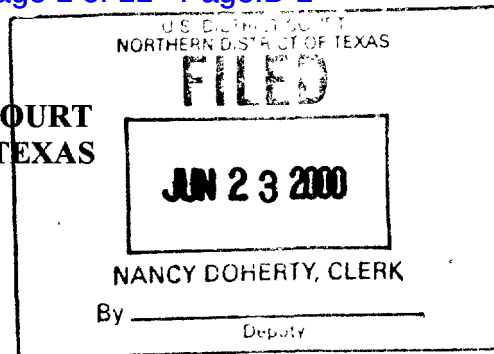


Original

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

THOMAS J. KEARNS, individually and doing business as
Financial Associated Service; and
KEARNS FINANCIAL SERVICES, INC.,
a Texas corporation,

Defendants.

Civil Action No.

3-00CV1358-1

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") for its Complaint against Defendants Thomas J. Kearns ("Kearns"), individually and doing business as Financial Associated Service ("FAS"), and Kearns Financial Services, Inc. ("Services"), alleges and states:

SUMMARY

1. This case involves an ongoing scheme to defraud investors in connection with the offer and sale of investments by Kearns and by Services, a corporation founded, owned and controlled by Kearns. Kearns preyed on senior citizens and bilked them of at least \$1.5 million. After Kearns, a licensed insurance agent and self-proclaimed investment advisor, obtained information concerning the assets and financial condition of insurance customers, he solicited elderly individuals to entrust him with their funds to invest in promissory notes, annuities, viaticals and other securities. In fact, after Kearns obtained monies from customers, he did not

invest the funds as he had represented and instead loaned \$325,000 to a friend to start a ginseng vitamin company and expended other monies to acquire a vacation home, to improve that home, to improve his residence and to acquire fifteen (15) automobiles. When some of the customers demanded that Kearns return their investments, Kearns failed to return the invested funds.

2. Kearns and Services have engaged, and unless restrained and enjoined by this Court, will continue to engage in acts, transactions, practices and courses of business which violate section 206 (1) and (2) of the Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. §80b-6 (1) and (2).

JURISDICTION AND VENUE

3. The Commission brings this action pursuant to section 209(d) of the Advisers Act, 15 U.S.C. §80b-9(d), to enjoin the violative acts, transactions, practices and courses of business and for ancillary relief. This case arises under the laws of the United States, including Acts of Commerce regulating commerce.

4. This Court has jurisdiction over this action pursuant to section 214 of the Advisers Act, 15 U.S.C. §80b-14, and pursuant to 28 U.S.C. §§1331 and 1337.

5. Kearns and Services can be found in, are inhabitants of, conduct business in and reside in the Northern District of Texas. Certain of the acts and practices constituting the violations alleged herein occurred within the Northern District of Texas. Venue is appropriate in the Northern District of Texas under section 214 of the Advisers Act, 15 U.S.C. §80b-14, and 28 U.S.C. §1391.

PARTIES

6. The Commission is an agency of the United States of America established by section 4(a) of the Exchange Act, 15 U.S.C. §77d(a).

7. Kearns, age 55, is a resident of Dallas, Texas. Kearns is believed to be the sole shareholder, a director and an officer of Services. Kearns is registered with the Texas Department of Insurance to sell life, health and HMO products, but he has never been registered with the Commission in any capacity.

8. Services is a Texas corporation and has its registered office in Dallas, Texas. Services is controlled by Kearns. Services has never been registered with the Commission in any capacity.

FACTUAL BACKGROUND

9. Since at least 1995, Kearns, doing business as FAS or through Services, conducted business as an insurance agent, initially offering and selling insurance-related products to elderly insurance clients.

10. Kearns followed this approach to establish close relationships with and to gain the trust of those clients.

11. Those relationships enabled Kearns to obtain personal information concerning the clients' assets and their overall financial condition.

12. After acquiring their financial information, Kearns solicited the elderly individuals to permit him to manage their funds and told them that he would be able to get them a higher return than what was otherwise available in annuities or bank certificates of deposit and that investing with him was safe and secure.

13. To further entice them, Kearns personally “guaranteed” some investors that they would realize specific returns through his management of their funds

14. A number of individuals, including his most recent clients, agreed to enter into investment advisory or money management agreements pursuant to which Kearns, either doing business as FAS or through Services, agreed to provide financial services and “investment advice” in exchange for compensation.

