

COPY

FILED IN CLERK'S OFFICE  
U.S.D.C. - Atlanta

JUN 04 2009

JAMES M. MATTEI, Clerk  
By: [Signature] Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

CHRISTOPHER M. KUNKEL,  
Defendant.

Civil Action No.

1 09-CV-1481

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

The Securities and Exchange Commission ("Commission") files this  
Complaint for Injunctive and Other Relief and alleges as follows:

**OVERVIEW**

1. This case concerns violations of federal securities laws by Christopher  
M. Kunkel ("Kunkel"), who provided services to Pinnacle Development Partners  
LLC ("Pinnacle") and assisted in the sale of the Pinnacle investments.

2. From October 2005 until October 2006, Pinnacle raised more than \$62 million from approximately 2,220 investors in 48 states and several foreign countries through a national advertising scheme which promised investors a 25% return in 45 or 60 days. Pinnacle sold investors interests in purported general partnerships. In reality, Pinnacle functioned as a limited partnership, with its founder serving as general partner and investors as limited partners. Pinnacle's investment program purported to generate profits by buying and flipping foreclosed real estate. It actually functioned as a Ponzi scheme. Rather than selling properties to third parties as Pinnacle purported, Pinnacle used investments by later investors to generate returns for earlier investors.

3. Kunkel devised the general partnership structure Pinnacle used for its investment and performed real estate closings for Pinnacle. Kunkel also wrote a reference letter Pinnacle sent to prospective investors personally touting the integrity of Pinnacle and its business model and informing investors that they might forfeit their profits if they contacted other Pinnacle investors without his permission.

4. Kunkel knew Pinnacle was advertising a 25% profit to investors in 45 days and believed that the promised return was ‘nonsensical.’ Kunkel also was aware that Pinnacle was not effecting sufficient real estate transactions on behalf of the partnerships to generate the purported returns. Despite this knowledge, Kunkel spoke with prospective investors on a regular basis and vouched that the company had always paid investors profits on a timely basis. In his conversations with investors, Kunkel failed to disclose his belief that the promised return was nonsensical or that Pinnacle was not selling sufficient properties to pay the returns promised to investors.

5. As a result of his conduct, Kunkel has engaged in, and unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

## **JURISDICTION AND VENUE**

6. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)], to enjoin the defendant from engaging in the transactions, acts, practices, and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties and for other equitable relief.

7. This Court has jurisdiction over this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

8. Defendant, directly and indirectly, has made use of the mails, the means and instruments of transportation and communication in interstate commerce, and the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

9. Venue lies in this Court pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because many of the transactions, acts, practices, and courses of business constituting violations of the Securities Act and the Exchange Act occurred in the Northern District of Georgia. Moreover, Defendant Kunkel resides in the Northern District of Georgia.

### **THE DEFENDANT**

10. **Christopher M. Kunkel**, age 54, resides in Grayson, Georgia. Kunkel obtained his bar license in Georgia in 1983 and has practiced as a real estate closing attorney in the in the metropolitan Atlanta area since that time.

### **FACTS**

11. This case involves a fraudulent unregistered offering of securities in the form of real estate development partnerships through a nationwide advertising campaign. Between October 2005 and October 2006, approximately 2,220 investors throughout the United States invested approximately \$62 million in nominal general partnership interests offered by Pinnacle. Although the investments were described as general partnerships, they functioned as limited

partnerships in that Pinnacle had sole control of the ventures. Unlike true general partners, investors had no way to control their partnerships or to remove Pinnacle as managing general partner.

12. Pinnacle offered its investments through its website, and through an extensive national advertising campaign. Pinnacle made general solicitations for investors in Newsweek magazine, the New York Post and as many as 40 other publications. Pinnacle's advertisements touted a 25% return to investors in 45, or later, 60 days, to be generated by investing in and flipping foreclosed real estate in Atlanta. The Pinnacle investment program functioned as a Ponzi scheme.

Although Pinnacle claimed that the returns derived from purchases and sales of real estate to third parties, the returns paid to investors actually were derived from new investor money in subsequent partnerships.

### **The Pinnacle Scheme**

13. Through its offering materials, Pinnacle offered investors fractional partnership interests in real estate that would purportedly pay a return of 25% within 45 (or later 60) days and a second 25% return plus capital after 90 days.

14. Pinnacle touted its own expertise and the expertise of its founder to support the purported high profits. The profits would purportedly be earned by purchasing foreclosed real estate and reselling at a profit.

15. Investors were told that their investment would be secured by a deed to real property in which they were to be named.

16. The partnership agreement Pinnacle gave to prospective investors, as well as actual agreements with investors, gave Pinnacle as managing partner the sole right and authority to manage and carry out the business of the respective partnership, and make all management decisions.

