

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

ALAN WILSON, SECURITIES)
COMMISSIONER OF SOUTH)
CAROLINA,)

Plaintiff,)

v.)

AMY LEBEN, ROBERT LEBEN,)
STRUCTURED FINANCE GROUP)
CORPORATION, GARY L.)
BOHLKE, and ROBERT SEMISCH,)

Defendants,)

and)

THE ROBERT S. LEBEN AND)
AMY L. LEBEN FAMILY TRUST,)

Relief Defendant.)
_____)

Case No. 2013-CP_____

COMPLAINT

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CLERK OF COURT

COMES NOW, Alan Wilson, Securities Commissioner of South Carolina, by his undersigned counsel, complaining of the above named defendants and alleging as follows:

PARTIES

1. Plaintiff is the Securities Commissioner of the State of South Carolina (the "Commissioner") and, in that capacity, is charged with enforcing the securities laws of the State of South Carolina.

2. Plaintiff accomplishes certain of his duties, including his registration duties, through the State Securities Division ("Securities Division").

3. Defendant Structured Finance Group Corporation (“SFG”) is a Delaware for-profit corporation with its principal place of business at 118 Peninsula Way, Columbia, South Carolina 29229. SFG is not registered with the Securities Division in any capacity.

4. Defendant Amy Leben is the President and sole shareholder of SFG and resides at 118 Peninsula Way, Columbia, South Carolina 29229. Amy Leben is not registered with the Securities Division in any capacity.

5. Defendant Robert Leben is the Managing Director of SFG and resides at 118 Peninsula Way, Columbia, South Carolina 29229. Robert Leben is not registered with the Securities Division in any capacity.

6. Defendant Gary L. Bohlke (“Bohlke”) is a Maryland resident and resides 1716 Eutaw Place, Baltimore, Maryland 21217. Bohlke acts as an agent of SFG. Bohlke is not registered with the Securities Division in any capacity.

7. Defendant Robert Semisch (“Semisch”) is a Georgia resident and resides at 2864 Kingsland Court S.E., Atlanta, Georgia 30339. Semisch is not registered with the Securities Division in any capacity. Semisch is or has been in the securities business and is or has been registered in some states, including in his home state of Georgia, as an investment adviser. Semisch has also been registered in multiple states as a broker-dealer agent. Semisch has passed multiple exams relating to securities products and state and federal securities laws.

8. The Robert S. Leben and Amy L. Leben Family Trust (the “Trust”) owns certain real property in Richland County, South Carolina.

JURISDICTION AND VENUE

9. This civil action is brought pursuant to S.C. Code Ann. §§ 35-1-603(a) and (b), which authorize the Securities Commissioner to bring an action in the Richland County Court of Common Pleas to enjoin violations of and enforce compliance with the South Carolina Uniform Securities Act of 2005 (the “Securities Act”) and to grant other appropriate relief.

10. This Court has jurisdiction over the parties and the subject matter of this action, and venue is proper in Richland County.

GENERAL FACTUAL ALLEGATIONS

A. Background

11. Robert Leben was formerly a resident of the State of New York. Prior to moving to South Carolina, he worked in various capacities with a number of financial firms. Robert Leben has taken and passed multiple exams relating to securities products and state and federal securities laws.

12. Amy Leben was formerly a resident of the State of New York. Prior to moving to South Carolina, she worked in the insurance industry. Amy Leben has taken and passed one or more exams relating to securities products and state and federal securities laws.

13. In or about 2006, while still residing in New York, Amy Leben engaged a Dover, Delaware law firm to form SFG as a Delaware Corporation. Amy Leben currently owns one hundred percent (100%) of the shares of SFG.

14. At some point during 2007, Amy and Robert Leben relocated to the Columbia, South Carolina area.

B. The Scheme

15. Shortly after Amy and Robert Leben relocated to South Carolina, they, along with the other Defendants, began soliciting investments through SFG (the “Investments”). During the period September 17, 2008 to May 9, 2011, at least eleven (11) investors (the “Investors”) invested in excess of \$3,000,000.00 with Defendants.

16. At least ten (10) of the Investors were advised to invest in SFG by Semisch.

17. At least one (1) Investor was directly contacted by Robert Leben and solicited to invest money in SFG.

18. According to the contract that each of the Investors entered into with SFG (the “Investment Agreement”), SFG was to secure the principal sum for the full term with “AAA rated US Treasury debt obligations.”

