

BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF DELAWARE

IN THE MATTER OF:

GRIFFIN & ASSOCIATES, INC.,
PREFERRED HOLDINGS, INC.,
and CHARLES W. GRIFFIN, JR.,

Respondents.

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Case No. 93-03-01,
93-08-01,
93-08-02

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

Charles W. Griffin, Jr., pro se.

OPINION AND ORDER

June 10, 1994
Wilmington, Delaware

I. Background

On September 7, 1993, charges were issued by the Delaware Department of Justice, Securities Division, against respondents Charles W. Griffin, Jr.; Griffin & Associates, Inc.; and Preferred Holdings, Inc. The charges were in the form of a document entitled "Notice of Intent to Suspend or Revoke Broker-Dealer Agent Registration." The charges alleged that Mr. Griffin defrauded three Delaware investors in the sale of stock in a corporation named Preferred Holdings, Inc., which was allegedly controlled by Mr. Griffin. The gist of the alleged fraud was that Mr. Griffin made the investors think they were buying an unencumbered real estate interest in a building owned by him, when in fact he owned only one suite of offices in the building, that interest was encumbered by an undisclosed mortgage loan from Wilmington Trust in the amount of \$95,000, and the investments were applied by Mr. Griffin to purchases of common stock in his corporation rather than to purchases of the real estate interests the investors thought they were getting. Additionally, the charges alleged that Mr. Griffin acted as an unregistered investment adviser and sold securities that were neither registered nor exempt from registration, in violation of the Delaware Securities Act. The Securities Division sought an order revoking Mr. Griffin's registration as a broker-dealer agent in Delaware, barring him from acting as an investment adviser, and requiring him to pay restitution to the defrauded investors.

Settlement negotiations between the Securities Division's prosecutor and the respondent did not produce an agreement, and a hearing on the charges was held on February 25, 1994, and continued on March 11, 1994. Mr. Griffin appeared at the hearing without counsel. He was advised to obtain counsel and was provided with the

opportunity to do so, but he chose to proceed with the hearing on that day (February 25). The State presented its case, consisting primarily of the testimony of the investors, and Mr. Griffin cross examined the State's witnesses. He was then given additional time in which to prepare his defense in light of the testimony against him that he had heard. Two weeks later, on March 11, Mr. Griffin presented his defense. After the hearing record was supplemented by a substitute exhibit, the record was closed on March 30, 1994.

II. Findings of Fact

During the period of 1983 to 1989, Mr. Griffin was a registered broker-dealer agent of Lowry Financial Services Corporation. He subsequently worked as a broker-dealer agent of several other companies during the period 1989 to 1993. (S-31). Mr. Griffin also held himself out as a registered investment adviser, operating as a corporate entity with the name "Griffin Associates, Inc." On September 18, 1987, he solicited Mr.

by letter and offered to assist him with "wealth accumulation plans" and "future retirement plans." (S-4). Mr. was then a 47-year-old maintenance mechanic for the DuPont Company. Mr. was residing in both Delaware and Maryland at that time, but he spent most of his time in Delaware taking care of his aged mother. He had no investment experience before meeting Griffin. On December 16, 1987, entered into a financial planning contract with Griffin whereby Griffin was to provide him with a financial plan for \$1140. (S-5, S-6). Subsequently, Griffin encouraged to liquidate his bonds and shares of stock (obtained from an inheritance) so that could pursue investments recommended by Griffin. Mr. was also encouraged

to take out a mortgage on his property to free up more capital for investment with Griffin.

Mr. Griffin advised that he would get "a handsome return" by investing in the office building in which Griffin's offices were located, at 530 School House Road in Hockessin, Delaware. was told that he could liquidate his real estate interest in five years. relied upon Griffin's recommendation and invested \$10,000 in what thought was an ownership interest in Suite H in the Hockessin building.

gave Griffin a check for \$10,000 on April 19, 1989. (S-7). At the time of the investment, received no document in exchange for the \$10,000 check. There was no mention by Mr. Griffin of Preferred Holdings, Inc. or of a \$95,000 mortgage interest in the property by Wilmington Trust. Seven months later, after one or more demands by for some document to evidence the investment, Griffin provided him with a typewritten statement of receipt. The statement, dated November 1, 1989, recited the receipt of the check for \$10,000 on April 19, 1989 as an investment making the owner of "5% of the condominium as a 5% stockholder in Preferred Holdings, Inc." (S-8). The statement also noted that Suite H was occupied by Patterson Schwartz, Inc., and that there was a "slightly positive cash flow after taxes, insurance, condo fees, and mortgage payments." (S-8). Approximately one year after the investment, and after further demands by Mr. , he was eventually given a stock certificate stating that he owned 20 shares in Preferred Holdings, Inc. (S-9).

