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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

U.S. DISTRICT COURT  
SOUTHWEST, OHIO  
EAST TOWN, COLUMBUS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JAMES MICHAEL COGLEY, individually and  
as a registered investment adviser  
and THE OHIO ESTATE GROUP,

Defendants.

CIVIL ACTION

FILE NO.

C2 98 - 802

JUDGE MARBLEY

MAGISTRATE JUDGE KING

COMPLAINT FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY AND  
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Now comes the Plaintiff, Securities and Exchange Commission ("Commission"), and  
alleges as follows:

1. From at least August 1997 through the present, Defendant James Michael Cogley ("Cogley") has offered and sold at least \$2,400,000 worth of The Ohio Estate Group ("OEG") promissory notes ("OEG Notes") to approximately 44 investors. In connection with these sales, Cogley has made and is continuing to make numerous misrepresentations and omitted and is continuing to omit to state necessary, material facts regarding the use of proceeds, the safety and return on the investment, Cogley's professional, disciplinary and financial history, OEG's financial condition and the nature of a Commission investigation.

2. Defendant Cogley, directly and indirectly, has engaged, is engaged and is about to engage in transactions, acts, practices and courses of business which constitute violations of

Sections 17(a)(1), (2) and (3) of the Securities Act of 1933, as amended ("Securities Act") [15 U.S.C. §77q(a)(1),(2) and (3)], Sections 10(b), 15(a)(1) and 15(c)(1) of the Securities Exchange Act of 1934, as amended ("Exchange Act") [15 U.S.C. §78j(b), §78o(a)(1) and §78o(c)(1)], Rules 10b-5 and 15c1-2 [17 C.F.R. §240.10b-5 and §15c1-2] promulgated thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, as amended ("Advisers Act") [15 U.S.C. §80b-6(1) and (2)].

3. Defendant OEG, directly and indirectly, has engaged, is engaged and is about to engage in transactions, acts, practices and courses of business which constitute violations of Sections 17(a)(1), (2) and (3) of the Securities Act [15 U.S.C. §77q(a)(1),(2) and (3)], Section 10(b) Exchange Act [15 U.S.C. §78j(b), §78o(a)(1) and §78o(c)(1)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder.

4. Plaintiff brings this action to enjoin such transactions, acts, practices and courses of business pursuant to Section 20(b) of the Securities Act [15 U.S.C. §77t(b)], Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §78u(d) and §78u(e)] and Section 209(d) of the Advisers Act [15 U.S.C. §80b-9(d)].

#### **JURISDICTION AND VENUE**

5. The Court has jurisdiction of this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)], Section 27 of the Exchange Act [15 U.S.C. §78a] and Section 214 of the Advisers Act [15 U.S.C. §80b-14].

6. The transactions, acts, practices, and courses of business constituting the violations herein have occurred within the jurisdiction of the United States District Court for the Southern District of Ohio and elsewhere.

7. The Defendants, directly and indirectly, have made, and are making, use of the mails, and of the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices and courses of business alleged herein in the Southern District of Ohio and elsewhere.

8. Pursuant to authority conferred on the Commission by Sections 10(b) and 15(c) of the Exchange Act [15 U.S.C. §78j(b) and §78o(c)], the Commission has promulgated Rules 10b-5 and 15c1-2 [17 C.F.R. §240.10b-5 and §240.15c1-2], such rules being in effect at all times mentioned herein and at the present time.

9. There is a reasonable likelihood that, unless enjoined by this Court, Defendants Cogley and OEG will continue to engage in transactions, acts, practices and courses of business of similar purport and object as those set forth in this complaint.

#### **DEFENDANTS**

10. Defendant Cogley, age 52, is a resident of Columbus, Ohio. Cogley filed for bankruptcy in or about 1990, receiving a discharge in or about 1991. In or about August 1996, Cogley signed, and caused to be filed with the Commission, a form ADV, registering as an investment adviser and operating as a sole proprietorship. In or about April 1997, Cogley consented to the entry of a cease and desist order by the State of Ohio Division of Securities for alleged violations of Ohio securities laws.

