

**BEFORE THE DEPARTMENT OF COMMERCE AND INSURANCE  
FOR THE STATE OF TENNESSEE, AT NASHVILLE**

TENNESSEE SECURITIES DIVISION, )

petitioner, )

v. )

WH PROPERTIES, INC., WHOLE HOG )  
PROPERTIES, INC., LION HEART AGENCIES, )  
PLANTERS GREAT GULF CORPORATION, )  
PLANTERS CHARTERED TENNESSEE TRUST, )  
TENNESSEE BENEFICIARY TRUST EXCHANGE, )  
THE POLARIS SYSTEM OF NORTH AMERICA, )  
MARK V. ENRIGHT, DR. ALDEN T. KLEIN, )  
ALDEN KLEIN ASSOCIATES and DR. AL L. GARY, )

> File No. 98-007

respondents. )

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**CEASE AND DESIST ORDER**

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This order issues as a result of a petition, attached hereto, filed by the Tennessee Securities Division of the Department of Commerce and Insurance and is predicated upon the following findings of fact and conclusions of law:

**Findings of Fact**

The Commissioner of the State of Tennessee, Department of Commerce and Insurance [hereinafter the Commissioner] finds as a matter of fact that:

1 The Respondent, WH Properties, Inc. [hereinafter WH Properties], is a Tennessee corporation chartered in this state on the 19th day of August, 1996. The corporation's principal place of business is located at 9717 Dutchtown Road, Knoxville, Tennessee 37923;

**2** The Respondent, Whole Hog Properties, Inc. [hereinafter Whole Hog], is a Tennessee corporation chartered in this state on the 2d day of July, 1992. The corporation's principal place of business is located at 9717 Dutchtown Road, Knoxville, Tennessee 37923.

**3** The Respondent, Lion Heart Agencies [hereinafter Lion Heart], is a business entity in Tennessee affiliated with WH Properties and Whole Hog;

**4** The Respondent, Planters Great Gulf Corporation [hereinafter Planters Great Gulf], is a business entity in Tennessee affiliated with WH Properties and Whole Hog;

**5** The Respondent, Planters Charter Tennessee Trust [hereinafter Planters Trust], is a business entity in Tennessee affiliated with WH Properties and Whole Hog;

**6.** The Respondent, Tennessee Beneficiary Trust Exchange [hereinafter Tennessee Trust], is a business entity in Tennessee affiliated with WH Properties and Whole Hog;

**7.** The Respondent, the Polaris System of North America [hereinafter Polaris], is a business entity in Tennessee affiliated with WH Properties and Whole Hog;

**8** The Respondent, Mark V. Enright [hereinafter Mr. Enright], is a director, officer, agent, employee and/or controlling member of WH Properties and Whole Hog and the Executive Vice-President and Chief Executive Officer of WH Properties and Whole Hog. Mr. Enright is a citizen and resident of the State of Tennessee currently residing at 1032 Farragut Hill Boulevard, Knoxville, Tennessee 37922;

**9.** The Respondent, Dr. Alden T. Klein [hereinafter Dr. Klein], is an agent of WH Properties and Whole Hog. Dr. Klein is a citizen and resident of the State of Tennessee currently residing at 200 Ladd Lane, North Chattanooga, Tennessee 37405. His business address is 4308 South Terrace, Chattanooga, Tennessee 37412;

10. The Respondent, Alden Klein Associates [hereinafter Klein Associates], is a sole proprietorship in Tennessee owned and operated by Dr. Klein and is affiliated with WH Properties and Whole Hog. Its principal place of business is 4308 South Terrace, Chattanooga, Tennessee 37412;

11. The Respondent, Dr. Al L. Gary [hereinafter Dr. Gary], is an agent of WH Properties and Whole Hog. Dr. Gary is a citizen and resident of the State of Tennessee currently residing at 1738 Lakewood Circle, Hixson, Tennessee 37343;

