

6. The investment certificates sold by the Estate to PHHA were not registered with the Division as required by Tenn. Code Ann. Section 48-2-104.

7. Approximately 246 investors in Tennessee have purchased the unregistered investment certificates, in addition there have been sales to investors in other states.

8. The Estate has collected an estimated \$294,000 from the sale of investment contracts.

9. The Estate asserted an exemption from registration based on Tenn. Code Ann. Section 48-2-103(b)(1) and was advised that the exemption was not available to them.

10. On August 31, 1988, Glen B. Rutherford, Counsel for the Estate, filed with the Division a request for a no action letter in reliance upon Tenn. Code Ann. Section 48-2-103(b)(1).

11. On September 23, 1988, Byron Jones, Staff Attorney for the Division responded in part by stating: "... [i]t would seem that the exemption to which you refer was intended to exclude from the registration requirements of the Tennessee Securities Act transactions in securities by administrators where those transactions are necessary to liquidate an estate." It is not apparent that the drafters of this provision intended to exempt the sale of securities by an administrator to raise money to prosecute a lawsuit on behalf of an estate."

CONCLUSION OF LAW

12. Tenn. Code Ann. Section 48-2-102(12) provides in pertinent part:

"Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or participation in, temporary or interim certificate for, receipt for,

guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

13. The investment certificates described in paragraph 5 above and sold by the Co-Administrators of the Estate are securities as defined by Tenn. Code Ann. Section 48-2-102(12).

14. Tenn. Code Ann. Section 48-2-104 provides:

It is unlawful for any person to sell any security in this state unless: (1) it is registered under this part; or (2) the security or transaction is exempted under Section 48-2-103.

15. The Co-Administrators have engaged in the sale of unregistered securities in violation of Tenn. Code Ann. Section 48-2-104.

16. Tenn. Code Ann. Section 48-2-103(b)(1) provides:

The following transactions are exempted from Sections 48-2-104 and 48-2-113: (1) any transaction by a person acting as an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

17. The exemption provided in Tenn. Code Ann. Section 48-2-103(b)(1) was not available to the Estate as it was intended as a transactional exemption to enable persons in specific capacities to liquidate existing estates.

18. This Order is in the public interest, necessary for the protection of investors and consistent with the purposes and policy of the Act.

ORDER

Now, therefore, in view of the foregoing, it is hereby ORDERED that:

1. The Estate and its Co-Administrators shall cease and desist from any further violation of the Act.

2. Within thirty (30) days of the date of the entry of this Order, the Estate shall pay a fine of One Thousand Five Hundred Dollars (\$1,500.00). The Co-Administrators shall be jointly and severally liable for the aforementioned amount. This find shall be

paid by certified check made payable to the State of Tennessee, Department of Commerce and Insurance and mailed to Securities Division, Department of Commerce and Insurance, Volunteer Plaza, Suite 680, 500 James Robertson Parkway, Nashville, TN 37243-0575.

3. All presently known administrative and civil claims of the Commissioner of Commerce and Insurance and the Tennessee Securities Division against the Estate and its Co-Administrators for violation of the Act relating to the sale of unregistered securities by the Estate are hereby deemed resolved by this Order.

4. If the estate and its Co-Administrators comply with the provisions set forth in this Order, the Division agrees to forgo the referral of the above-stated facts for criminal prosecution.

This Agreed Order, which the parties believe and acknowledge is in the public interest and in their own best interest, represents a compromise settlement of the controversy between the parties and is for settlement purposes only. The Co-Administrators affirmatively state that they freely have agreed to the entry of this Order and that no threats of any kind have been made by the Commissioner, the Division, or any agent or representative of either in connection with this Agreed Order.

The parties, by signing this Order, affirmatively state their agreement to be bound by the terms of this Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in the Order, are

The Commissioner and the Division furthermore agree binding upon them. to the terms of this Order despite the absence of signature by B. Vandenberg Hall as a Co-Administrat

ENTERED this 17th day of December, 1992. of the Estate.

Elaine A. McReynolds
Elaine A. McReynolds, Commissioner
Commerce and Insurance

APPROVED FOR ENTRY:

FOR THE ESTATE:

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Roy/D. Feathers
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