After Mr. received his financial plan from Griffin, but before the investment in Suite H, mentioned to his brother-in-law, ; that he might want to meet with an investment adviser, Mr. Griffin. In 1988 Mr. was a 49-year-old

Delaware resident who was employed by the _____ as an aircraft mechanic earning \$33,000 in annual income. _____ met with Griffin and told him that he _____ intended to retire in five years at about 55% of his salary. In June and July of 1988, Griffin produced a document entitled "Personal Financial Planning Case Analysis" for _____ (S-11). In presenting investment opportunities to the _____, Griffin mentioned his office building in Hockessin. Griffin told _____ that if he were to invest in Suite H, in five years' time the building would be sold or Griffin would otherwise provide _____ with an opportunity to sell his interest.

_____ relied on Griffin's recommendation and thought that it would be a good investment because it was in real property. At the same time, however, _____ testified that he understood that he was getting stock in return for his investment principal.

On September 9, 1988, and again on March 8, 1989, _____ gave Griffin a check in the amount of \$9000, for a total investment of \$18,000. (S-12). State's Exhibit S-13 is a typewritten receipt from Charles Griffin that acknowledges the receipt of \$9000 from _____; which "represents a 4 1/2% interest in Suite H at 530 Schoolhouse Road, Hockessin, DE." The receipt further states, "Formal papers and stock certificate will be forthcoming." Attached to this receipt is a copy of an envelope stamped by the U.S. Post Office on October 19, 1988, suggesting that _____ received this receipt from Griffin slightly more than one month after the September 9, 1988 investment. _____ recalled no mention by Griffin of the existence of a mortgage or of any risks in connection with his two investments. Eventually, _____ received from Griffin a stock certificate in Preferred Holdings, Inc., stating that _____ owned

18 shares. (S-14). testified that he had to put "a lot of pressure" on Griffin before the stock certificate was delivered. On July 11, 1990, Griffin gave a handwritten note that stated:

This is to confirm that you are owed a second stock certificate for an additional 18 shares in Preferred Holdings, Inc. This certificate will be forwarded to you when the original is located or a new replacement is produced.

(S-15). The never received a second certificate from Griffin for the March 1989 investment.

Mrs. , a Delaware resident employed as a temporary secretary, met Charles Griffin in the autumn of 1988. Her husband, , had known Mr. Griffin for a year before Mrs. meeting with him. Mrs. had no prior investment experience. When she acquired an inheritance, Mrs. and her husband met with Mr. Griffin at his office in Hockessin. Mrs. told Griffin that she wanted an investment with a high yield that was also liquid. She had a preference for real estate investments, but when Griffin mentioned a lot in Bear, Delaware, she thought it was too risky. Griffin then suggested that she invest in his building, and she agreed. Griffin mentioned a prior investor who had recently obtained a 15% rate of return on an investment in his building and had just that evening been paid. Mrs. relied upon Mr. Griffin's recommendation, viewing him as a professional like a doctor. Griffin gave her a tour of his office suite and an adjoining suite, and he told her of lawyers and dentists who were tenants in the building and from whom he was receiving rent. On November 8, 1988, Mr. and Mrs. gave Mr. Griffin a check in the amount of \$31,650, which they thought would make them part owners of Suite H in the Hockessin office building. (S-17). There was no mention of stock.

Although Mrs. expected to receive a document from Mr. Griffin in exchange for their check, none was forthcoming. Therefore, before leaving, she requested a receipt. Griffin gave her a handwritten note that stated the following:

Today, Nov. 8th, 1988, I received \$31,650 from for an investment in Suite H of the Hockessin Professional Building representing a 15.825% ownership in same.