12. Rhonda House [hereinafter Ms. House] is a citizen and resident of the State of Tennessee, residing at 8233 Harrison Bay Road, Harrison, Tennessee 37341;

13. Belva Jenkins [hereinafter Ms. Jenkins] is a citizen and resident of the State of Tennessee, residing at 101 Marlboro Avenue, Chattanooga, Tennessee 37411;

14. Clifton DeWeese and the Clifton E. DeWeese Joint Family Trust [hereinafter the DeWeese Trust] is a citizen, resident and domiciliary of the State of Tennessee. The DeWeese Trust's address is 7511 South Dent Road, Hixson, Tennessee 37343;

15. Dr. William Meadows [hereinafter Dr. Meadows] is a citizen and resident of the State of Tennessee, residing at 9236 Shay Cove, Ooltewah, Tennessee;

16. The Respondents, WH Properties and Whole Hog, are corporations engaged in the business of selling interests in what is termed liquid real estate trust exchange interests [hereinafter the trust interests] to investors in Tennessee and other states. WH Properties and Whole Hog employ agents in the State of Tennessee and other states for that purpose. A vast array of marketing materials are utilized by such agents to sell the trust interests. The trusts are referred to in the marketing literature of WH Properties and Whole Hog as both Planters Trust and

Tennessee Trust;

17. The investment plan works as follows: Agents hired by WH Properties and Whole Hog market and attempt to sell trust interests to investors. Once an investor agrees to invest money in a trust interest, the monies are submitted to WH Properties in Knoxville, Tennessee. It is represented by WH Properties and Whole Hog that these monies are then invested in various, unspecified hotel, lodging, and restaurant holdings. It is further represented to the investor that he is then given an interest in real property located in Knox County, Tennessee worth double the amount of the original investment. At the end of the investment period, the investor receives back from WH Properties and Whole Hog the amount of his principal plus a specified sum of profits depending on which trust the investor invested in. All profits are guaranteed by the Respondents, WH Properties and Whole Hog, in the marketing literature. The investor sells the real property back to WH Properties and Whole Hog for one dollar (\$1.00) at the end of the investment period. The investor is given three (3) choices as to what type of trust interest to purchase. One option is a landlord trust in which an investor pays money for a landlord trust interest and receives monthly checks for thirty-nine (39) months until he fully recovers his principal plus a specified sum of interest. Another option is a beneficiary trust. With a beneficiary trust, the investor pays a specified amount for the trust interest and is then paid back double the amount he originally invested at the end of thirty-nine (39) months. The last option is a leveraged trust in which the investor pays his initial investment up front and then receives a check back representing partial principal and partial interest every five (5) months for twenty-six (26) months. Each time an investor receives a check, he then resubmits or leverages the check back into the trust until the twenty-six (26) month period has ended. At the end of the twenty-six (26) month period, he then

receives a check back for the next thirty-nine (39) months, so that the entire investment period is sixty-five (65) months. At the end of the investment period, the investor receives a three hundred and eighty-three percent (383%) return on his investment. With each trust interest, WH Properties and Whole Hog have complete control over the monies invested once they are submitted, and the investors have no actual or practical control over the investment;

18. Dr. Klein, doing business as Klein Associates, marketed and sold a trust interest to Mrs. House on behalf of and as an agent of WH Properties and Whole Hog. Mrs. House invested twenty-seven thousand six hundred forty-one dollars and thirteen cents (\$27,641.13) on the 21st day of July, 1997 for her trust interest:

19. Dr. Klein, doing business as Klein Associates, marketed and sold a trust interest to Mrs. Jenkins while acting on behalf of and as an agent of WH Properties and Whole Hog. Mrs. Jenkins invested twenty-two thousand dollars (\$22,000.00) on the 17th day of September, 1997 for her trust interest