19. The Investment Agreement promises Investors above-market rates of return from their investments, up to fourteen percent (14%), to be distributed quarterly.

20. Additionally, the Investment Agreement contains a merger clause stating that it represents the “entire agreement between the parties.”

21. Pursuant to the Investment Agreement, Investors’ funds are wired from the Investors to a “Fiduciary Trust account.” Bohlke is the “Fiduciary

Trustee” on the “Fiduciary Trust account” and, as such, the recipient of the Investor funds.

22. Upon receipt of Investor funds, Bohlke diverts a portion of the funds for his own use. The portion diverted by Bohlke often exceeds ten (10) percent of the investment.

23. Bohlke’s remuneration is not disclosed to the Investors.

24. Bohlke subsequently transfers a percentage of the funds to accounts in the name of Amy Leben and SFG.

25. Contrary to the representations to Investors, very little of the more than \$3,000,000 invested with Defendants was used to purchase United States Treasury debt obligations.

26. Defendants did not fully secure the principal sum of any of the eleven Investors whose Investments are detailed in this Complaint with AAA rated United States Treasury debt obligations.

27. Additionally, upon information and belief, no Investor’s principal is or has been “secured for the full term.”

28. In reality, Defendants are operating a Ponzi scheme, wherein investments from one investor are used to repay prior investors in the scheme.

29. During the pendency of the scheme, Defendant Robert Leben engaged in the trading of some bonds, commodities, and other securities. However, the trading was almost entirely unprofitable. Such trading diminished the Investors’

principal, despite Defendants' promise in the Investment Agreement that the Investor's "[p]rincipal is secured for the full term."

30. Defendant Robert Leben's trading, however, is not the primary reason little to no Investor principal remains today.

31. Misappropriation of Investor funds by Defendants for personal use is the primary reason Investor principal is diminished.

32. During the period in which the Investors invested with Defendants, neither Amy nor Robert Leben had any significant source of income other than the Investor funds.

33. During the period of the investments, Amy Leben, acting as the sole shareholder and President of SFG, caused SFG to create a "credit line" between SFG and Amy and Robert Leben, whereby the Lebens were permitted to draw millions of dollars from SFG for personal use.

34. Funds from the "credit line" were then used to finance nearly every aspect of Amy and Robert Leben's lifestyle, including the purchase of a new Audi, various home furnishings, artwork, cosmetic surgery, and vacations to numerous destinations within and without the State of South Carolina.

35. The Investment Agreement makes no mention of the credit line, stating instead that Investors' funds will be secured by "AAA rated US Treasury debt obligations."

36. Additionally, Investors' funds were directed by Amy Leben and Robert Leben toward the purchase and substantial renovation of their Columbia, South Carolina home (the "Residence"), which is titled in the name of the Trust.

37. Furthermore, Amy Leben and Robert Leben have directed in excess of \$100,000 in Investors' funds to their son, Michael Leben, who resides in the State of New York, including \$1,000 shortly after his birthday, and over \$90,000 ostensibly for the development of a website.

38. Robert Leben has one or more unpaid judgments against him based on his prior involvement in the securities industry. In order to evade his creditors, Robert Leben has attempted to minimize the appearance of his involvement in SFG.

39. Amy Leben has materially aided Robert Leben's attempts to evade creditors by causing the incorporation of SFG and by listing herself as the President and sole shareholder.

40. Additionally, Amy Leben has registered SFG's brokerage, bank, and other accounts, as well as SFG's credit cards, in her name.

C. The Investments are securities

41. The Investments sold to investors are "securities" as defined by the Securities Act.

42. The Investments constitute "investment contracts." Specifically, all of the following occurred in connection with the Investments:

- a. Investors placed funds with the Defendants;
- b. Those funds were pooled in SFG's accounts;

- c. Investors were promised profits in the form of a “better than average return”; and
- d. No material efforts were required of the Investors to obtain the stated returns. All essential efforts critical to the success of the venture were to be performed by one or more of the Defendants.

43. Additionally, the Investment Agreement constitutes a “certificate of interest or participation in a profit-sharing agreement” which, by definition, is a “security” pursuant to the Securities Act.

