

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

OKLAHOMA DEPARTMENT OF SECURITIES,)
ex rel. IRVING L. FAUGHT, ADMINISTRATOR,)

Plaintiff,)

v.)

ACCELERATED BENEFITS CORPORATION,)
a Florida Corporation, et al.,)

Defendants.)

MAR 13 2001

PATRICIA PRESLEY, COURT CLERK
by *Patricia White*
Deputy

Case No. CJ-99-2500-66

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. Accelerated Benefits Corporation (hereinafter ABC) is a Florida corporation which offers and sells investments in viatical settlements. The investment is evidenced by Purchase Request Agreements through which purchasers contract for the right to receive from ABC a sum of money equal to a designated percentage of the death benefits payable from one or more life insurance policies on the life of one or more persons (known as a viator) who have a catastrophic or life threatening illness or condition in exchange for the performance of certain services by ABC.

2. ABC contracts with persons, via a Producer Agreement, to solicit and take orders for all programs, products, and/or services offered by ABC including the viatical settlements. ABC pays commissions, bonuses and overrides to the sales agents.

3. ABC entered into Producer Agreements with American Financial Associates, L.L.C. and William W. Romine. Pursuant to these producer agreements, American Financial Associates, L.L.C., William W. Romine, Philip Stegall and Kelly Ryan acted on behalf of ABC to effect the offer and sale of investment opportunities in the State of Oklahoma.

4. ABC prepares promotional materials for and distributes such materials to the ABC Agents for their use in soliciting the purchase of investment opportunities. These materials are also distributed to purchasers of the investment opportunities. The materials distributed by ABC

emphasize the substantial and **guaranteed returns** that can be expected from the purchase of an investment opportunity. The materials encourage a purchaser to compare the purchase of an investment opportunity with ABC with other types of investments, such as stocks, bonds, or mutual funds, in terms of risk and expected profit. The promotional materials state that the investment bears the least amount of risk while generating the greatest amount of profit in relation to more traditional investment vehicles.

5. In the Purchase Request Agreement, ABC establishes suitability requirements for a purchaser of an investment opportunity. The suitability requirements relate to net worth and educational or financial experience.

6. ABC allows purchasers to designate the term of their investment in the Purchase Request Agreement by selecting from a range of life expectancies for the viators. Certain of the purchasers designated the term of their investments from the following range:

- First Available policy; returning from 12% to 60%;
- 6 months to 12 months (profits from 6% to 12%);
- 12 months to 24 months (profits from 12% to 28%);
- 24 months to 36 months (profits from 28% to 42%);
- 36 months to 48 months (profits from 42% to 60%);
- 48 months to 60 months (profits from 60% to 75%).

7. American Title Company of Orlando, Florida, (hereinafter American Title) acts as an escrow company on behalf of and at the direction of ABC. American Title receives and holds funds from the purchase of the investment. Each purchaser of an investment remits a check to ABC, payable to American Title, for the full amount of the investment. ABC then deposits the checks into a bank account in the name of American Title.

8. The purchase of the investment occurs at the time the purchaser parts with his or her money.

9. Pursuant to its Purchase Request Agreement obligations, ABC preliminarily qualifies or rejects viators' life insurance policies based on an evaluation of the actual policies and medical

records utilizing ABC's established standards.

10. Pursuant to its obligations, ABC further evaluates and negotiates for the purchase of qualified life insurance policies of viators via the following process:

- (a) ABC hires medical reviewers who review the viators' medical records, confirm the health status of the viators and provide an estimate of the viators life expectancies to ABC. ABC incurs the expense of the medical reviews.
- (b) ABC determines that sufficient funds have been pooled from the sale of investment opportunities to its investors to bid on particular life insurance policies.
- (c) Based on the life expectancy estimates provided by the medical reviewer, ABC negotiates for the purchase of the policies through a bidding process.

11. Pursuant to its obligations, ABC tentatively matches life insurance policies to investors Purchase Request Agreements. ABC notifies purchasers of the tentative matching by identifying the policy or policies that have been matched to the purchaser's request by insurance carrier name and policy number; the amount of money the purchaser is guaranteed to receive upon maturation of the matched policy; the name of the viator; the viator's estimated life expectancy, and the purchaser's profit percentage on the transaction.