15. Initially, Kearns, doing business as FAS, had clients execute a written “Investment Agreement” and a “Special Power of Attorney” and promised the clients a 6.75% to 10% fixed annual return over a specific period of time (usually 3 to 5 years), with monthly payments of interest through arrangements that provided for the generation of returns through various viatical or annuity investments and paid Kearns a management fee of 4% of the total amount entrusted to him for investment.

16. Later arrangements with clients gave Kearns control over client funds and “guaranteed” the clients an annual return of 9% to 10% for a period of between 3 and 5 years, but did not specify how Kearns was to invest client funds even though Kearns led clients to believe that he would generate returns from safe investments he was to make on their behalf.

17. In the most recent version of his scheme, Kearns has required clients to enter into three written agreements. One agreement, entitled “Money Management Agreement and Special Power of Attorney,” is between Services, doing business as FAS, and the client, gives Kearns control over investor funds and provides that Services is to provide “financial services” and “investment advice” in exchange for an hourly fee of \$125. A second agreement, entitled “Durable Power of Attorney,” also gives Kearns control over client funds. A third agreement,

entitled "Investment Agreement," is between "Financial Associated Service" and the client and guarantees the client a minimum return of 10% for four years.

18. Although none of the three agreements specify how Kearns was or is to invest client funds or to generate the guaranteed returns, clients did and do rely on Kearns' oral representations that he would invest their funds only in safe and secure investments.

19. In order to provide him with monies to manage, Kearns explicitly encouraged investors to liquidate annuities, bank certificates of deposit and stocks in order to come up with the funds to enter into their advisory relationship with him.

20. At least seventeen (17) individuals entered into investment advisory relationships with Kearns.

21. Most of Kearns and Services' investment advisory clients are senior citizens, and several are now deceased.

22. In a number of instances, Kearns refused to cooperate with heirs who wish to withdraw monies Kearns supposedly managed for the deceased.

23. All of Kearns' clients were told that their money would be invested in safe and secure investments, and some were told that the promised returns were guaranteed by Kearns personally and/or one of his entities, and certain of the written agreements Kearns and Services provided to clients, including the agreements currently in use, guaranteed specific returns of as much as 10% annually.

24. Although early investors were told that their funds would be used to purchase annuities and/or viaticals, many investors, including the most recent, were only told that Kearns would invest their money in safe and secure investments without mention of any specific investments.

25. Kearns never purchased annuities, viaticals or other safe and secure investments for his clients.

26. With respect to annuities, none of Kearns' clients who were told that their funds were invested in annuities ever signed any document with an insurance company that issues annuities, received any documentation from the issuer(s) of the annuities or received a Form 1099 reflecting income that would have been generated by the annuities.

27. Kearns and Services failed to provide clients with any documentation to substantiate claims that they had made viatical investments on the clients' behalf.

28. Although Kearns did provide several clients with periodic statements for two purported entities, FAS Viatical Investments ("FAS Viatical") and Genesis Viatical Clearing Corporation ("Genesis"), that reflected investments purportedly made for the clients in viaticals, together with interest earned on those investments, Kearns "made up" FAS Viatical and Genesis, and the companies never existed; Kearns and Services never purchased any viatical investment; and the FAS Viatical and Genesis statements were fraudulent.

29. Kearns told one early client that he was investing her inheritance and life savings of \$220,000 in annuities. Although the client repeatedly told Kearns that she needed to invest in very conservative programs because her funds were needed to help support her 12-year-old, autistic daughter, Kearns never provided the client with anything to evidence such an investment. Kearns never provided the client with any document or form for the client to sign regarding her investment, and no one provided the client with any statement evidencing the client's investment or earnings. When the client sent Kearns a letter asking where her money had been invested and demanding supporting documentation, Kearns refused to provide the client with any written information and only orally advised that her money was invested in annuities issued by

“Southwest Insurance.”

30. “Southwest Insurance” never issued any annuity to any client of Kearns or of Services.

31. Kearns never purchased any legitimate or “safe and secure” investment on behalf of any of his clients.

32. Since 1995, Kearns has been using investor funds to purchase over \$360,000 worth of automobiles (a total of 15 automobiles are registered in his name), to purchase a new lake house for \$170,000 (on which he spent an additional \$100,000 for additions and improvements) and to make \$50,000 in improvements on his \$200,000 residence in Dallas. Kearns also used investor funds to pay for \$75,000 worth of improvements at a Dallas bar in which Kearns has no recorded interest. Those expenditures are excessive in light of Kearns’ average reported annual income of approximately \$70,000 during 1997 and 1998.

33. Kearns continues to mislead clients by representing to them that he has invested their money in safe investments and encouraging them to renew their advisory relationship with him, recently had clients sign new agreements to renew their relationship with him and supposedly to roll over pre-existing investments, continues to exercise control over the funds of all his clients and is continuing to solicit new clients.