11. Defendant OEG is an Ohio corporation. Cogley is the president and owner of OEG and has signed promissory notes in his capacity as president of OEG and on behalf of OEG as maker of the promissory Notes.

## FACTS

### Investors and OEG Notes

12. From in or about August 1997 through in or about July 1998, Cogley, through OEG, fraudulently raised, through the sale of promissory notes issued by OEG and personally guaranteed by Cogley (the "OEG Notes"), at least \$2,400,000 from approximately 44 investors living in Ohio and elsewhere.

13. Cogley, through OEG, sold the OEG Notes primarily to elderly and retired investors who attended investment seminars sponsored by, among others, OEG.

14. Cogley generated interest in the seminars through mass mailings, targeting retired individuals and referring to topics concerning living trust, estate and financial planning issues.

15. In addition, Cogley sold OEG Notes to individuals referred to him by other investors or by paid solicitors.

16. Cogley encouraged these individuals to arrange for one-on-one meetings at Cogley's office or at the investors' homes to discuss Cogley's financial planning services. In at least one instance, Cogley visited an elderly couple in their retirement home to solicit their purchase of OEG Notes.

17. At the seminars or in discussions, Cogley claimed that the stock market was "too risky," and implied that he could offer safer investment opportunities for investors.

18. During those meetings, Cogley would analyze the individual's current investment portfolio and introduce them to OEG Notes as substitutes for certificates of deposit ("CDs"), annuities and other safe investments. Cogley told investors that the OEG Notes were FDIC insured and secured by underlying investments in real estate and other business ventures.

19. The OEG Notes carried varying interest rates ranging from 9.25% to 24% for periods from one to four years. Cogley, through OEG, offered higher interest rates on the longer term notes and if the investor chose to accumulate interest instead of receiving monthly interest payments.

20. Cogley, both orally and in writing, characterized the OEG Notes as investments.

21. Sometimes, Cogley would mail to prospective clients a written analysis comparing the person's portfolio return to the return on OEG Notes.

22. In order to gain their trust, Cogley represented himself to these elderly individuals as a devout and religious man.

23. At Cogley's urging, these individuals liquidated CDs, transferred funds from Individual Retirement Accounts or stock proceeds to Cogley for investment in the OEG Notes. Cogley and OEG offered to pay and penalty the investors incurred due to the premature liquidation of any asset. One investor transferred the majority of the proceeds from the sale of his home to Cogley for investment in OEG Notes.

24. Cogley personally guaranteed each OEG Note. Cogley signed the promissory notes on behalf of OEG and personally, as a guarantor.

25. Cogley, through OEG, mailed checks to certain investors who elected to receive monthly interest payments. Cogley, through OEG, mailed monthly statements to investors reflecting their principal investment plus accumulated interest.

**Misrepresentations and Omissions to State Material Facts**

26. From in or about August 1997 through the present, Cogley, individually and on behalf of OEG, in connection with the offer, purchase and sale of OEG Notes, made, and is making, numerous misrepresentations, both orally and in writing, to investors and potential investors including, but not limited to:

- a. Cogley is misrepresenting the safety of the OEG Notes, telling some investors that the OEG Notes are FDIC insured and as safe as annuities and certificates of deposit;
- b. Cogley is misrepresenting his and OEG's ability to earn enough money to pay the promised interest on the OEG Notes of 9.25% to as high as 24%;
- c. Cogley is misrepresenting that the money raised will be used for real estate and business development projects, while intending to use the money instead to pay for his personal expenses, for OEG's business expenses, and to pay earlier investors interest and principal;
- d. Cogley is misrepresenting that clients can recover their principal investment at any time;

- e. Cogley is misrepresenting that he held founder's stock in a restaurant corporation and that he was involved in a \$200 million public offering for that corporation;
- f. Cogley is misrepresenting to investors that he and OEG have a successful record of money and portfolio management; and
- g. Cogley is misrepresenting that the Commission's investigation was routine and had concluded with a finding of no wrong-doing.

