

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

DEC 30 2016

RICK WARREN  
COURT CLERK

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Oklahoma Department of Securities )  
*ex rel.* Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
R&J Financial, Inc. and )  
John M. Arledge, Jr., )  
 )  
Defendants. )

Case No. CJ - 2016 - 6646

**PETITION FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

COMES NOW the Plaintiff, Oklahoma Department of Securities (“Department”) *ex rel.* Irving L. Faught, Administrator, and for its claims against R&J Financial, Inc. and John M. Arledge, Jr. (collectively, “Defendants”), alleges and states as follows:

**OVERVIEW**

This case involves violations of the Oklahoma Uniform Securities Act of 2004 (the “Act”), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (2011), by Defendants. Specifically, the Department alleges that Defendant R&J Financial, Inc. has failed to register as an investment adviser and employed and/or associated with an unregistered investment adviser representative, in violation of Section 1-403 of the Act; Defendant John M. Arledge, Jr. has failed to register as an investment adviser representative, in violation of Section 1-404 of the Act; and Defendants have engaged in prohibited investment advisory conduct, in violation of Section 1-502 of the Act and 660:11-7-42(b) of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (“Rules”), Okla. Admin. Code §§ 660:1-1-1 through 660:25-7-1. Further, Defendants have offered and sold unregistered securities, in violation of Section 1-301

of the Act; Defendant John M. Arledge, Jr. has transacted business in this state as an unregistered agent, in violation of Section 1-402 of the Act; Defendant R&J Financial, Inc. has employed and/or associated with an unregistered agent, in violation of Section 1-402 of the Act; and Defendants have perpetrated fraud in connection with the offer and sale of securities, in violation of Section 1-501 of the Act.

### **JURISDICTION**

1. Plaintiff brings this action pursuant to Section 1-603 of the Act and is the proper party to bring this action.

2. In connection with their activities in this state as described herein, Defendants are subject to the provisions of the Act, pursuant to Section 1-610 of the Act, and to the jurisdiction of this Court and service of summons.

3. Venue is proper in this county.

### **BACKGROUND**

4. R&J Financial, Inc. ("R&J Financial"), an unincorporated entity with its principal place of business in Oklahoma City, Oklahoma, operates as an investment management and consulting business.

5. John M. Arledge, Jr. ("Arledge"), an individual, is an Oklahoma resident. At all times material hereto, R&J Financial acted under the control of Arledge.

### **NATURE OF THE CASE**

6. Beginning as early as 2007 and continuing to the present, Defendants have offered to invest the money of certain Oklahoma residents ("Investors"). Among the Investors are Investor A, the spouse of Investor A, Investor B and Investor C, each of whom is discussed

below. In connection with more than one of the Investors, the investment arrangement between Defendants and an Investor was evidenced by:

(a) a promissory note (“Promissory Note”), the terms of which authorize Defendants to commingle the Investor’s monies in an investment account to be managed and controlled by Defendants; or

(b) an “Investment Consultant Agreement” (“Consulting Agreement”), the terms of which authorize R&J Financial, denoted as the “Advisor”, to open an investment account, in the name of the Investor, to be managed and controlled by Defendants.

7. Arledge, who calls himself a securities trader, represents to Investors that (a) he has specialized knowledge and experience to make profitable investments; (b) he worked on Wall Street for five or six years; and (c) the Investors will have no role in making decisions regarding the investments or in effecting the promised rate of return or interest, that is, the Investors will completely rely on the judgment and efforts of Arledge to receive the promised profits.

8. The stated interest rate on a Promissory Note is the “S&P 500 plus five percent (5%).” The term of a Promissory Note ranges from 3 to 7 years. Defendants are compensated based on a pre-determined profit sharing plan.

9. The stated rate of return on a Consulting Agreement is the “S&P 500 plus five percent (5%).” The term of a Consulting Agreement is seven (7) years. Defendants are compensated based on a pre-determined profit sharing plan.

10. Defendants guarantee Investors the principal amount of their investments at maturity by representing Defendants will purchase zero coupon and/or deferred interest bonds in the investment accounts. Defendants have not purchased such bonds.

11. Investors suffered net losses through the Defendants' trading activities.

12. R&J Financial is not, and has not been, registered under the Act as an investment adviser.

13. Arledge is not, and has not been, registered under the Act as an investment adviser representative or issuer agent.

14. The Consulting Agreement and Promissory Notes are not, and have not been, registered under the Act.

#### Investor A and His Spouse

15. Investor A, a resident of Oklahoma, retired after working for the same employer for 42 years. While employed, Investor A had a 401(k) savings plan through his employer. Arledge claims to have helped Investor A with his 401(k) investments.