12. Pursuant to its obligations, ABC finalizes the purchase of the viators' life insurance policies through the following process:

- (a) ABC issues contracts for the purchase of the viators' life insurance policies by American Title.
- (b) ABC directs American Title to disburse funds to the viators for the purchase of their policies.
- (c) ABC directs American Title to pay administrative and operating expenses of ABC, commissions to ABC Agents, ABC's compensation, American Title's fees and future premium payments.
- (d) ABC directs that ownership of the policies and the beneficiary designations be transferred from the viators into the name of American Title or American Title for the benefit of ABC.
- (e) ABC sends a closing package to each purchaser for each policy to which the purchaser's purchase request agreement is matched. The closing package includes the identity of the other purchasers that have been matched to the same policy, the viator's life expectancy determination, and proof of the change in ownership and beneficiary designation to American Title.

13. Pursuant to its obligations, ABC performs policy maintenance after the purchase of the life insurance policies from the viators through the following process:

- (a) ABC monitors the health of each viator and maintains all viator contact information.
- (b) ABC verifies payment of premiums on all policies.
- (c) ABC receives notice of the death of a viator. ABC notifies purchasers of the investment to which the viator's policy is matched and the appropriate ABC Agents of the viator's death. ABC obtains a copy of the death certificate, which ABC forwards to American Title for filing of the death claim.
- (d) ABC will defend claims made against the policy.
- (e) American Title receives the death benefit from the insurance carrier. ABC documents to American Title the names of the purchasers of the investment to receive checks and the amounts of the checks. ABC directs American Title to issue checks made payable to purchasers of the investment in the amounts designated by ABC. American Title delivers the checks directly to ABC. ABC then sends the checks to purchasers of the investment.
- (f) When ABC notifies purchasers of the viator's death, ABC routinely provides purchasers the opportunity to reinvest their proceeds in another investment opportunity. ABC requests that the purchaser complete an amendment to the purchase request agreement in order to consummate the reinvestment.

14. Participation by a purchaser of an investment is limited to: (a) executing a purchase request agreement and designating a life expectancy range for the viator with the stated return, and (b) providing funds for the right to receive a sum of money equal to a designated percentage of the death benefits payable from one or more life insurance policies on the life of one or more viators.

15. The purchasers of the Investment Contracts do not obtain ownership of the life insurance policies of the viators.

16. The purchasers of the investment are not named as beneficiaries on the life insurance policies of the viators.

17. The purchasers of the investment have no access to or opportunity to review the medical records or insurance policies of the viators.

18. ABC's efforts are the essential managerial efforts that affect the success or failure of the investment opportunities. ABC has the expertise, knowledge or ability to perform such efforts;

purchasers do not.

19. The profits of purchasers of investment are tied to the profits of other purchasers by ABC's pooling of funds to purchase the viators' life insurance policies. The purchasers receive a proportionate share of any profits that result from the Investment Contracts.

20. ABC offered and sold Investment Contracts to Oklahoma residents through the Oklahoma Agents in the State of Oklahoma.

21. The investments were not registered under the Oklahoma Securities Act and were not exempt from registration pursuant to Section 401 of the Oklahoma Securities Act.

22. The Oklahoma Agents were not registered under the Oklahoma Securities Act.

23. Charles E. Bates, Earl Dean Simpson, Subhash R. Sood, Dharam P. Sood, and Donald S. Stacy are Oklahoma residents who entered into purchase request agreements with ABC. These Oklahoma residents invested their money with the expectation of profits.

24. In June of 1998, Earl Dean Simpson advised ABC of representations made to him that the return on his investment would be tax free. The tax free representations were made by Philip Stegall, an Oklahoma Agent.

25. On August 4, 1998, Donald S. Stacy entered into his purchase request agreement with ABC based on the representations made to him that the return on his Investment Contract would be tax free. The tax free representations were made by two of the Oklahoma Agents, Kelly Ryan and William W. Romine.

26. On September 28, 1998, Charles E. Bates entered into his purchase request agreement with ABC. One of the Oklahoma Agents, Kelly Ryan, represented to Mr. Bates that the return on his investment would be tax free.

27. The return on the investment is taxable.

28. There are various risks associated with the investment including, but not limited to the following: (a) that the viator could live longer than the estimated life expectancy; (b) that the insurer could become insolvent before the death benefit is paid and the purchaser of the investment could lose all or a portion of his or her investment funds; and (c) that the purchaser's annualized

return could be significantly reduced if ABC fails to properly evaluate the viator's health and insurance policy.