27. From in or about August 1997 through the present, Cogley, individually and on behalf of OEG, in connection with the offer, purchase and sale of OEG Notes, omitted, and is omitting, to state material facts to investors and potential investors including, but not limited to:

- a. Cogley is omitting to state to investors that he filed for bankruptcy in 1990;
- b. Cogley is omitting to state to investors that in April 1997, he consented to the entry of a cease and desist order by the State of Ohio Division of Securities for allegedly soliciting and selling unregistered securities in violation of Ohio securities laws;
- c. Cogley is omitting to state to investors that he has a significant negative net worth and owed approximately \$200,000 in personal liabilities that far exceeded his assets at the time he was personally guaranteeing the OEG Notes;
- d. Cogley is omitting to state to investors that he intended, and intends, to use the majority of their investment funds to pay OEG's business expenses,

Cogley's personal expenses and principal and interest payments to earlier investors; and

- e. Cogley is omitting to state to investors that OEG's liabilities far exceed its assets.

### COUNT I

#### **Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)]**

28. Paragraphs 1 through 27 are hereby realleged and incorporated by reference herein.

29. From at least August 1997 through the present, Cogley and OEG, in the offer and sale of securities in the form of OEG Notes, by the use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, directly or indirectly, have employed and are employing devices, schemes or artifices to defraud, all as more fully described in Paragraphs 1 through 27 above.

30. In the offer and sale of securities in the form of OEG Notes, and as part of the scheme to defraud, Cogley made false and misleading statements of material fact and omitted to state material facts to investors and prospective investors, regarding the use of investor money, the safety and return of the OEG Notes, Cogley's professional, disciplinary and financial history, OEG's true financial condition and the nature of the Commission's investigation all as more fully described in paragraphs 26 and 27 above.

31. Cogley and OEG knew or were reckless in not knowing of the facts and circumstances described in paragraph 30 above.



32. By reason of the activities described in paragraphs 28 through 31 above, Cogley and OEG have violated and are violating Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)].

## COUNT II

### **Violations of Section 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §77q(a)(2) and §77q(a)(3)]**

33. Paragraphs 1 through 27 are hereby realleged and incorporated by reference herein.

34. From in or about August 1997 through the present, Cogley and OEG, in the offer and sale of securities in the form of OEG Notes, by the use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, directly or indirectly, have obtained and are obtaining money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and have engaged and are engaging in transactions, practices or courses of business which have operated and will operate as a fraud and deceit upon purchasers and prospective purchasers of the OEG Notes, all as more fully described in Paragraphs 26, 27 and 30 above.

35. By reason of the activities described in paragraphs 33 and 34 above, Cogley and OEG have violated and are violating Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §77q(a)(2) and §77q(a)(3)].

**COUNT III**

**Violations of Section 10(b) of the Exchange Act  
[15 U.S.C. §78j(b)] and Rule 10b-5  
[17 C.F.R. §240.10b-5] thereunder**

36. Paragraphs 1 through 27 are hereby realleged and incorporated by reference herein.

37. From in or about August 1997 through the present, Cogley and OEG, in connection with the purchase and sale of securities in the form of OEG investment notes, by the use of the means or instrumentalities of interstate commerce and of the mails, directly or indirectly, have employed and are employing devices, schemes or artifices to defraud; have made and are making untrue statements of material fact and have omitted and are omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and have engaged and are engaging in acts, practices and courses of business which have operated and will operate as a fraud and deceit upon purchasers of such securities, all as more fully described in Paragraphs 26, 27 and 30 above.