20. Dr. Klein, doing business as Klein Associates, placed an advertisement in a Chattanooga newspaper in order to solicit potential investors to purchase a trust interest. Mr. Clifton DeWeese responded to said advertisement and purchased a trust interest on behalf of the DeWeese Trust. Dr. Klein, doing business as Klein Associates, was acting on behalf of and as an agent of WH Properties and Whole Hog when he placed the advertisement and sold the DeWeese Trust its interest. The DeWeese Trust invested twenty-one thousand three hundred ninety-six dollars and seventeen cents (\$21,396.17) on the 15th day of May, 1997 for its trust interest;

21. Dr. Klein, doing business as Klein Associates, marketed and sold a trust interest to Dr. Meadows while acting on behalf of and as an agent of WH Properties and Whole Hog. Dr.

Meadows invested eight thousand six hundred fifty-one dollars and nineteen cents (\$8,651.19) on the 4th day of October, 1996 for his trust interest;

22. Dr. and Mrs. Klein invested approximately nineteen thousand dollars (\$19,000.00) in a trust interest. Mr. Enright personally sold Dr. and Mrs. Klein their trust interest after Dr. Klein received a solicitation from Dr. Gray;

Dr. Klein received a commission from WH Properties and Whole Hog for the trust interest sales to Ms. House, Ms. Jenkins, the DeWeese Trust and Dr. Meadows. Dr. Gary received a commission from WH Properties and Whole Hog for the sale of a trust interest to Dr. and Mrs. Klein;

24 In the various marketing and financial materials of WH Properties and Whole Hog, WH Properties and Whole Hog are represented to be affiliated with and/or subsidiaries or divisions of Planters Great Gulf and Lion Heart Agencies. Polaris represents itself to be a licensing entity that licenses the agents of WH Properties and Whole Hog to sell the trust interest heretofore described on behalf of WH Properties and Whole Hog. WH Properties, Whole Hog, Lion Heart, Planters Great Gulf, Planters Trust, Tennessee Trust, Polaris, and Klein Associates are not registered with the Division as broker-dealers. Mr. Enright and Drs. Klein and Gray are not registered with the Division as a broker-dealer or agent;

The trust interests heretofore described are not registered with the Division as a security.

### **Conclusions of Law**

The Commissioner concludes as a matter of law that:

1 As part of the Tennessee Securities Act of 1980, Tenn. Code Ann. §§ 48-2-101, et

seq. [hereinafter the Act], Tenn. Code Ann. § 48-2-102(2) states in pertinent part that an agent means any individual, other than a broker-dealer, who is employed, appointed or authorized by a broker-dealer to sell securities from, in or into this state and who has paid or given a commission or other remuneration, directly or indirectly, for soliciting a sale of securities to or from any person in this state;

2. Tenn. Code Ann. § 48-2-102(3) states in pertinent part that a broker-dealer means any person engaged in the business of effecting transactions in securities for the account of others, or any person engaged in the business of buying or selling securities issued by one (1) or more other persons for such person's own account and as part of a regular business rather than in connection with such person's investment activities:

3. Tenn. Code Ann. § 48-2-102(12) defines a security to mean 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 instrument commonly known as a security, or any certificate of 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;

4. Tenn. Code Ann. § 48-2-104 states that it is unlawful for any person to sell any security in this state unless:

(1) It is registered under this act; or

(2) The security or transaction is exempted under Tenn. Code Ann. § 48-2-103; or

(3) The security is a covered security;

5 Tenn. Code Ann. § 48-2-116(a) states in pertinent part that the Commissioner may from time to time make, promulgate, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this part;

6 Tenn. Code Ann. § 48-2-116(e)(2) states that such order may be entered without prior notice to the affected party if the Commissioner determines that prior notice would not be in the public interest and would detrimental to the protection of investors;

7 Tenn. Code Ann. § 48-2-119 states in pertinent part that whenever it appears to the Commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provisions of the act or any rule or order thereunder, he may enjoin the acts or practices and enforce compliance. The Commissioner has the discretion to enforce compliance in the manner in which he sees fit;