34. Kearns recently entered into an investment advisory agreement and power of attorney with an elderly individual.

35. Kearns has refused some clients’ requests to return their funds or provide documentation about their investments.

36. Although several investors recently attempted to liquidate their investments and withdraw their funds, they were unsuccessful because Kearns refused to cooperate.

37. Beneficiaries and heirs of several deceased investors have not been able to obtain information from Kearns regarding the deceaseds' investments and have found that Kearns' current claims about the value of the investments are less than what the heirs were told by the deceased before passing.

38. Recently Kearns withdrew \$50,000 from the FAS client account, and he no longer visits his office or returns telephone calls, apparently to evade clients and law enforcement authorities.

CAUSE OF ACTION

FRAUD BY AN INVESTMENT ADVISER

Violations Of Section 206 (1) And (2) Of The Advisers Act

39. The allegations of Paragraphs 1 through 38 of this Complaint are realleged and incorporated herein by reference, as if set forth herein verbatim.

40. Kearns and Services are "investment advisers," as that term is defined in section 202 (11) of the Advisers Act, 15 U.S.C. §80b-2 (11).

41. As "investment advisers," by use of the mails and of other means and instrumentalities of interstate commerce, Kearns and Services, directly and indirectly, employed devices, schemes and artifices to defraud and engaged in transactions, practices and courses of business which did and do operate as a fraud and deceit upon clients and prospective clients.

42. Kearns and Services intentionally, knowingly and/or recklessly engaged in the acts and practices described.

43. Kearns and Services acted with scienter.

44. By reason of the foregoing, Kearns and Services have violated, and unless enjoined, will continue to violate section 206 (1) and (2) of the Advisers Act, 15 U.S.C. §80b-

6 (1) and (2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Securities and Exchange Commission respectfully prays that this Court:

I.

Preliminarily and permanently enjoin Defendants Thomas J. Kearns, individually and doing business as Financial Associated Service, and Kearns Financial Services, Inc., from engaging in further violations of section 206 (1) and (2) of the Investment Advisers Act of 1934, 15 U.S.C. §80b-6 (1) and (2);

II.

Order that Defendants Thomas J. Kearns, individually and doing business as Financial Associated Service, and Kearns Financial Services, Inc., make no payment or expenditure of funds (including charges on any credit card), and effect no sale, gift, hypothecation or other disposition of any asset, pending a showing to the Court of sufficient funds or assets to satisfy all claims arising from the violations of the federal securities laws alleged in this complaint, or posting a bond or surety sufficient to assure payment of any such claim;

III.

Order that all assets of Defendants Thomas J. Kearns, individually and doing business as Financial Associated Service, and Kearns Financial Services, Inc., be frozen until further order of the Court;

IV.

Order Defendants Thomas J. Kearns, individually and doing business as Financial Associated Service, and Kearns Financial Services, Inc., to make an accounting of all assets obtained through their fraudulent scheme;

V.

Order Defendants Thomas J. Kearns, individually and doing business as Financial Associated Service, and Kearns Financial Services, Inc., to disgorge any monies or other assets received from investors and any income or profit therefrom, including prejudgment interest;

VI.

Appoint a receiver to marshal the assets of Defendants Thomas J. Kearns, individually and doing business as Financial Associated Service, and Kearns Financial Services, Inc.;

VII.

Direct that discovery be conducted on an expedited basis;

VIII.

Order Defendants Thomas J. Kearns, individually and doing business as Financial Associated Service, and Kearns Financial Services, Inc., to pay civil penalties pursuant to section 209(e) of the Investment Advisers Act of 1940, 15 U.S.C. §80b-9(e).

IX.

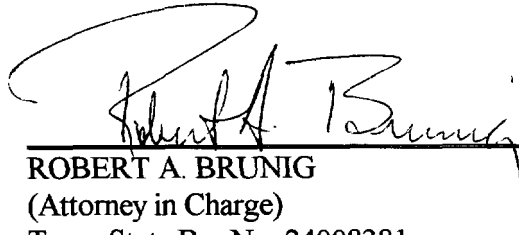
Require Defendants Thomas J. Kearns, individually and doing business as Financial Associated Service, and Kearns Financial Services, Inc., to account for all monies which they have received and disbursed within the period on and after January 1, 1997; and

X.

Order such further relief as this Court may deem just and proper.

FOR THE COMMISSION, BY ITS ATTORNEYS:

Dated: June 22, 2000.



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