D. Investor A

44. Illustrative of Defendants’ scheme is the case of Investor A.

45. Investor A was informed of the opportunity to invest with Defendants by Semisch, who was Investor A’s financial advisor.

46. Investor A was told that if he invested with SFG, he would receive no less than a fourteen percent (14%) annual return on his investment for the full term of the investment.

47. Between September of 2008 and May of 2009, Investor A, through four (4) separate transactions, invested a total of \$1,250,000 with SFG.

48. Each time Investor A invested, an Investment Agreement detailing the terms of the transaction was executed with SFG.

49. Each Investment Agreement that Investor A entered into promised a return of fourteen percent (14%) annually, payable quarterly, and that Investor A's money would be secured by "AAA rated US Treasury debt obligations."

50. On September 17, 2008, Investor A invested \$200,000 with SFG. The funds received pursuant to this investment were not placed in United States Treasury securities. A portion of the investment was used by Amy Leben and Robert Leben for the payment of personal expenses, including over \$8,000 to pay the balance on a credit card in the name of Amy Leben.

51. On December 16, 2008, Investor A invested an additional \$200,000 with SFG. These funds were not used to purchase United States Treasury securities. A portion of the investment was used by Amy Leben and Robert Leben for a number of personal purchases including over \$3,000 at Carolina Imports, over \$1,800 at Whit Ash Furnishings, and nearly \$8,000 at The Lite House.

52. On January 9, 2009, Investor A invested an additional \$100,000 with SFG. These funds were not used to purchase United State Treasury securities. A portion of the investment was used to pay the personal expenses of Amy Leben and Robert Leben, including over \$18,000 in home furnishings, over \$5,000 for appliances and home electronics at H.H. Gregg, and over \$4,000 at Home Depot.

53. On May 21, 2009, Investor A made a fourth investment with SFG. This investment was in the amount of \$750,000. The funds were not used to purchase United States Treasury securities. A portion of the investment was used to pay the personal expenses of Amy Leben and Robert Leben, including over \$1,300

at Dick's Sporting Goods, over \$1500 on airline tickets, over \$10,000 for cosmetic surgery, and \$68,235 to Audi of Columbia for the purchase of an Audi RS4 Cabriolet by Amy Leben.

54. An additional \$8,500 of Investor A's May 21, 2009 investment was wired to Bohlke on June 9, 2009 for disbursement to other investors.

E. Investor B

55. Investor B provides another example of the mechanics of Defendants' scheme.

56. In 2008, Investor B's husband passed away. His passing left Investor B with the proceeds of a \$400,000 life insurance policy.

57. Investor B consulted with Semisch, who had been her husband's financial advisor, and he advised her to invest a portion of the proceeds of her husband's life insurance policy with Robert Leben and SFG.

58. Investor B agreed to invest \$250,000.00 in the scheme.

59. Semisch informed Investor B that her investment would be placed in United States Treasury Bills and pay her an annual interest rate of fourteen percent (14%).

60. Investor B's funds were not used to purchase United States Treasury Bills. Rather, they were used in conjunction with additional Investors' funds to facilitate the purchase of the Residence for \$500,000 on January 6, 2009.

61. In 2010, Investor B's sister received a lump sum payment of \$50,000 as part of an early retirement brought on by a physical disability.

62. Investor B asked Semisch to contact Robert Leben and arrange for her sister's money to be invested in SFG. Upon being approached, Robert Leben stated that SFG was unwilling to accept new investors and suggested instead that Investor B add her sister's \$50,000 to Investor B's \$250,000 investment, for a total investment of \$300,000.00.

63. Accordingly, on January 28, 2010, Investor B executed an Investment Agreement with SFG and Robert Leben and transferred \$50,000 to Bohlke via the stated "Fiduciary Trust account."

64. Following receipt, Bohlke transferred \$49,450 to SFG. Investor B's sister's money was not used to purchase "AAA rated US Treasury debt obligations;" rather, it was primarily diverted to pay various personal expenses related to Amy Leben and Robert Leben, including \$25,000 to Amy Leben, \$7,500 to Michael Leben's website operation, \$6,300 wired to, and subsequently withdrawn from, a bank account in the name of Amy Leben, and \$5,500 to pay various bills, including utility bills of Michael Leben.