8 In the State of Tennessee, as delineated in State v. Brewer, 932 S.W.2d 1 (Tenn Cr. App. 1996), an investment contract exists when: (1) an offeree furnishes initial value to an offeror, (2) a portion of this initial value is subjected to the risks of the enterprise, (3) the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and (4) the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

9. The trust interest described hereinbefore are investment contracts as that term is defined in State v. Brewer, 932 S.W.2d (Tenn. Cr. App. 1996), and, thus, securities as that termed is defined in Tenn. Code Ann. § 48-2-102(12);

10 The Respondents, WH Properties, Whole Hog Properties, Inc., Lion Heart Agencies, Planters Great Gulf Corporation, Planters Chartered Tennessee Trust, Tennessee Beneficiary Trust Exchange, The Polaris System of North America, Mr. Enright, Drs. Klein and Gray, and Klein Associates have marketed and sold and are presently marketing and selling securities in the State of Tennessee, to wit, the investment contracts hereinbefore described, with the knowledge that those investment contracts have not been registered with the Division. These acts are in violation of Tenn. Code Ann. § 48-2-104;

11 Based upon the Findings of Fact and the exhibits attached to the petition, the Respondents may continue to violate Tenn. Code Ann. § 48-2-104 unless ordered to cease and desist by the Commissioner:

12 Tenn. Code Ann. § 48-2-109(a) states that it is unlawful for any person to transact business from, in or into this state as a broker-dealer or agent unless he is registered as a broker-dealer or agent under the Act;

13 Based upon the Findings of Fact and the exhibits attached to the petition, the Respondents have and may continue to act as agents and/or broker-dealers as those terms are defined in the Act without being registered with the Division in violation of Tenn. Code Ann. § 48-2-109(a) unless ordered to cease and desist by the Commissioner

**NOW THEREFORE**, in consideration of the foregoing, it is hereby **ORDERED** that the

Respondents, WH Properties, Whole Hog Properties, Inc., Lion Heart Agencies, Planters Great Gulf Corporation, Planters Chartered Tennessee Trust, Tennessee Beneficiary Trust Exchange, The Polaris System of North America, Mr. Enright, Drs. Klein and Gray, and Klein Associates shall **CEASE AND DESIST** in the further offer, sale and marketing of securities including but not limited to the investment contracts described hereinbefore in, into or from the State of Tennessee until such time as such securities are effectively registered with the Division.

It is further **ORDERED** that the Respondents, WH Properties, Whole Hog Properties, Inc., Lion Heart Agencies, Planters Great Gulf Corporation, Planters Chartered Tennessee Trust, Tennessee Beneficiary Trust Exchange, The Polaris System of North America, Mr. Enright, Drs. Klein and Gray, and Klein Associates shall **CEASE AND DESIST** in any further conduct as a broker-dealer or agent from, in or into the State of Tennessee until such time as they are effectively registered with the Division to engage in such activity.

All parties assisting, aiding or helping in anywise the aforementioned Respondents in any of the aforementioned violations of the Tennessee Securities Act of 1980, Tenn. Code Ann. §§ 48-2-101, et seq., shall **CEASE AND DESIST** from all such activities and violations of said Act.

This Order is not intended to prohibit any lawful conduct in which any of the Respondents might in engaged.

Entry of this Order shall in no wise restrict the Tennessee Securities Division or the Commissioner of Commerce and Insurance from taking further action with respect to these or other possible violations by Respondents of the Act or any of the rules promulgated thereunder.

This Order shall become a Final Order thirty (30) days from date of its entry unless written notification requesting a hearing is made within that thirty (30) day period

You are advised that you have a right to a hearing as to all matters raised in this Order. If you wish to exercise your right to a hearing, please notify the Assistant Commissioner for Securities, State of Tennessee, Department of Commerce and Insurance, Securities Division, 500 James Robertson Parkway, Sixth Floor, Davy Crockett Tower, Nashville, Tennessee 37243. Such request must be received within thirty (30) days of the date of entry of this Order.