The note was signed by Griffin. (S-18). At the time of this investment, Griffin did not mention the existence of the mortgage on the property, and he did not discuss any risks. Subsequently, Mrs. became upset that she had nothing more than the handwritten note to manifest her investment. She made several requests of Mr. Griffin for a more official document, but received responses that she found evasive. Eventually, her husband was able to obtain from Griffin a stock certificate which stated that owned 63.3 shares of common stock in Preferred Holdings, Inc. (S-19). Mrs. testified that she was surprised to see the document's reference to stock, but her husband explained that Mr. Griffin had found it necessary to set up their partnership in this manner.

Mrs. testified that during a telephone call with Griffin in February of 1993, he stated that he was having trouble with his bank, Wilmington Trust. Mrs. asked of Griffin, "What bank? What mortgage?" Griffin advised her that she would get a letter from his attorney explaining everything. She subsequently received a letter from a Pennsylvania attorney, John S. Custer, Jr., advising her that Suite H had been purchased with a mortgage loan from Wilmington Trust in the amount of \$95,000, that Preferred Holdings, Inc. had defaulted on the loan, and that Wilmington Trust had instituted

foreclosure proceedings on Suite H. (S-20). Similar letters were sent by Mr. Custer to the other investors. (S-10, S-16).

According to a July 1988 internal Wilmington Trust memorandum, Charles and Barbara Griffin had borrowed \$195,000 from Wilmington Trust to purchase two condominium units, F and H, in the Hockessin Professional Building at School House Road. (S-29). According to a January 20, 1989 Wilmington Trust memorandum, on that date the Griffins repaid the interim loan and took out two separate mortgages in the names of "Griffin Holding Company" and "Preferred Holdings, Inc.," corporations which the Griffins had formed, for \$100,000 on Unit F and for \$95,000 on Unit H, respectively. (S-23). The \$95,000 mortgage agreement for Suite H is included in the record as State's Exhibit S-26, and its accompanying Note (S-25) and Assignment (S-24) are included as well. According to a certified copy of the Delaware Secretary of State's Office, the articles of incorporation of Preferred Holdings, Inc. were filed on November 16, 1988, at which time Charles and Barbara Griffin were named in the corporate charter as directors. (S-22).

Mr. Griffin thus took investor funds from _____ on September 9, 1988, and from _____ on November 8, 1988, in advance of the November 16, 1988 filing of the corporate charter of Preferred Holdings, Inc. The monies received by Mr. Griffin from the investors went into his (and his wife's) personal checking account at the _____, rather than into any corporate or escrow account. (S-1, S-2). The funds were then spent by Mr. and Mrs. Griffin for personal expenses. (S-3).

During the relevant period, Mr. Griffin occupied Suite F and rented Suite H to Patterson Schwartz. At some point, Patterson Schwartz moved out and the suite became vacant. Mr. Griffin was then unable to meet the monthly mortgage payments to Wilmington Trust, which foreclosed on the mortgage and forced a foreclosure sale of the property. Preferred Holdings, Inc., now appears to be a shell without any assets. Hence the investors' shares are worthless. Mr. Griffin's activities at issue in this case do not appear to have been on behalf of any of the brokerage firms for which he worked.

In Mr. Griffin's defense, he offered the testimony and affidavits of several other investors (Mr. and Mrs. _____ and _____) in Preferred Holdings, Inc., who state that they received full disclosure from Mr. Griffin. They say he told them about the corporation, the stock, and the existence of the mortgage. Also supporting Mr. Griffin's claim that he provided full disclosure are the typewritten notes given to _____ and the _____ which mention the stock and the mortgage payments.

III. Conclusions of Law

I find that the respondent, Charles W. Griffin, Jr., did defraud _____, _____; and _____ in the sale of shares of common stock in Preferred Holdings, Inc. The fact that he did not defraud Mr. and Mrs. _____ and _____ fails to prove that he did not defraud others. The testimony of _____, _____; and _____, along with several key documents, has convinced me that Griffin did defraud them. Their testimony was similar in describing a pattern of conduct by Griffin in which he gave them the impression that he owned the Hockessin Professional Building, persuaded them that they were buying an ownership interest in

Suite H as an investment, gave them no documents at the time of the investment unless compelled to do so, and still later, on demand from the investors, produced receipts and stock certificates that gave the appearance of a legitimate sale of stock with full disclosure. Among the most damaging pieces of evidence against Griffin is State's Exhibit S-18, the handwritten note to _____, stating that she had purchased a 15.825% ownership interest in Suite H. In fact, she had purchased nothing because Preferred Holdings, Inc. did not even exist at that time. Even after the incorporation of the company and her receipt of stock, she was not legally the owner, or even a part owner, of Suite H. Preferred Holdings, Inc. owned Suite H. Charles Griffin controlled Preferred Holdings, Inc. and could have disposed of Suite H at any time (assuming he could get a price that would satisfy the mortgage).