38. Cogley and OEG knew or were reckless in not knowing of the facts and circumstances described in paragraph 37 above.

39. By reason of the activities described in paragraphs 36 through 38 above, Cogley and OEG have violated and are violating Section 10(b) of the Exchange Act, as amended [15 U.S.C. §78j (b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

#### **COUNT IV**

##### **Violations of Section 15(a)(1) of the Exchange Act [15 U.S.C. §78o(a)(1)]**

40. Paragraphs 1 through 27 are hereby realleged and incorporated by reference herein.

41. From in or about August 1997 through the present, Cogley continuously has made and is making use of the mails or means or instrumentalities of interstate commerce in order to effect transactions in, or to induce or attempt to induce the purchase or sale of securities in the form of OEG Notes without being registered with the Commission as a broker or dealer.

42. By reason of the activities described in paragraphs 40 and 41 above, Cogley has violated and is violating Section 15(a)(1) of the Exchange Act [15 U.S.C. §78o(a)(1)].

#### **COUNT V**

##### **Violations of Section 15(c)(1) of the Exchange Act [15 U.S.C. §78o(c)(1)] and Rule 15c1-2 [17 C.F.R. §240.15c1-2] thereunder**

43. Paragraphs 1 through 27 are hereby realleged and incorporated by reference herein.

44. From in or about August 1997 through the present, Cogley continuously has made and is making use of the mails or means or instrumentalities of interstate commerce in order to directly or indirectly effect transactions in, or to induce or attempt to induce the purchase or sale of securities in the form of OEG Notes, and has employed and is employing manipulative, deceptive or other fraudulent devices or contrivances, all as more fully described in Paragraphs 26, 27 and 30 above.

45. By reason of the activities described in paragraphs 43 and 44 above, Cogley has violated and is violating Section 15(c)(1) of the Exchange Act, as amended [15 U.S.C. §78o (c)(1)] and Rule 15c1-2 [17 C.F.R. §240.15c1-2] thereunder.

#### **COUNT VI**

##### **Violations of Section 206(1) of the Advisers Act [15 U.S.C. §80b-6(1)]**

46. Paragraphs 1 through 27 are hereby realleged and incorporated by reference herein.

47. From in or about August 1997 through the present, Cogley, by the use of the mails or means or instrumentalities of interstate commerce, directly or indirectly, has employed, and is employing, devices, schemes or artifices to defraud investment advisory clients and prospective clients, all as more fully described in Paragraphs 26, 27 and 30 above.

48. Cogley knew or was reckless in not knowing of the facts and circumstances described in paragraph 47 above.

49. By reason of the activities described in paragraphs 46 through 48 above, Cogley has violated and is violating Section 206(1) of the Advisers Act [15 U.S.C. §80b-6(1)].

**COUNT VII**

**Violations of Section 206(2) of the Advisers Act  
[15 U.S.C. §80b-6(2)]**

50. Paragraphs 1 through 27 are hereby realleged and incorporated by reference herein.

51. From in or about August 1997 through the present, Cogley, by use of the mails or means or instrumentalities of interstate commerce, directly or indirectly, has engaged, and is engaging, in transactions, practices, or courses of business that operate as a fraud or deceit upon investment advisory clients and prospective clients, all as more fully described in Paragraphs 26, 27 and 30 above.

52. By reason of the activities described in paragraphs 50 and 51 above, Cogley has violated and is violating Section 206(2) of the Advisers Act [15 U.S.C. §80b 6(2)].

**WHEREFORE**, the Plaintiff respectfully requests that this Court:

I.

Find that the Defendants Cogley and OEG committed the violations alleged above.

II.

Grant a temporary restraining order and orders of preliminary and permanent injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining Cogley, his officers, agents, servants, employees, attorneys, and those persons in active concert or participation with him who receive actual notice of the Order of Permanent Injunction

by personal service or otherwise, and each of them, from directly or indirectly, in the offer, purchase or sale of the securities of any issuer or to any client or prospective client, engaging in the acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Sections 17(a)(1), (2) and (3) of the Securities Act [15 U.S.C. §77q(a)(1), §77q(a)(2) and §77q(a)(3)], Sections 10(b), 15 (a)(1) and 15(c)(1) of the Exchange Act [15 U.S.C. §78j(b), §78o(a)(1) and §78o(c)(1)], Rules 10b-5 and 15c1-2 thereunder [17 C.F.R. §240.10b-5 and §240.15c1-2], Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §80b-4, §80b-6(1) and §80b-6(2)] and Rule 204-3 [17 C.F.R. §275.204-3] thereunder.