16. In 2009, after working twenty years, Investor A's spouse rolled over her individual retirement account ("IRA") to an AmeriTrade account with a beginning balance of approximately \$158,000. The AmeriTrade account was controlled by Arledge as the authorized trading agent. Arledge claims to have effected transactions in the AmeriTrade account to "hedge" Investor A's 401(k). Between January 2011 and December 2013, Arledge effected purchases in the IRA in excess of \$15,900,000 and sales in excess of \$15,700,000. By January of 2014, the value of the AmeriTrade account had been reduced to \$20,475 due to trading losses.

17. In or about January of 2013, a Consulting Agreement was entered into between Defendants and Investor A. Investor A rolled over his 401(k) in the amount of \$810,000 to an

individual retirement account at optionsXpress in the name of Investor A but under the management and control of Defendants. The Consulting Agreement was signed by Arledge on behalf of R & J Financial. The term of the Consulting Agreement is seven (7) years.

18. Arledge promised Investor A that he would earn greater growth on his retirement money by doubling Investor A's money in 7 years if the funds were left in the account. Specifically, Defendants promised a rate of return equal to the "S&P 500 plus five percent (5%)."

19. In the Consulting Agreement, Defendants represent that Investor A's principal will be guaranteed at maturity through the purchase of zero coupon and/or deferred interest bonds in Investor A's account. No such bonds were ever purchased.

20. One provision of the Consultant Agreement provides in pertinent part as follows:

Advisor is not obligated to conduct any discussions relating to any investment decisions in regards to the Client account and in general will have very little contact with Client except on rare occasions. The Advisor has an obligation to perform and achieve the objective of generating [the] highest return possible above and beyond any other considerations. The Advisor will typically have no more than two interactions within the year that Client can expect verbal or written correspondence other than the agreed upon quarterly/yearly statements. The Advisor has already expressly explained this to the Client and has the right to and will most likely enforce an immediate suspension of said Consulting Agreement with full penalties to Client if Client does not respect this matter.

21. An attachment to the Consultant Agreement outlines the Defendants' compensation for their efforts.

22. Arledge traded options and stocks in Investor A's optionsXpress account. Between January 2013 and April 2016, Arledge effected purchases in Investor A's optionsXpress account in excess of \$41,900,000 and sales in excess of \$41,400,000. Investor A's trade confirmations and account statements were sent directly to Defendants from optionsXpress.

23. At times material hereto, Defendants provided Investor A with quarterly reports on R&J Financial letterhead reflecting the ending account balance of Investor A's trading account and the ending account balance based on the S&P 500 rate of return benchmark. For example, on the report for the second quarter of 2014, the ending account value of Investor A's optionsXpress account was \$588,407.42, yet Defendants represented the value of Investor A's account to be \$1,060,067.58.

24. As of June 2016, Investor A's optionsXpress account had suffered trading losses, at the hands of Defendants, of over half of the initial investment.

25. In June of 2016, Arledge encouraged Investor A to transfer his individual retirement account from optionsXpress to OptionsHouse while still promising a rate of return equal to the "S&P 500 plus 5%" and the guarantee of Investor A's \$810,000 principal investment amount at maturity. Investor A opened his OptionsHouse account with a balance of \$424,900.79. The account was opened as a margin account.

26. Investor A's accounts have dramatically underperformed the S&P 500 index. Investor A's rate of return from inception through September 30, 2016, was -51.24%, while the S&P rate of return for the same time period was 44.73%.

27. Arledge has access to Investor A's online password to his OptionsHouse account and continues to manage the trading in the account.

#### Investor B

28. In or about August of 2007, a Promissory Note was entered into between Defendants and an Oklahoma Investor (Investor B), in the amount of \$60,000. Arledge signed the Promissory Note on behalf of R&J Financial. Under the terms of the Promissory Note, Defendants promised to repay Investor B her \$60,000 plus interest equal to the "S&P 500 plus 5

percent (5%).” The term of the Promissory Note was three years.

29. In the Promissory Note, Defendants represented that Investor B’s principal would be guaranteed at maturity through the purchase of zero coupon and/or deferred interest bonds. No such bonds were ever purchased.

30. The \$60,000 was deposited into, and commingled with, Arledge’s father’s trading account at optionsXpress that was controlled and managed by Arledge. As a result, Investor B’s money was not traded based on her risk tolerance and income level. During the note’s term, Investor B was advanced approximately \$9,500 by Defendants.

31. Defendants renegotiated Investor B’s Promissory Note in 2010 for 5 more years. On or around February 1, 2016, Defendants provided Investor B with an accounting showing the principal amount of the note plus earned interest totaled \$74,971 and deductions for the previous advance of \$9,500 and purported taxes owed. No tax documents were ever provided to Investor B and Defendants used Arledge’s own tax rate to assess the amount of taxes owed by Investor B. In February of 2016, Investor B received \$60,186.44 from Defendants. The source of funds for Defendants’ repayment to Investor B was a bank account owned by Arledge’s mother, not investment profits.

