

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FILED

2009 OCT 29 PM 2:29

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

CASE NUMBER:

6:09-CV-1839-ORL
Q & CJK

UNITED FUNDING, INC., and
MICHAEL FEHRENBACHER,

Plaintiffs

vs.

JOHN BOSCHERT, JENIFER HOFFMAN,
BRYAN ZUZGA and ASSURED
CAPITAL CONSULTANTS, LLC,

Defendants

_____ /

COMPLAINT

COMES NOW, the Plaintiffs, UNITED FUNDING, INC., and MICHAEL FEHRENBACHER, by and through their undersigned counsel and sues the Defendants JOHN BOSCHERT, JENIFER HOFFMAN, BRYAN ZUZGA and ASSURED CAPITAL CONSULTANTS, LLC and state as follows:

PARTIES

1. The Plaintiff, UNITED FUNDING, INC., hereinafter referred to as UFI, is an Illinois Corporation.
2. The Plaintiff, MICHAEL FEHRENBACHER, hereinafter referred to as FEHRENBACHER, is a resident of the State of Illinois, over the age of eighteen years and otherwise sui juris.

3. The Defendant, ASSURED CAPITAL CONSULTANTS, LLC, hereinafter, ASSURED, is a Florida Limited Liability Corporation authorized to conduct business in the State of Florida.
4. The Defendant, JOHN BOSCHERT, hereinafter, BOSCHERT, is an individual over the age of eighteen years of age, who at all times resided in Orange County, Florida, within the Middle District of Florida, is over the age of eighteen years and otherwise sui juris.
5. The Defendant, JENIFER HOFFMAN, hereinafter, HOFFMAN, is an individual over the age of eighteen years of age, who at all times resided within the Middle District of Florida, is over the age of eighteen years and otherwise sui juris.
6. BRYAN ZUZGA, hereinafter, ZUZGA, is an individual over the age of eighteen years of age, who at all times resided within the Middle District of Florida, is over the age of eighteen years and otherwise sui juris.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332 because there is diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00 exclusive of interest, costs and attorneys fees.
8. Venue of this action is proper in this jurisdiction pursuant to 28 U.S.C. §1391 because the events giving rise to the claims asserted in this Complaint occurred in Orange County, Florida, within the Middle District of Florida, and all of the Defendants reside and/or conduct business within the Middle District of Florida.

BACKGROUND

9. ASSURED is an entity operated by JENIFER HOFFMAN and JOHN BOSCHERT for fraudulent purposes. Upon information and belief, ASSURED has no legitimate business interest.
10. Prior to the transaction between the parties, the Plaintiffs conspired to create a complex scheme designed to defraud the Plaintiffs.
11. To that end the Plaintiffs organized ASSURED purportedly to act as an investment company which allegedly could provide above market returns to select investors.
12. FEHRENBACHER was referred to the Defendants to discuss investment opportunities being offered by the Defendants.
13. To that end, FEHRENBACHER, acting on his own behalf and as agent of UFI, had telephone conversations with HOFFMAN and BOSCHERT wherein HOFFMAN and BOSCHERT described the investment opportunity with their company, ASSURED.
14. The Defendants made representations to FEHRENBACHER, acting on his own behalf and as agent of UFI, that the investments made with them were secure and promised extremely high returns.
15. The Defendants represented to FEHRENBACHER, acting on his own behalf and as agent of UFI, that if he were to invest the sum of two million dollars (\$2,000,000.00) in the Defendants' investment program, he would be paid a return of 45% per week.
16. The Defendants represented to FEHRENBACHER, acting on his own behalf and as agent of UFI, that any investment made would be absolutely secure in that it would be held in the escrow account of an attorney.