29. ABC, through its agents, orally and in writing, made the following misstatements of fact in connection with their offers and sales of investments:

- (a) that ABC offered and sold "No Risk - Insured" investments in viatical settlements when in fact ABC did not.
- (b) that the return on the investments was tax free when in fact the return was not tax free.
- (c) that the investments are "the perfect, no risk investment" with "Quick-profit, guaranteed" when in fact there were risks associated with the investments and quick profits could not be guaranteed.

The facts that were misstated were material to the investment decisions of Oklahoma purchasers of the investments.

30. ABC made the following misstatements of fact in connection with its offers and sales of the investment

- (a) In connection with the purchase of the investment by Subhash R. Sood (hereinafter Mrs. Sood), ABC stated in the Purchase Request Agreement that Mrs. Sood would "be named as absolute, irrevocable, non-transferable and direct beneficiary on all Policies Purchased" when in fact she was not. American Title was named as the beneficiary.
- (b) ABC stated, in correspondence with Oklahoma purchasers of the investments that: (1) the return on the investment was "GUARANTEED" when in fact it was not; and (2) "the ownership and beneficial rights for [life insurance policies] have been secured FOR the BENEFIT OF (F.B.O.) all purchasers . . ." when, in fact, such designations were never made.
- (c) ABC stated in sales literature distributed to ABC Agents and purchasers of the investments: (1) that viatical settlements are "fully-backed" when in fact there is no securitization, other form of collateralization or any ownership interest to support the investments; (2) that "policy(ies) are purchased directly from the Viator(s) by the Purchaser(s) . . ." when in fact the purchasers of the investments do not purchase the viators' insurance policies.

The facts that were misstated were material to the investment decisions of Oklahoma purchase of the investments.

31. ABC omitted to state the following facts necessary to make the statements that were

made not misleading:

- (a) that any coverage provided by the Insurance Guarantee Fund referred to in the Purchase Request Agreement does not apply to life insurance policies, but only to property and casualty insurance policies.
- (b) that the guaranteed payment of premiums referenced in the Purchase Request Agreement is limited to the amount of funds from the purchase of investments that is set aside according to a predetermined formula of one and one half times the life expectancy of the viator.

The facts that were omitted were material to the investment decisions of Oklahoma purchasers of the investments and were necessary to make the statements that were made, in the light of the circumstances under which they were made, not misleading.

32. ABC marketed itself as a reputable company operating under the highest of standards.

ABC omitted to state the following facts necessary to make such representations not misleading:

- (a) that its sales agent, William W. Romine, had been convicted of a felony for misapplication of fiduciary property.
- (b) that the United States District Court, Middle District of Florida, in 1998, had entered a permanent injunction against Clarence Keith LaMonda ("LaMonda"), the managing director and chief executive officer of LaMonda Management Family Limited Partnership, the entity that was responsible for providing legal, accounting, management and administrative services to ABC.
- (c) that in June, 1998, ABC received a written complaint from Oklahoma investor Earl Simpson, alleging that one or more of the Oklahoma Agents had made Material representations to Mr. Simpson, yet ABC undertook no investigation of Mr. Simpson's allegations and continued to allow the Oklahoma Agents to make the same misrepresentations in the offer and sell of the investments in Oklahoma until April of 1999 when ABC terminated its relationships with Mr. Romine and American Financial Associates, L.L.C.
- (d) that the Florida Department of Insurance, entered a Consent Order on October 31, 1997, against ABC, wherein ABC represented that LaMonda "is no longer an officer, director, owner, agent or employee of [ABC], has divested himself of any and all ownership interest he may have had in [ABC], and is no longer associated in any manner with [ABC]. . . ." In said Consent Order, ABC further represented that ABC "will not allow C. Keith LaMonda to have any direct or indirect affiliations with [ABC] . . . until such time as the allegations of fraud and dishonesty in the complaint filed against him by the United States Securities and Exchange Commission have been resolved in his favor, and the [Florida Department of Insurance] approves, in writing, his proposed re-association with [ABC]."

The facts that were omitted were material to the investment decisions of Oklahoma purchasers of the investment and were necessary to make the statements that were made, in the light

of the circumstances under which they were made, not misleading.

