

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:)	
)	ORDER TO CEASE AND DESIST
Lake Greenwood Developers, LLC,)	
William E. Gilbert, and)	
Jan Bradshaw,)	File No. 12046
)	
Respondents.)	

WHEREAS, the Securities Division of the Office of the Attorney General of the State of South Carolina (the "Division"), pursuant to authority granted in the South Carolina Uniform Securities Act of 2005 (the "Act"), S.C. Code Ann. §§ 35-1-101 to 35-1-703 (Supp. 2012), received information regarding alleged activities of Lake Greenwood Developers, LLC, William E. Gilbert, and Jan Bradshaw (collectively, the "Respondents") which, if true, could constitute violations of the Act; and

WHEREAS, the information led the Division to open and conduct an investigation of the Respondents pursuant to S.C. Code Ann. § 35-1-602; and

WHEREAS, in connection with the investigation, the Division has determined that evidence exists to support the following findings and conclusions:

1. Respondent Lake Greenwood Developers, LLC ("Lake Greenwood Developers" or the "Developer") is a South Carolina limited liability company with the last known mailing address of 322 Main Street, Suite 100, Greenwood, South Carolina 29646.
2. The Developer was responsible for the development of a residential community near Lake Greenwood named Planter's Row at Palmetto Crossing which was managed by Respondent William E. Gilbert.

3. Respondent William E. Gilbert (“William E. Gilbert” or “Gilbert”) is the manager and Registered Agent of the Developer with the last known mailing address of P.O. Box 519, Greenwood, South Carolina 29648.
4. Respondent Jan Bradshaw is a South Carolina resident with the last known address of 1717 Bypass 72 NE, Greenwood, South Carolina 29649.
5. Jan Bradshaw, at all times relevant to this action, was a real estate salesperson with Carolina Waterfront Properties, LLC. Carolina Waterfront Properties, LLC was affiliated with the Developer and handled sales aspects of the development for the Developer, including serving as the “exclusive” sales agent for the Developer.
6. In March of 2006, Respondents Developer and Gilbert sold lot 28 to Investor A and lot 31 to Investor B, under sales contracts which included buy-back provisions. The provisions allowed the purchasers to exercise an option within a stated time frame to require the Developer to buy back the lots at a higher, agreed upon price.
7. In April of 2007, Investors A and B attempted to exercise their respective buy-back contracts, at which time the Developer, for additional consideration, negotiated a six-month extension, citing lack of funds to satisfy the demands.
8. In September of 2007, the Developer, by and through its agent Jan Bradshaw, contacted a South Carolina investor, Investor C, about entering into a purchase and buy-back agreement on lots 28 and 31.
9. The Developer, together with its agent Jan Bradshaw, promoted the sale and buy-back arrangement to Investor C as an “investment opportunity” and outlined specific returns on the initial investment. Further, the Developer, by and through its agent Jan Bradshaw, stated that the buy-back provision was guaranteed by the Developer.
10. Respondents provided Investor C with promotional materials to encourage him to invest, including the following: a) a document which contained descriptions of various amenities and features of the development and ended with a page titled “investment opportunities,” b) a

document titled "Palmetto Crossing Investor Information" which detailed certain investment options, and c) a Palmetto Crossing newsletter which promoted a restaurant that allegedly would be coming to the development.

11. Gilbert showed Investor C the development and explained the vision for the future of the project.
12. Further, Gilbert promoted the investment to Investor C with assertions that the money would be used toward completing the neighborhood amenities.
13. Investor C and Gilbert discussed the opportunity for a buy-back agreement in connection with Investor C's purchase of the lots.
14. In their dealings with Investor C, the Respondents stated, represented, and/or implied that the Developer was the owner and title-holder of the properties in question.
15. On or about September 25, 2007, Investor C entered into a purchase and buy-back agreement (the "Agreement") with the Developer on lots 28 and 31 for a total price of \$570,000 (\$290,000 for Lot 28 and \$280,000 for Lot 31).
16. In the Agreement, the Seller (the Developer) promised to pay \$20,000 per lot (\$40,000 total) at closing as interest in advance for the period of one year from the date of closing. The Seller had the option during the period of one year from the date of closing to repurchase Lot 28 for \$325,000 and Lot 31 for \$315,000. If the option was not exercised, then at the beginning of the second year after the closing the Seller was to pay \$20,000 per lot (\$40,000 total) as interest in advance for the second year. The Seller agreed to repurchase any outstanding lots at the end of year two at a price of \$355,000 for Lot 28 and \$345,000 for Lot 31. In the contract, Investor C agreed to make no material alterations to Lots 28 and 31 for the duration of the contract.
17. To further incentivize the investment, the Developer granted Investor C a second mortgage on unsold lots in the development which was subordinated, by agreement, to the first mortgage securing a construction loan between Service Corporation of South Carolina and the Developer.

