

BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF DELAWARE

IN THE MATTER OF:)
F. THOMAS GREER,)
BHG UNLIMITED,)
A business located at) Case No. 91-01-02
1303 Delaware Avenue,)
Wilmington, Delaware,) Hearing: June 5, 1991
Respondents.)

W. Michael Tupman, Esquire, Deputy Attorney General,
Department of Justice, Wilmington, Delaware,
attorney for the State of Delaware.

Edward F. Eaton, Esquire,
Connolly, Bove, Lodge, & Hutz,
Wilmington, Delaware,
attorney for F. Thomas Greer and BHG Unlimited.

OPINION AND ORDER

Date: August 2, 1991
Wilmington, Delaware

On March 4, 1991, as the Delaware Securities Commissioner, I issued a summary cease and desist order against the respondents on the basis of a notice of allegations drafted by the staff of the Securities Division. The notice of allegations charged the respondents with violations of the Delaware Securities Act (6 Del. C. ch. 73). The gist of the allegations was that F. Thomas Greer had sold notes to

, and . The notes were allegedly sold as investments and totaled thousands of dollars -- approximately \$76,000 for Mrs. alone. The notes typically had a maturity of three years and paid interest at an annual rate of 12 to 15 percent. It was alleged that the sales occurred in Delaware, that the notes were securities, that they were not registered with the Securities Division, and that Mr. Greer never registered himself or his unincorporated business to sell securities in Delaware.

Specifically, the notice of allegations charged Greer with willful violations of 6 Del. C. sections 7303, 7304 and 7313. It generally alleged the existence of fraud and that Greer had failed to repay the principal on one of notes which had matured.

Mr. Greer requested a hearing, which was held on June 5, 1991, at the offices of the Department of Justice. Mr. Greer was represented by counsel at the hearing.

The State presented three witnesses: Francis Gregory Gause, Jr. (the investigator), and . Mr. Gause

testified that none of the notes was registered with the Securities Division or claimed as an exemption in any filing with the Division. He also testified that Mr. Greer was not registered to sell securities in any capacity.

testified that she had purchased notes from Mr. Greer as an investment. She identified copies of the notes, which were placed into evidence as State's Exhibit S-1 through S-36.¹

The maturity of each of the notes was three years, but at the end of that period (despite [redacted] demands) Mr. Greer did not return the principal on any of the notes with a few minor exceptions. He did repay a total of \$3,500 out of the aggregate investment principal, at least \$76,000. [T-23; S-36]. Greer also made interest payments on the notes. At the time of the purchases of the notes, Greer personally guaranteed repayment. [T-28].

, a 76-year-old widow, also testified for the State. She also purchased promissory notes from Mr. Greer. The aggregate principal of the notes was \$21,000, of which Greer repaid only \$5,000. Some notes had maturities of two years, and some had three-year maturities. As with , Greer paid interest on [redacted] notes. At the time of the

¹The State's Exhibits shall be referenced in this opinion as "S-1" through "S-36." Mr. Greer's exhibits shall be referenced as "Greer Ex. 1" through "Greer Ex. 6." References to the hearing transcript shall appear as "T-1" through "T-99."

purchase, Greer told [T-38]. that he would invest her money.

In rebuttal, Mr. Greer testified that he was not aware that these "loans" could be "interpreted as being securities." [T-88]. His defense was, essentially, that he intended no harm, was unaware of the requirements of the Delaware Securities Act, and his violations (if any) were not willful. He admitted accepting the funds, drafting the documents, and even purveying them as "investments." [T-81, 83, 85]. Mr. Greer also admitted that he would probably be unable to repay some of the notes because of unforeseen difficulties in his insurance business. [T-73, 74]. He offered five exhibits through his counsel. In closing argument, his counsel stated that Mr. Greer did not really object to the issuance of the cease and desist order but disputed the allegations of fraud. [T-94].

Reviewing the evidence, I find that Mr. Greer has repeatedly violated the Delaware Securities Act. The notes are obviously securities, as 6 Del. C. section 7302(a)(13) explicitly defines "security" to include notes. Since Mr. Greer sold notes in the approximate aggregate amount of \$362,000 to at least 11 Delaware investors during the period of 1985 to 1989, it is also clear to me that he was in the business of selling such notes. He derived substantial revenue from selling the notes, and he used the proceeds of the sales for his own personal and business expenses. Thus, he was an unregistered broker-dealer in violation of 6 Del. C. section 7313. Moreover, the securities themselves were

neither registered nor exempt from registration, and each sale of the promissory notes constituted a violation of 6 Del. C. Section 7304.

Mr. Greer also violated 6 Del. C. section 7303 by not informing the investors of the risks they faced by investing their money with him. He admitted that he never provided them with any relevant financial information. [T-86]. Instead, he gave them false assurances by providing various guarantees that have proven to be worthless. It is, incidentally, an ethical violation for a securities salesman to guaranty the safety of a security. (NASD MANUAL para. 2169.46, 2169.47 (CCH); Curtis I. Wilson, SEC Release No. 34-26425 (1989); Walter C. Nathan, SEC Release No. 34-24569 (1987)].

Finally, there is the issue of whether Mr. Greer willfully committed these violations. I find that he did. As a licensed insurance salesman who was aware that the selling of securities is a regulated industry, [T-82], Mr. Greer's ignorance of the details of securities law--if genuine--was deliberate. He did not bother to look into the legal requirements because he did not want to know the answer. This indifference to the requirements of the law is the equivalent of willfulness. Moreover, in the securities context, "willful" has been interpreted to mean an intentional commission of the acts constituting the violation, rather than an intent to violate the particular legal standard. [In the matter of: W.N. Whelen & Co., Inc., Opinion and Order of Delaware Securities Commissioner at 12-14 (August 5, 1989)]. Mr.

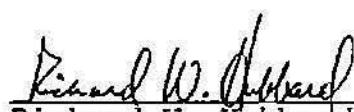
Greer certainly intended to commit the acts that constituted the violations. [T-74, 75].

I reject Mr. Greer's denials because I found his testimony to be dishonest. He testified under oath that he never had any intention of selling any stocks or bonds, but the investment documents he drafted describe themselves as "notes or bonds." [T-83; S-1]. In the absence of a cease and desist order, Mr. Greer presents a threat that he may continue these illegal and harmful sales of securities in Delaware.

It is in the public interest that the cease and desist order issued on March 4, 1991, remain in full effect. Any violation of that order by Mr. Greer would be grounds for criminal prosecution.

Mr. Greer may appeal this opinion and order to the Delaware Court of Chancery within the next 60 days. If he fails to do so, the cease and desist order shall be permanent.

So ordered.


Richard W. Hubbard
Richard W. Hubbard
Securities Commissioner

Date: August 2, 1991