_____ testified that he knew he was investing in stock, but _____ and _____ testified that Griffin did not mention either stock or Preferred Holdings, Inc. Further, all three testified that Griffin never mentioned the existence of the \$95,000 Wilmington Trust mortgage interest in Suite H. Ordinarily, the existence of liabilities attached to corporate assets would not necessarily be a material fact in the sale of shares of common stock. In this case, however, Griffin touted the investment as an ownership interest in Suite H; the only asset of Preferred Holdings, Inc. was Suite H; and the ability of Griffin to meet the monthly mortgage payments on Suite H was vital for the investors' shares to have any value. Under these circumstances, the existence of the Wilmington Trust mortgage was a material fact that Griffin was obligated to disclose at the time of the investment transactions.

In Hubbard v. Hibbard Brown & Co., Del. Supr., 633 A.2d 345 (1993), the Delaware Supreme Court held that:

"...in order to establish a violation of § 7303(2) [the anti-fraud provision of the Delaware Securities Act], it must be demonstrated that the defendant (1) made a misstatement or omission (2) of material fact (3) with scienter (4) in connection with a purchase or sale of a security (5) upon which the plaintiff (or another person if the action is brought by the Delaware Securities Division) relied and (6) that reliance proximately caused the plaintiff's (or other person's) injuries.

633 A.2d at 349. I find that these elements are satisfied with respect to Mr. Griffin's sales of stock in Preferred Holdings, Inc. to _____, _____, and _____. The precise misrepresentations and omissions are specified below. As to scienter, while I do not think that Griffin intended the investors to end up with worthless shares of stock, I do think that he knowingly and intentionally misrepresented and omitted material facts to induce the investors to buy extremely risky, speculative securities.

The investors' purchase of stock in Preferred Holdings, Inc. was extremely risky and speculative because: (1) the company had no assets, income, or operations other than Suite H; (2) the existence of the \$95,000 mortgage lien meant that the investors had little or no security for their investment and that the monthly mortgage payments had to be met or the property would be lost; (3) the use of the investment proceeds by the Griffins for their personal expenses, rather than depositing the funds into a corporate account, further reduced the assets of the company and made the success of the investments dependent upon a tremendous appreciation in the value of the property; and (4) the price that was paid by the investors was high relative to the value of the property, so that real estate values in Hockessin would have to have nearly doubled

before the investors could have even gotten their principal back. (Wilmington Trust, giving a \$95,000 mortgage loan at 80% of value, valued Suite H at approximately \$118,750. Mr. [redacted], however, paid \$10,000 for a five percent interest in the company, which implies a total market value of \$200,000 for the company. Thus, the value of Suite H would have to have risen to \$200,000 before [redacted] could have recovered his principal, assuming an equitable distribution of corporate assets among the shareholders. This analysis does not even consider the mortgage lien of \$95,000, which had to be satisfied before the investors could get their money.)

Because the stock in Preferred Holdings, Inc. was extremely risky and speculative, Mr. Griffin was not only under a duty to disclose that fact, but he also had an ethical obligation to determine reasonably and in good faith that such a security was suitable for his clients. Article III, § 2 of the National Association of Securities Dealers, Inc.'s (NASD's) Rules of Fair Practice states the following:

In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

NASD Manual ¶2152 (CCH). The NASD's Rules of Fair Practice are the brokerage industry's ethical guidelines, and a serious departure from these standards would presumptively constitute a violation of 6 Del. C. § 7316(a)(7), which authorizes discipline on the basis of dishonest or unethical practices by a broker-dealer agent.

I conclude that Charles Griffin, Jr., did violate 6 Del. C. § 7316(a)(7) by recommending extremely risky and speculative securities to [redacted] and [redacted]

when such securities were clearly unsuitable for them. testified that she communicated her concerns about risk to Mr. Griffin. She stated that she would not have knowingly bought stock from Mr. Griffin. testified that he told Griffin that he () was going to retire in five years and was concerned about a loss of income. The speculative investment in Preferred Holdings, Inc. was clearly inappropriate for ; given his situation and concerns. Because Mr. financial circumstances and investment objectives are unclear on this record, I decline to conclude that Griffin violated § 7316(a)(7) with respect to him.