#### Investor C

32. On or about January 15, 2013, a Promissory Note was issued by Defendants to an Oklahoma Investor (Investor C), in the amount of \$50,000. Under the terms of the Promissory Note, Defendants promised to pay monthly interest to Investor C equal to the “S&P 500 plus five percent (5%)” beginning the first month after the investment was made.

33. The Promissory Note was signed by Arledge, on behalf of R&J Financial, and stated that the proceeds would be transferred to an investment account for the purpose of

generating capital gains. Investor C's funds were deposited into Arledge's bank account on January 18, 2013. On January 22, 2013, \$35,000 was transferred to Arledge's personal trading account and \$15,000 was transferred to Arledge Ventures, LLC, a family owned commercial real estate business.

34. Investor C has not received the promised monthly interest payments.

#### Use of Investment Proceeds

35. Defendants have not managed Investor funds in a manner to generate or pay the promised returns and interest provided for in the Consulting Agreement and the Promissory Notes.

36. Arledge has transferred Investor funds among his multiple bank accounts and his father's optionsXpress trading account that he controls. Arledge used Investor funds for the payment of business and personal expenses such as credit card payments, insurance premiums and utility payments.

#### Misrepresentations and Omissions

37. In connection with the activities described above, Defendants made untrue statements including, but not limited to:

- a. that Investors would receive interest or returns equal to the "S&P 500 plus five percent (5%)";
- b. that Arledge had specialized knowledge and expertise to make profitable investments;
- c. that Arledge had worked on Wall Street;
- d. that Arledge effected transactions in the AmeriTrade account to "hedge" Investor A's 401(k); and

- e. that zero coupon and/or deferred interest bonds would be purchased to guarantee the principal amounts of the Consulting Agreement and Promissory Notes at maturity.
38. In connection with the activities described above, Defendants omitted to state the following:
- a. the risk that Defendants will be unable to return the principal amount of the investments at maturity;
  - b. that the Consulting Agreement and the Promissory Notes are securities subject to registration under the Act;
  - c. that the Consulting Agreement and the Promissory Notes are not registered under the Act;
  - d. that Arledge would use Investor funds for business and personal expenses;
  - e. that Arledge's history of investing for others has resulted in trading losses and that he is repaying those investors in installments;
  - f. that Arledge has never been registered as an issuer agent under the Act;
- and
- g. that R&J Financial and Arledge have never been registered under the Act as an investment adviser or investment adviser representative, respectively, and do not have the necessary qualifications to be registered as such under the Act.

**FIRST CAUSE OF ACTION**  
**(Violation of Section 1-301 of the Act:**  
**Offer and Sale of Unregistered Securities)**

39. The Department realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 38 above.

40. The Promissory Notes and Consultant Agreement are securities as defined by Section 1-102 of the Act.

41. Defendants offered and sold the Promissory Notes and the Consulting Agreement in Oklahoma. The Promissory Notes and the Consulting Agreement offered and sold by Defendants are not and have not been registered under the Act.

42. By reason of the foregoing, Defendants have violated, may be violating, and unless enjoined, will continue to violate Section 1-301 of the Act.

**SECOND CAUSE OF ACTION**  
**(Violation of Section 1-402 of the Act: Transacting Business as Unregistered Agent and/or**  
**Employing or Associating with Unregistered Agent)**

43. The Department realleges and incorporates by reference each and every allegation contained in the preceding cause of action.

44. R&J Financial, Inc. is an issuer as defined in Section 1-102 of the Act.

45. Arledge, by virtue of his efforts and activities in this state in effecting or attempting to effect purchases or sales of the securities of R&J Financial, Inc., is an agent as defined in Section 1-102 of the Act.

46. Arledge is not registered in any capacity under the Act.

47. R&J Financial employed or associated with an unregistered agent.

48. By reason of the foregoing, Defendants R&J Financial and Arledge have violated, may be violating, and unless enjoined, will continue to violate Section 1-402 of the Act.

**THIRD CAUSE OF ACTION**  
**(Violation of Section 1-403 of the Act:**  
**Transacting Business as an Unregistered Investment Adviser)**

49. The Department realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

50. Defendant R&J Financial has transacted business in this state as an investment adviser by engaging, for compensation, in the business of advising others as to the advisability of investing in, purchasing, or selling securities.

51. Defendant R&J Financial is not registered as an investment adviser under the Act.

52. By reason of the foregoing, Defendant R&J Financial has violated, may be violating, and unless enjoined, will continue to violate Section 1-403 of the Act.