### III.

Grant a temporary restraining order and orders of preliminary and permanent injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining OEG, its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with it who receive actual notice of the Order of Permanent Injunction by personal service or otherwise, and each of them, from directly or indirectly, in the offer, purchase or sale of the securities of any issuer or to any client or prospective client, engaging in the acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Sections 17(a)(1), (2) and (3) of the Securities Act [15 U.S.C. §77q(a)(1), §77q(a)(2) and §77q(a)(3)], Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

IV.

Grant a temporary restraining order and orders of preliminary and permanent injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining Defendants Cogley and OEG, those persons in active concert or participation with them who receive actual notice of the Order, by personal service or otherwise, and each of them, from directly or indirectly:

- A. transferring, selling, assigning, pledging, dissipating, concealing or otherwise disposing of in any manner, any funds, assets, accounts or other property belonging to, or in the possession, custody or control of the Defendants, wherever located; and
- B. transferring, selling, assigning, pledging, dissipating, concealing or otherwise disposing of in any manner, any funds, assets, accounts or other property into which investor funds were deposited.
- C. destroying, mutilating, concealing, altering or disposing of any documents or recordings related to the offer, purchase, or sale of OEG promissory notes.

V.

Grant an order requiring the Defendants Cogley and OEG to:

- A. provide to the Court, within four days of the issuance of the Temporary Restraining Order, an accounting of all of Cogley's and OEG's funds and assets and their location; provided, however, that nothing in the order shall

be construed to require the Defendants to abandon any constitutional or other legal privilege which they may have available to them; and

- B. produce to the Plaintiff, within four days of the issuance of the Temporary Restraining Order, all books, records and other documents supporting or underlying the accounting provided to the Court pursuant to paragraph V.A. above.
- C. produce to the Plaintiff, within four days of the issuance of the Temporary Restraining Order, all current accountant's reports, bank statements, documents indicating title to real or personal property, and any other indicia of ownership or interest in property of any of the Defendants, which indicia of ownership or interest are now in the Defendants' actual or constructive possession.

## VI

Grant a temporary restraining order and orders of preliminary and permanent injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, requiring the Defendants Cogley and OEG , those persons in active concert or participation with them who receive actual notice of the Order, by personal sevice or therewise, and each of them, from directly or indirectly receiving any funds from individuals or entities for the purpose of investment.



VII.

Grant an Order requiring Defendants Cogley and OEG to disgorge any and all ill-gotten gains, including prejudgment interest.

VIII.

Grant an Order appointing a receiver to marshal and preserve the assets of Defendants Cogley and OEG.

IX.

With regard to Defendants Cogley's violative acts, practices and courses of business set forth herein, which occurred on or after August 1, 1997, grant an order imposing upon him appropriate civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)].

X.

With regard to Defendants OEG's violative acts, practices and courses of business set forth herein, which occurred on or after August 1, 1997, grant an order imposing upon it appropriate civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

XI.

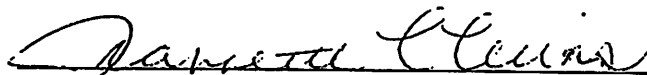
Retain jurisdiction of this action in accordance with the principals of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and

decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

XII.

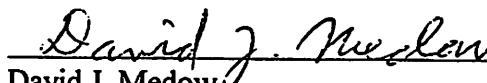
Grant Orders for such further relief as the Court may deem appropriate.

Respectfully submitted



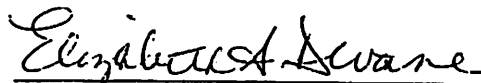
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