17. While the partnership agreements required the unanimous approval of all partners with respect to, among other things, borrowing of any funds for the partnership in excess of \$10,000 and contracts between the partnership and any related parties, Pinnacle regularly transferred properties to the partnerships, and transferred properties from one partnership to another, in related party transactions, without the approval of the partners and without disclosure to them.

### **Kunkel's Misrepresentations**

18. Kunkel began providing legal advice to Pinnacle regarding how to structure Pinnacle's investment business in the fall of 2005.

19. By December 2005, Kunkel had drafted the purported general partnership Pinnacle used with its investors.

20. Kunkel knew that the terms of the general partnership were not being followed, yet he continued to allow the partnership agreement to be used by Pinnacle and O'Neal.

21. In late 2005, Kunkel drafted a letter on his letterhead which he allowed Pinnacle to send to prospective investors. In the letter, Kunkel attested to the integrity of Pinnacle and its business plan, and advised investors that they would forfeit their promised profits if they communicated with other Pinnacle investors without his approval.

22. Kunkel knew that no registration statement had been filed with the Commission for the offering of these securities.



23. As the result of his letter, Kunkel served as an official reference for Pinnacle, speaking with at least two or three prospective investors every week.

24. In his telephone calls with investors, Kunkel assured them that Pinnacle had paid returns to investors on a timely basis.

25. Kunkel believed that the 25% return in 45 days that Pinnacle was promising investors was “nonsensical.” However, he did not share his view that the returns were nonsensical with investors who called him.

26. Kunkel assured at least one investor who wondered whether Pinnacle was a Ponzi scheme that Pinnacle was doing nothing illegal.

27. Kunkel had reservations about the Pinnacle investment, knew Pinnacle was raising substantial sums from investors through the partnerships and notes, and suspected that Pinnacle was not selling any of the properties it had purchased. Nonetheless, he continued to tell investors who called him that Pinnacle paid its returns to investors on time without disclosing his reservations about Pinnacle.

**COUNT I—UNREGISTERED OFFERING OF SECURITIES**

**Violations of Sections 5(a) and 5(c) of the Securities Act  
[15 U.S.C. § 77e(a) and 77e(c)]**

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

29. No registration statement has been filed or is in effect with the Commission pursuant to the Securities Act and no exemption from registration exists with respect to the transactions described herein.

30. From as early as October 2005 through the present, defendant Kunkel, singly and in concert with Pinnacle:

- (a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise;
- (b) made use of the means of communication in interstate commerce or of the mails to vouch for the integrity of the Pinnacle securities;

(c) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell through the use or medium of any prospectus or otherwise, without a registration statement having been filed with the Commission as to such securities.

31. By reason of the foregoing, defendant, directly and indirectly, singly and in concert, has violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

## **COUNT II—FRAUD**

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

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

33. Defendant Kunkel, in representations regarding the sale of the securities described herein, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and

indirectly, employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above.

34. Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

35. While engaging in the course of conduct described above, the defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

36. By reason of the foregoing, the defendant, directly and indirectly, has violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

### **COUNT III—FRAUD**

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

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

38. Defendant Kunkel, in representations regarding the securities described herein, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

- (a) made untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- (b) engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

39. By reason of the foregoing, the defendant, directly and indirectly, has violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

**COUNT IV—FRAUD**

**Violations of 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]**

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

41. Defendant Kunkel, in connection with representations made regarding the securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- (a) employed devices, schemes, and artifices to defraud;
- (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- (c) engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

42. The defendant knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, the defendant acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

43. By reason of the foregoing, the defendant, directly and indirectly, has violated and, unless enjoined, will continue to violate 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].

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Commission respectfully prays for:

**I.**

Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that the defendant Kunkel committed the violations alleged herein.

## **II.**

Permanent injunctions enjoining the defendant Kunkel, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of the order of injunction, by personal service or otherwise, and each of them, from violating, directly or indirectly, Sections 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] promulgated thereunder

## **III.**

An order requiring disgorgement by the defendant of all ill-gotten gains or unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws.

## **IV.**

An order 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)] and Section 209(e) of the Advisers Act [15 U.S.C. 80b-9(e)] imposing civil penalties against the defendant.

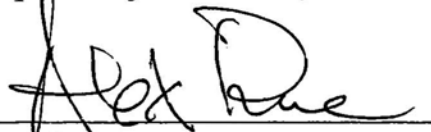


V.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

Dated June 3, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alex Rue", written over a horizontal line.

Alex Rue

Senior Trial Counsel

Georgia Bar No. 618960

E-mail: [ruea@sec.gov](mailto:ruea@sec.gov)

**Telephone 404 842-76716**

John G. Westrick

Staff Attorney

Georgia Bar No. 423430

Micheal D. Watson

Staff Attorney

Georgia Bar No. 741740

COUNSEL FOR PLAINTIFF

Securities and Exchange Commission

3475 Lenox Road, N.E. Suite 500

Atlanta, Georgia 30326-1232

Tel: (404) 842-7600

Fax: (404) 842-7679