18. Of Investor C's \$570,000 investment, approximately \$251,294.04 went to Investor A, approximately \$250,000 went to Investor B, \$20,000 went to Carolina Waterfront Properties, LLC as commission on the sale, and \$40,000 went back to Investor C as interest for the first year.
19. The real estate closing for the transaction involving Investor C took place on October 30, 2007.
20. A May 2010 appraisal of the two properties at issue (lots 28 and 31) concluded that the October 2007 value of lot 28 was \$185,000 and \$180,000 for lot 31.
21. South Carolina Code Ann. Section 35-1-102(29) defines a security to include, inter alia, any note, evidence of indebtedness, or investment contract.¹ The term "security" is further defined in subsection (D) to include "an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a 'common enterprise' means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors."
22. In construing state securities laws, federal law and court interpretation may be used as guidance for South Carolina courts.²
23. The Supreme Court of South Carolina, in defining an investment contract under the prior securities act, adopted the Howey Test, first announced by the Supreme Court of the United States in *Securities and Exchange Commission v. W.J. Howey Co.*, 328 U.S. 293, 66 S.Ct. 1100.³
24. The Howey Test states that an investment contract exists where there has been (i) an investment of money, (ii) in a common enterprise, (iii) with an expectation of profits garnered solely from the efforts of others.

¹ S.C. Code Ann. § 35-1-102(29) "'Security' means any note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a 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."

² *Garrett v. Snedigar*, 293 S.C. 176, 180 (Ct. App., 1987), *overruled on other grounds*, *Olson v. Faculty House of Carolina Inc.*, 354 S.C. 161, and *Majors v. South Carolina Securities Commission*, 373 S.C. 153, 163 (2007).

³ *Majors*, 373 S.C. 153, 163.

Investment of Money

25. Investors A, B, C, and perhaps others, gave to the Developer sums of money in exchange for a packaged contract which included the purchase agreement, a deed, and, simultaneously, a buy-back agreement.

In a Common Enterprise

26. According to South Carolina Code Ann. Section 35-1-102(29), a common enterprise exists when the fortunes of the investor are intertwined with the person offering the investment, a third party, or other investors.
27. In the present case, Investors A and B's fortunes, in terms of whether the buy-back of their lots would occur as promised, depended upon the investment of another investor.
28. Additionally, Investor C's fortunes were to be intertwined with the Developer's as the Developer was to repay Investor C \$640,000 in October of 2008, or \$700,000 in October of 2009, following forthcoming improvements to the development promised by the Respondents.
29. The granting of second mortgages or other lots in the development to Investor C further demonstrates the common enterprise existing with the investment.

Expectation of profits from the efforts of others

30. South Carolina Code Ann. Section 35-1-102(29) and later state and federal cases reduce the last prong of the Howey Test from *solely* from the efforts of others to *substantially* or *primarily* from the efforts of others.
31. The Supreme Court of the United States has held that the element of profits, as required by the Howey Test, includes not only profit sharing, but also capital appreciation⁴ and contractually promised fixed rates of return.⁵

⁴ *United Housing Foundation, Inc. v. Forman*, 95 S.Ct. 2051, 2060 (1975).

⁵ *Securities and Exchange Commission v. Edwards*, 124 S.Ct. 892, 897 – 98 (2004).

32. Respondents promoted the lot interests they offered and sold as an “investment opportunity” with guarantees of certain specified returns on investment. Further, Respondents and Investor C, through representations and the Agreement, established investment intent rather than an intent by Investor C to consume or use the property for personal benefit.
33. Investor C did not purchase the lots with the intent of overseeing the construction of improvements to increase the value himself. Further, Investor C did not intend to hold the lots to realize long-term passive appreciation in value after he sold the lots himself. Rather, Investor C intended to rely on the Developer’s ability to construct amenities and other improvements to the neighborhood to increase the lots’ values, enabling the Developer, in the short term, to repurchase the lots. The Developer’s acknowledgement of Investor C’s investment intent is clear; the buy-back provision was conditioned on the requirement that there be no material alteration to the properties during the holding period.
34. Investor C’s profit was dependent on the Respondents’ efforts, including their efforts to develop the land into a high-value, residential community ready to sell into the market place for residential dwellings.
35. Lake Greenwood Developers, LLC, William E. Gilbert, and Jan Bradshaw engaged in the offer and sale of securities in South Carolina.
36. The securities offered and sold were not registered with the Division.
37. Additionally, none of the Respondents were registered with the Division to offer or sell securities in the State of South Carolina.
38. Pursuant to S.C. Code Ann. Section 35-1-301, it is unlawful for a person to offer or sell a security in this State unless the security is registered, a federal covered security, or exempt from registration under Sections 35-1-201 through 35-1-203 of the Act.
39. Pursuant to S.C. Code Ann. Section 35-1-102(2), an agent is an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of

securities, or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities.