17. To that end, the Defendants represented to FEHREHNBACHER, acting on his own behalf and as agent of UFI, that BRYAN ZUZGA was an attorney who would act as escrow agent.
18. After initial telephone conferences, FEHRENBACHER, acting on his own behalf and as agent of UFI, met with BOSCHERT and HOFFMAN at the Peabody Hotel in Orange County, in the Middle District of Florida.
19. At the meeting at the Peabody Hotel, BOSCHERT and HOFFMAN again made the representations as to the nature of the investment, returns and security thereof.
20. During the meeting at the Peabody, BOSCHERT and HOFFMAN again represented that all funds were to be secure and placed in an attorneys escrow account.
21. They represented to FEHRNEBACHER that ZUZGA was supposed to be at the meeting, but could not attend, however, they placed a telephone call to ZUZGA so that FEHRENBACHER could talk to him and confirm the handling the funds.
22. To that end, during the meeting at the Peabody Hotel, FEHRENBACHER, acting on his own behalf and as agent of UFI, spoke with ZUZGA, wherein ZUZGA specifically represented to FEHRENBACHER that ZUZGA was an attorney, had an escrow account and would hold the funds in escrow pursuant to the parties discussions.
23. Based on the representations of the Defendants, UFI agreed to invest two million dollars (\$2,000,000.00) in the Defendants' program.
24. The Defendants presented FEHRENBACHER with a Joint Venture Agreement, a copy of which is attached hereto as Exhibit A, which Agreement reiterated the terms promised FEHREHNBACHER, acting on his own behalf and as agent of UFI .

25. FEHRENBACHER, on behalf of UFI executed the Joint Venture Agreement at the Peabody Hotel in Orlando, and thereafter, delivered the sum of two million dollars (\$2,000,000.00) to the Defendants.
26. After delivery of the initial two million dollars (\$2,000,000.00) to the Defendants, the Defendants tendered to FEHERENBACHER statements alleging the funds invested had accrued returns.
27. Thereafter, the Defendants presented FEHRENBACHER with another investment opportunity wherein the previous funds and accrued dividends would be reinvested along with additional sums, on similar terms.
28. Based on the representations of the Defendants, FEHRENBACHER agreed to “roll over” the prior investment and invest an additional four million eight hundred thousand dollars (\$4,800,000.00) in the Defendants’ program.
29. The Defendants presented FEHRENBACHER with a second Joint Venture Agreement, a copy of which is attached hereto as Exhibit B, which Agreement reiterated the terms promised FEHREHNBACHER.
30. FEHRENBACHER executed the second Joint Venture Agreement and delivered an additional sum of four million eight hundred thousand dollars (\$4,800,000.00) to the Defendants.
31. Despite the Defendants’ representations as to profitability, FEHRENBACHER and UFI have received absolutely no return on their investment.
32. FEHRENBACHER became suspicious that the investment may not be bona-fide in August 2009, and pursuant to the terms represented him by the Defendants, demanded a return of the escrow monies.

33. Despite demand for an explanation as to the status of the investment, FEHRENBACHER and UFI have received none from the Defendants.
34. Rather, the Defendants delayed furnishing information in an effort to hide the fact that the program had no value and that there was nothing to show for the investment.
35. Although unbeknownst to FEHRENBACHER and UFI at the time of the investments, it appears that rather than operating a secure investment, the Defendants were instead operating a “ponzi scheme” or other investment scam.
36. The Plaintiffs have further learned that the Defendant, ZUZGA, who was always represented to be an attorney and was to act as escrow agent is not an attorney licenced in Florida.
37. As a result of the actions of the Defendants, the Plaintiffs have had to retain the undersigned counsel and are indebted for a fee.
38. All conditions precedent to this action have been either fulfilled or waived.

COUNT I
(Conspiracy to Defraud)

39. This is an action for conspiracy to defraud the Plaintiffs.
40. The Plaintiffs reincorporate the allegations of paragraphs 1 through 38 above as if set forth fully herein.
41. The Defendants acted jointly and in concert to make various representations to the Plaintiffs in an effort to cause the Plaintiffs to invest monies in their investment scheme.
42. The representations made by the Defendants as to the nature of the investment, security thereof, and return on investment were false when made.

43. The Defendants knew that the representations were false when made.
44. The Defendants made the representations solely to induce FEHRENBACHER and UFI to make investments in their scheme
45. In reliance on the representations of the Defendants, FEHRENBACHER and UFI tendered in excess of six million eight hundred thousand dollars (\$6,800,000.00) to the Defendants.
46. As a result of its reliance on the misrepresentations of the Defendants, FEHRENBACHER and UFI have suffered damages.
47. The Plaintiffs reserve the right to amend this Complaint to assert a claim for punitive damages upon a sufficient proffer.