33. ABC engaged in acts, practices, or a course of business that operated as a fraud or deceit upon purchasers of the investment by:

- (a) making the misstatements of fact described in paragraphs 29 through 30 above.
- (b) omitting to state the facts described in paragraphs 31 and 32 above.
- (c) requiring the Purchaser to execute the "Purchase Request Agreement" thereby making the representation that the purchaser's money was "neither borrowed nor in any way anticipated to be needed during the maximum maturity term selected hereinabove" when in fact there was no maximum maturity term for the investment because there was no guarantee that the viator's death would occur within the maturity term selected.
- (d) preparing and executing a document titled "Accelerated Benefits Corporation Note Purchase Agreement and Assignment of Benefits" wherein certain representations and warranties were made on behalf of, and in the name of, Mrs. Sood without her knowledge or consent including, but not limited to, the following:
 - (i) that she is sophisticated in financial matters;
 - (ii) that she is able to bear the risk of purchasing a note for an indeterminate period; and
 - (iii) that she can afford the possible complete loss of funds invested.
- (e) stating in the closing packages to Mrs. Sood that the insurance companies issuing policies to which her investments were matched had been directed to name her as a direct, irrevocable beneficiary on such policies when in fact the insurance companies were not so directed.
- (f) tentatively matching Dharam P. Sood to a policy supposedly satisfying his life expectancy designation when in fact the medical review had not yet been performed and the life expectancy of the viator had not yet been determined.

CONCLUSIONS OF LAW

1. Defendant ABC, places its defense in the instant case on the case of **Life Partners, Inc. v. SEC**, 87 F.3d 536 (D.C. Cir. 1996), *rehearing denied*, 102 F.3d 587 (1996). The Life Partners case places its emphasis on the managerial efforts of the seller of the investment at the point of post investment. As here, the Defendant argues that the only managerial effort by ABC after the investor's purchase is the payment of proceeds at of the viator. This analysis is inconsistent with the test set forth in **U.S. v. Howey**, 328 U.S. 293 (1946).

The outcome of the investment in the instant case is totally dependent on the expertise and managerial efforts of ABC in seeking out and choosing the right viatical settlement. Investors have no input into the investment nor do they have a beneficial ownership interest in any of the viatical settlements.

1. The investments offered and sold by ABC are securities under Section 2(v) of the Oklahoma Securities Act. (Findings of Fact 1 through 20, 23).

2. ABC offered and sold the investments to Oklahoma residents in violation of Section 301 of the Oklahoma Securities Act. (Findings of Fact 1, 2, 3, 4, 5, 7, 8, 14, 20, 21, 23).

3. ABC employed agents, as defined in Section 2(d) of the Oklahoma Securities Act, who were not registered or exempt from registration in violation of Section 201(b) of the Oklahoma Securities Act. (Findings of Fact 2, 3, 4, 20, 22, 24, 25, 26, 29).

4. The Oklahoma Agents were common law agents of ABC. (Findings of Fact 2, 3, 4, 20, 22, 24, 25, 26, 29).

5. ABC offered and sold the Investment Contracts in violation of Section 101(2) of the Oklahoma Securities Act. (Findings of Fact 4, 6, 11, 15, 16, 17, 24 through 32).

6. ABC offered and sold the Investment Contracts in violation of Section 101(3) of the Oklahoma Securities Act. (Findings of Fact 4, 6, 11, 15, 16, 17, 24 through 33).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is entered on behalf of the Oklahoma Department of Securities on its Petition.

DATED this 13th day of March, 2001.



DANIEL L. OWENS, DISTRICT JUDGE

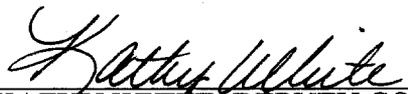
I, PATRICIA PRESLEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerk's Office of Oklahoma County, Okla., this 13 day of March, 2001.
By Patricia Presley PATRICIA PRESLEY, Court Clerk Deputy

Certificate of Mailing

This is to certify that a true and correct copy of the foregoing Findings of Fact and Conclusions of Law was mailed, postage prepaid, on the 13th day of March, 2001, to the following:

MS. PATRICIA LABARTHE
ATTORNEY AT LAW
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102

MS. IDA WURCZINGER DRAIM
ATTORNEY AT LAW
2101 L. STREET, N.W.
WASHINGTON, D.C. 20037-1526


KATHY WHITE, DEPUTY COURT CLERK