40. Pursuant to S.C. Code Ann. Section 35-1-402(a), it is unlawful for an individual to transact business as an agent in this State unless registered or exempt from registration.
41. Pursuant to S.C. Code Ann. Section 35-1-402(d), it is unlawful for a broker-dealer or an issuer engaged in offering, selling, or purchasing securities in South Carolina to employ an agent who is neither registered nor exempt from registration.
42. Pursuant to S.C. Code Ann. Section 35-1-501, it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:
 - a. To employ a device, scheme, or artifice to defraud;
 - b. To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
 - c. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.
43. Respondent Lake Greenwood Developers offered or sold unregistered securities in the State of South Carolina, in violation of S.C. Code Ann. Section 35-1-301.
44. Respondent Lake Greenwood Developers employed or associated with agents who transacted business in the State of South Carolina while not properly registered with the Division or exempt from registration, in violation of S.C. Code Ann. Section 35-1-402(d).
45. Respondent Lake Greenwood Developers, by and through its agents, in connection with the offer, sale, or purchase of a security, directly or indirectly:
 - a. Employed a device, scheme, or artifice to defraud;
 - b. Made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

- c. Engaged in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.
46. Respondent Jan Bradshaw offered or sold unregistered securities in the State of South Carolina, in violation of S.C. Code Ann. Section 35-1-301.
47. Respondent Jan Bradshaw acted as an agent by representing the issuer, Lake Greenwood Developers, in effecting or attempting to effect the sales of securities in the State of South Carolina while not being properly registered with the Division or exempt from registration, in violation of S.C. Code Ann. Section 35-1-402(a).
48. Respondent Jan Bradshaw, in connection with the offer, sale, or purchase of a security, directly or indirectly:
- a. Employed a device, scheme, or artifice to defraud;
 - b. Made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
 - c. Engaged in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.
49. Respondent William E. Gilbert offered or sold unregistered securities in the State of South Carolina, in violation of S.C. Code Ann. Section 35-1-301.
50. Respondent William E. Gilbert acted as an agent by representing the issuer, Lake Greenwood Developers, in effecting or attempting to effect the sales of securities in the State of South Carolina while not being properly registered with the Division or exempt from registration, in violation of S.C. Code Ann. Section 35-1-402(a).
51. Respondent William E. Gilbert, in connection with the offer, sale, or purchase of a security, directly or indirectly:
- a. Employed a device, scheme, or artifice to defraud;

- b. Made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. Engaged in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

CEASE AND DESIST ORDER

WHEREAS, pursuant to S.C. Code Ann. § 35-1-604(a)(1), if the Securities Commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of the Act or a rule adopted or order issued under the Act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of the Act or a rule adopted or order issued under the Act, the Securities Commissioner may issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with the Act; and

WHEREAS, pursuant to S.C. Code Ann. § 35-1-604(b), an order issued under Section 35-1-604(a) is effective on the date of issuance and must include a statement of any civil penalty or costs of investigation the Division will seek, a statement of the reasons for the order, and notice that a hearing will be scheduled if one is requested;

NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a), IT IS HEREBY ORDERED that Lake Greenwood Developers, William E. Gilbert, and Jan Bradshaw each:

- a. Immediately cease and desist from transacting business in this State in violation of the Act and, in particular, Sections 35-1-301, 35-1-402(a), 35-1-402(d), and 35-1-501 thereof; and
- b. Pay a civil penalty of \$10,000 for each of the three violations of the Act committed by that Respondent and detailed in this Order.

REQUIREMENT OF ANSWER AND
NOTICE OF OPPORTUNITY FOR HEARING

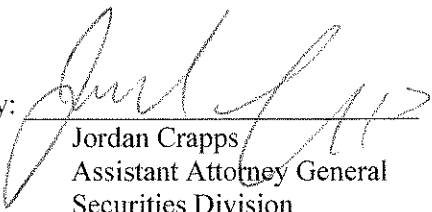
Respondents are hereby notified that they each have the right to a hearing on the matters contained herein. To schedule such a hearing, a Respondent must file with the Securities Division, Post Office Box 11549, Rembert C. Dennis Building, Columbia, South Carolina, 29211-1549, attention: Thresechia Navarro, within thirty (30) days after the date of service of this Order to Cease and Desist a written Answer specifically requesting a hearing. If a Respondent requests a hearing, the Division, within fifteen (15) days after receipt of a request in a record from a Respondent, will schedule the hearing.

In the written Answer, the Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. A Respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.

Failure by a Respondent to file a written request for a hearing in this matter within the thirty-day (30) period stated above shall be deemed a waiver by that Respondent of the right to such a hearing. Failure of a Respondent to file an Answer, including a request for a hearing, shall result in this Order, including the stated civil penalty and assessed fees, becoming final as to that Respondent by operation of law.

CONTINUING TO ENGAGE IN ACTS DETAILED BY THIS ORDER AND/OR SIMILAR ACTS MAY RESULT IN THE DIVISION'S FILING ADDITIONAL ADMINISTRATIVE ACTIONS AND/OR SEEKING FURTHER ADMINISTRATIVE FINES. WILLFUL VIOLATION OF THIS ORDER COULD RESULT IN CRIMINAL PENALTIES UNDER S.C. CODE ANN. § 35-1-508 OF THE ACT.

IT IS SO ORDERED, This the 21 day of February, 2013.

By: 

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