**FOURTH CAUSE OF ACTION**  
**(Violation of Sections 1-403 and 1-404 of the Act:**  
**Transacting Business as an Unregistered Investment Adviser Representative and**  
**Employing or Associating with an Unregistered Investment Adviser Representative)**

53. The Department realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

54. Defendant Arledge, who is employed by or associated with an investment adviser, is an investment adviser representative through making recommendations or otherwise giving investment advice regarding securities, managing accounts or portfolios of clients, and determining which recommendation or advice regarding securities should be given.

55. Defendant Arledge is not registered as an investment adviser representative under the Act.

56. Defendant R&J Financial employed or associated with Defendant Arledge as an unregistered investment adviser representative.

57. By reason of the foregoing, Defendants have violated, may be violating, and unless enjoined, will continue to violate Sections 1-403 and 1-404 of the Act.

**FIFTH CAUSE OF ACTION**  
**(Violation of Section 1-501(2) of the Act:**  
**Untrue Statements and Omissions of Material Fact)**

58. The Department realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

59. Defendants, in connection with the offer and/or sale of securities, directly and indirectly, have made untrue statements of material fact.

60. Defendants, in connection with the offer and/or sale of securities, directly and indirectly, have omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

61. By reason of the foregoing, Defendants have violated, may be violating, and unless enjoined, will continue to violate Section 1-501(2) of the Act.

**SIXTH CAUSE OF ACTION**  
**(Violation of Section 1-501(3) of the Act: Fraud or Deceit)**

62. The Department realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

63. Defendants, in connection with the offer and/or sale of securities, and through the use of untrue statements of material fact and the omissions of material fact described above, have engaged in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon other persons.

64. By reason of the foregoing, Defendants have violated, may be violating, and unless enjoined, will continue to violate Section 1-501(3) of the Act.

**SEVENTH CAUSE OF ACTION**  
**(Violation of Section 1-502(A)(2) of the Act: Untrue Statements and Omissions of Material Fact)**

65. The Department realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

66. Defendants, in providing investment advice, directly and indirectly, have made untrue statements of material fact and have omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

67. By reason of the foregoing, Defendants have violated, may be violating, and unless enjoined, will continue to violate, Section 1-502(A)(2) of the Act.

**EIGHTH CAUSE OF ACTION**  
**(Violation of 660:11-7-42(b) of the Rules: Dishonest or Unethical Practices)**

68. The Department realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

69. Defendants, while acting as an investment adviser or an investment adviser representative, engaged in dishonest or unethical practices to include: (a) inducing trading in clients' accounts that is excessive in size or frequency in view of the financial resources, investment objectives and character of the accounts; and (b) guaranteeing clients that no loss will occur with the advice that will be rendered.

70. By reason of the foregoing, Defendants have violated, may be violating, and unless enjoined, will continue to violate, 660:11-7-42(b) of the Rules.

**NINTH CAUSE OF ACTION**  
**(Violation of Section 1-502(A)(3) of the Act: Fraud or Deceit)**

71. The Department realleges and incorporates by reference each and every allegation

contained in the preceding causes of action.

72. Defendants, in providing investment advice, and through the use of untrue statements of material fact and the omissions of material fact described above, have engaged in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon other persons.

73. By reason of the forgoing, Defendants have violated, may be violating, and unless enjoined, will continue to violate Section 1-502(A)(3) of the Act.

### **PRAYER FOR RELIEF**

Defendants have engaged in acts and practices in violation of the Act and the Rules and have, as a result of these activities, received a substantial amount of money from Investors. Unless enjoined, Defendants will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object. A danger exists that money received by Defendants from Investors will be lost through reckless trading or spent on personal expenses. A permanent injunction to issue against Defendants is necessary to prevent further violations of the Act.

WHEREFORE, based upon the foregoing, and pursuant to the authority specifically granted by Section 1-603 of the Act, the Department prays for the Court to grant the following relief:

#### **I.**

A permanent injunction enjoining the Defendants, their agents, servants, employees, attorneys, and those persons in active concert or participation with them, from transacting business in or from this state as an issuer, issuer agent, broker-dealer, broker-dealer agent, investment adviser and/or investment adviser representative, and otherwise offering or selling

any security in or from this state.

II.

An order requiring Defendants to make restitution to any and all Investors who purchased securities and/or received investment advice from Defendants in amounts to be determined;

III.

An order imposing a civil penalty of \$45,000 against Defendant Arledge; and

IV.

Such other relief as the Court may deem necessary, just and proper in connection with the enforcement of the Act and Rules.

Respectfully submitted,  
OKLAHOMA DEPARTMENT OF SECURITIES  
Irving L. Faught, Administrator

By:



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