WHEREFORE, the Plaintiffs, MICHAEL FEHRENBACHER and UNITED FUNDING, INC., demand judgment against JOHN BOSCHERT, JENIFER HOFFMAN, BRYAN ZUZGA and ASSURED CAPITAL CONSULTANTS, LLC, jointly and severally, plus prejudgment interest and an award of the costs and attorney's fees incurred in this action and such other and supplemental relief as may be deemed appropriate.

COUNT II
(Unlawful Sale of Security)

48. This is an action for the unlawful sale of a security.
49. The Plaintiffs reincorporate the allegations of paragraphs 1 through 38 above as if set forth fully herein.

50. The investment program referenced in the various agreements provided the Plaintiffs and which were marketed by the Plaintiffs are each a security as that term is defined in §517.021, Florida Statutes.
51. The securities were not registered as required by §517.07, Florida Statutes.
52. Notwithstanding the same, the Defendants offered the same for sale in the State of Florida.
53. Pursuant to the terms of §517.211, Florida Statutes, FEHRENBACHER and UFI are entitled to rescission of the transactions and a refund of all monies actually paid plus interest at the legal rate and an award of attorneys fees and costs.

WHEREFORE, the Plaintiffs, MICHAEL FEHRENBACHER and UNITED FUNDING, INC., demands judgment against JOHN BOSCHERT, JENIFER HOFFMAN, BRYAN ZUZGA and ASSURED CAPITAL CONSULTANTS, LLC, jointly and severally, plus prejudgment interest and an award of the costs and attorney's fees incurred in this action and such other and supplemental relief as may be deemed appropriate.

COUNT III
(Florida Unfair and Deceptive Trade Practices Act)

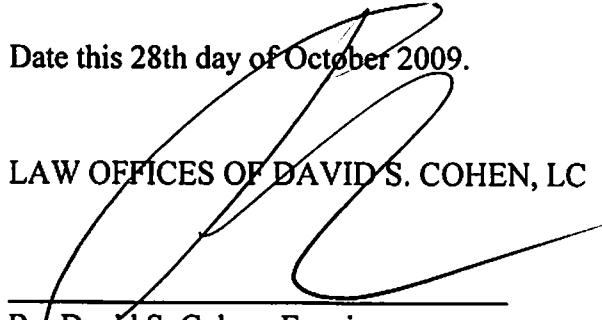
54. This is an action for violation of the Florida Unfair and Deceptive Trade Practices Act (Chapter 501, Florida Statutes).
55. The Plaintiffs reincorporate the allegations of paragraphs 1 through 38 above as if set forth fully herein.

56. The actions of the Defendants as set forth above in creating the investment scheme and inducing the Plaintiffs to participate in the program were unfair and deceptive.
57. The Defendants' actions and representations were intended solely to induce FEHRENBACHER and UFI to make investments in its scheme
58. In reliance on the representations of the Defendants, FEHRENBACHER and UFI tendered in excess of six million eight hundred thousand dollars (\$6,800,000.00) to the Defendants
59. As a direct result of the Defendants' deceptive actions, the Plaintiffs were induced, tricked, and unfairly taken advantage, causing damages.

WHEREFORE, the Plaintiffs, MICHAEL FEHRENBACHER and UNITED FUNDING, INC., demands judgment against JOHN BOSCHERT, JENIFER HOFFMAN, BRYAN ZUZGA and ASSURED CAPITAL CONSULTANTS, LLC, jointly and severally, plus prejudgment interest and an award of the costs and attorney's fees incurred in this action and such other and supplemental relief as may be deemed appropriate.

Date this 28th day of October 2009.

LAW OFFICES OF DAVID S. COHEN, LC



By: David S. Cohen, Esquire
5728 Major Boulevard
Suite 550
Orlando, Florida 32819
Tel.: (407) 354-3420
Fax.: (407) 354-3840
Florida Bar No. 0970638