65. Despite the thefts of funds described above, Robert Leben informed Investor B that as of July 29, 2013, the value of her investment had increased to a total of \$409,810.

FIRST CLAIM FOR RELIEF
Sale of Unregistered Securities
(Violation of S.C. Code Ann. § 35-1-301)

66. The Commissioner incorporates the allegations of paragraphs 1-65 and realleges them as if set forth verbatim herein.

67. The Investment Agreements that the Defendants offered and sold to the Investors constitute securities as defined by S.C. Code Ann. § 35-1-102(29).

68. The Securities Act requires that securities be registered with the Securities Division or offered under a claim of exemption.

69. The Investment Agreements were not registered with the Securities Division and were not offered under a claim of an exemption.

70. By reason of the foregoing, Defendants Robert Leben, Amy Leben, Semisch, Bohlke and SFG have violated, and unless enjoined will continue to violate, S.C. Code Ann. § 35-1-301.

SECOND CLAIM FOR RELIEF
Unregistered Agent
(Violation of S.C. Code Ann. § 35-1-402)

71. The Commissioner incorporates the allegations of paragraphs 1-70 and realleges them as if set forth verbatim herein.

72. As alleged in paragraphs 1-65 above, Defendants Robert Leben and Bohlke each received compensation for representing an issuer in effectuating the purchase or the sale of securities while not being registered with the Securities Division in violation of S.C. Code Ann. § 35-1-402(a).

73. By reason of the foregoing, Defendants Robert Leben and Bohlke have violated, and unless enjoined will continue to violate, S.C. Code Ann. § 35-1-402.

THIRD CLAIM FOR RELIEF
Securities Fraud
(Violation of S.C. Code Ann. § 35-1-501)

74. The Commissioner incorporates the allegations of paragraphs 1-73 and realleges them as if set forth verbatim herein.

75. By engaging in the acts and conduct alleged in paragraphs 1-65 above, Defendants Robert Leben, Amy Leben, Bohlke, Semisch, and SFG, directly or indirectly, in connection with the offer or sale of a security, have:

- a. Employed devices, schemes, and artifices to defraud;
- b. Made or caused to be made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances they were made, not misleading; and
- c. Engaged in acts, practices, and courses of business that operated or would operate as a fraud or deceit upon another person.

76. By reason of the foregoing, Defendants Robert Leben, Amy Leben, Bohlke, Semisch, and SFG, directly or indirectly, have violated, and unless enjoined will continue to violate, S.C. Code Ann. § 35-1-501.

FOURTH CLAIM FOR RELIEF
Disgorgement

77. The Commissioner incorporates the allegations of paragraphs 1-76 and realleges them as if set forth verbatim herein.

78. The Residence was purchased with Investors' funds and titled in the name of the Trust.

79. The Trust does not have a legitimate claim to the Residence or the funds used to purchase it.

80. By reason of the foregoing, the Trust should be required to disgorge the Residence and any other ill-gotten gains in its possession.

PRAYER FOR RELIEF

WHEREFORE, the Commissioner respectfully prays for:

I.

An order containing Findings of Fact and Conclusions of Law pursuant to Rule 52 of the South Carolina Rules of Civil Procedure, finding that the Defendants named herein committed the violations alleged herein.

II.

A permanent injunction barring the Defendants from future violations of the Securities Act.

III.

An order requiring an accounting of the use of proceeds of the sales of securities described in this Complaint.

IV.

An order requiring the disgorgement by the Defendants of all ill-gotten gains realized from the activities described herein, with prejudgment interest.

V.

An order pursuant to S.C. Code Ann. § 35-1-603(b)(2)(C) imposing upon each Defendant a civil penalty not to exceed \$10,000 for each violation of the Securities Act by that Defendant.

VI.

An order declaring and imposing a constructive trust on all property received by the Robert S. Leben and Amy L. Leben Family Trust, except such property as the Trust shows, to the satisfaction of the Court, does not constitute proceeds from the sale of the Investments described in this Complaint, and ordering the Trust to disgorge all property except such property as it has shown to the Court's satisfaction does not constitute proceeds from the sale of the Investments described in the Complaint.

VII.

An order granting any other relief the Court considers just and proper.

Respectfully Submitted,

ALAN WILSON
Securities Commissioner

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December 11, 2013.