ENTERED this 30<sup>th</sup> day of March, 1998.

  
Douglas M. Sizemore, Commissioner  
Department of Commerce and Insurance

**APPROVED FOR ENTRY:**

  
Daphne D. Smith  
Assistant Commissioner for Securities

  
G. Everett Sinor, Jr., B.P.R.# 017564  
Attorney for the Petitioner  
Tennessee Securities Division  
Sixth Floor, Davy Crockett Tower  
500 James Robertson Parkway  
Nashville, Tennessee 37243  
(615)741-5917

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Cease and Desist Order has been served upon the following parties by personally serving same or by placing a true and correct copy of same in the United States Mails, certified, return receipt requested on the date herein marked next to the Respondent's name:

WH Properties, Inc.  
c/o Mark V. Enright, Registered Agent  
9717 Dutchtown Road  
Knoxville, Tennessee 37923  
Manner and Date of Service: 3/30 98  
Certified Mail 2 308 476 256

Whole Hog Properties, Inc.  
c/o Danielle Melissa Marie Brown, Registered Agent  
9717 Dutchtown Road  
Knoxville, Tennessee 37923  
Manner and Date of Service: 3/30 98  
Certified Mail 2 308 476 257

Lion Heart Agencies  
c/o Tennessee Secretary of State  
President James K. Polk Building  
Nashville, Tennessee 37243  
Manner and Date of Service: Personally  
delivered to Secretary of State - 3/30 98

1/k/a 9717 Dutchtown Road  
Knoxville, Tennessee 37923

Planters Great Gulf Corporation  
c/o Tennessee Secretary of State  
President James K. Polk Building  
Nashville, Tennessee 37243  
Manner and Date of Service: Personally  
delivered to Secretary of State - 3/30 98

1/k/a 9717 Dutchtown Road  
Knoxville, Tennessee 37923

Planters Chartered Trust Exchange  
c/o Tennessee Secretary of State  
President James K. Polk Building  
Nashville, Tennessee 37243  
Manner and Date of Service: Personally  
delivered to Secretary of State - 4/2 98

1/k/a 9717 Dutchtown Road  
Knoxville, Tennessee 37923

Tennessee Beneficiary Trust Exchange  
c/o Tennessee Secretary of State  
President James K. Polk Building  
Nashville, Tennessee 37243

Manner and Date of Service: Personally  
delivered to Secretary of State - 3/31/98

The Polaris System of North America  
c/o Tennessee Secretary of State  
President James K. Polk Building  
Nashville, Tennessee 37243

Manner and Date of Service: Personally  
delivered to Secretary of State - 3/31/98

Mark V. Enright  
9717 Dutchtown Road  
Knoxville, Tennessee 37923

Manner and Date of Service: 3/30/98  
Certified Mail Z 308 476 258

l/k/a 9717 Dutchtown Road  
Knoxville, Tennessee 37923

l/k/a 9717 Dutchtown Road  
Knoxville, Tennessee 37923

Mark V. Enright  
11032 Farragut Hills Boulevard  
Knoxville, Tennessee 37922

Manner and Date of Service: 3/30/98  
Certified Mail Z 308 476 259

Dr. Alden T. Klein  
200 Ladd Lane  
North Chattanooga, Tennessee 37405

Manner and Date of Service: 3/30/98  
Certified Mail Z 308 476 260

Alden Klein Associates  
4308 South Terrace (also l/k/a)  
Chattanooga, Tennessee 37412  
(This is also the l/k/a)

Manner and Date of Service: 3/30/98  
Certified Mail Z 308 476 261

Alden Klein Associates  
c/o Tennessee Secretary of State  
President James K. Polk Building  
Nashville, Tennessee 37243

Manner and Date of Service: 3/30/98  
~~Certified Mail Z 308 476 262~~

Personally served on  
Sec'y of State - 3/30/98

Served by: J. Everett Sun, Jr.  
Title: Staff Attorney