As to the charges of registration violations, while I suspect that Griffin may have committed violations of this sort, the record does not adequately support the charges. Although there was testimony as to the nonexistence of an exemption from the securities registration requirements of § 7304, there was no testimony that the securities were in fact unregistered. As to the charge of Griffin being an unregistered investment adviser, the custodian of the Securities Division's investment adviser records did not testify. Mr. Stanley Yackoski, the securities investigator who did testify, under cross examination admitted twice that "this is out of my realm." He showed a lack of familiarity with renewal procedures during prior years, stated that he thought registration records were unavailable for some prior years, and indicated that his conclusion as to Griffin's lack of registration was based on "files made available to me." It was unclear who made the files available to him and whether the files that were given to him were complete. Before someone is found liable for violating the Delaware Securities Act, with its strict penalties, a more reliable showing than this must be made.

My conclusions of law are specified below:

A. Violations of 6 Del. C. § 7303(2) and § 7316(a)(2):

1. Griffin willfully defrauded _____ by telling her that with her investment she acquired a 15.825% ownership interest in Suite H, which was not true. He also defrauded her by failing to disclose the existence of the \$95,000 mortgage lien on the property and failing to disclose the fact that this was a speculative investment.
2. Griffin willfully defrauded _____ by telling him that a stock certificate was forthcoming when the company had no legal existence until several months later and by telling him that his \$9000 investment acquired an ownership interest in Suite H. Griffin also defrauded _____ by failing to disclose the existence of the \$95,000 mortgage lien on the property and failing to disclose that the investment was speculative.
3. Griffin willfully defrauded _____ by telling him that his \$10,000 investment acquired a 5% ownership interest in Suite H, which was not true. Griffin also defrauded _____ by failing to disclose the existence of the \$95,000 mortgage lien on the property and failing to disclose that the investment was speculative.

B. Violations of 6 Del. C. § 7316(a)(7):

1. Griffin engaged in an unethical practice by recommending a speculative investment to _____ when he knew that her concerns about risk made that investment unsuitable for her.

2. Griffin engaged in an unethical practice by recommending a speculative investment to _____ when Griffin knew that _____ impending retirement and concerns about loss of income made that investment unsuitable for him.

IV. Sanctions

Charles Griffin, Jr., obtained the trust of the investors in this case by holding himself out as an experienced investment adviser, and he then betrayed their trust by deceitfully selling them speculative securities that became worthless. His actions appear to me to have been thoroughly calculated. He has obviously caused great damage, financial and emotional, to _____, _____, and _____. For these reasons, I am revoking his broker-dealer agent license in Delaware. Additionally, I am ordering him to pay restitution to his investor victims. There is no fine, as Mr. Griffin will find it difficult enough to obtain the funds to pay restitution.

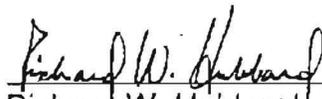
In the event that Mr. Griffin is able to find a firm that would be willing to hire him to work in an office in Delaware where he would be closely supervised by an on-site NASD - approved principal, I will consider modifying the revocation order to allow him to pursue a restitution plan. The supervisory arrangement and the restitution plan would have to be approved by the Delaware Securities Division, and the revocation order would be subject to reinstatement immediately upon any failure to comply with the plan.

Until such time as this revocation order is modified, either by judicial appeal or by me, Mr. Griffin may not engage in any securities sales, brokerage, investment advisory, or issuer agent activities in Delaware. This order extends to any corporations formed by

Mr. Griffin that engage in such activities, and to any partnerships he would join with others who engage in such activities. Any violation of this order or further violation of the Delaware Securities Act by Mr. Griffin will be subject to criminal prosecution.

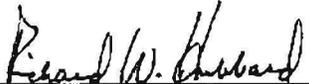
In light of my order against Mr. Griffin individually, I see no need for findings or orders with respect to his corporations. The respondent has 60 days from the date of this order in which to file an appeal in the Delaware Court of Chancery after paying the costs of transcribing the hearing record. 6 Del. C. § 7324.

Date: June 10, 1994


Richard W. Hubbard
Securities Commissioner

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Date: June 10, 1994



Richard W. Hubbard
Securities Commissioner