ownership program had been purchased for himself and Defendant West, neither of whom had personally participated in the Auto Ownership program. (Affidavits of _____ and Max Theodore).

32. Defendant Freddie Lee Carr misrepresented to potential investors that Defendant VLI was a debt consolidation company and, therefore, not subject to any state regulation. Moreover, Defendant VLI and Defendant Freddie Carr, as President of VLI, misrepresented to potential investors that VLI was a licensed entity and that its programs were guaranteed. These Defendants further represented that their investment programs had a money back guarantee, when in fact, the only funds that were refundable were the down payment and only if the investor chose not to continue in the program after six months. (Exhibits 1 and 3 to Exhibit E to Verified Complaint).

33. Defendants received approximately $799,823.50 in investor funds from approximately 1700 investors over an eight (8) month time period. Of that amount, approximately $278,443.01 was frozen in Defendant VLI's bank accounts as a result of this Court's Temporary Restraining Order and subsequent Temporary Injunction. (Affidavit of Max Theodore).

34. Defendant VLI's financial and other records demonstrate that the remaining funds were used by the Defendants as follows:

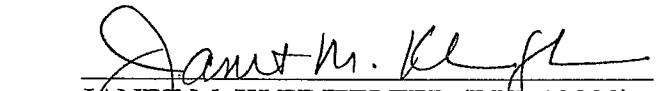
- Approximately $168,980.67 was used by Defendants Freddie Lee and Jenelle Cedeno Carr to pay of the mortage on their personal residence located at 695 Forest Ridge Drive, LaVergne, Tennessee 37086.
- Approximately $31,386.06 was used by Defendants Freddie Lee Carr, Jenelle Cedeno Carr and Jamie West to purchase a 2003 Infiniti G-35 for the personal use and benefit of Defendant West.
- Approximately $36,689.73 was used by Defendant Freddie Lee Carr to purchase a 2003 Cadillac CTS for his personal use and benefit.
- Approximately $18,736.78 was used by Defendant Jenelle Cedeno Carr to purchase a 2003 PT Cruiser for the use and benefit of Benita Lenoir, a VLI investor.
- Approximately $253,409.81 was used by Defendants Freddie Lee and Jenelle Cedeno Carr for their personal living expenses, including travel expenses for the purpose of soliciting potential investors, during 2002 and January 2003.

(Affidavit of Max Theodore).

34. The investments in Defendants' Home Ownership; Auto Ownership; Student Loan and Credit Card Programs have never been registered with the Securities Division of the Tennessee Department of Commerce and Insurance as required by Tenn. Code Ann. § 48-2-104. (Affidavit of Cora Alton attached as Exhibit F to the Verified Complaint).

Respectfully submitted,

PAUL G. SUMMERS
Attorney General and Reporter



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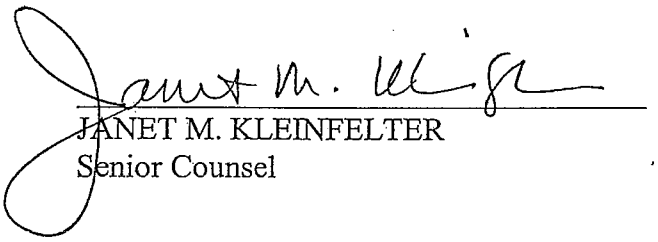
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Statement of Undisputed Facts has been sent by first class U.S. mail, postage prepaid, to: W. Gary Blackburn, Blackburn & McCune, PLLC, 201 4th Avenue North, Suite 1700, Nashville, Tennessee 37219, this 21st day of June, 2004.



JANET M. KLEINFELTER
Senior Counsel