

## **Investors awarded more than \$1 million in damages**

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A group of novice investors has been awarded more than \$1 million in damages after accusing a Kannapolis financial services adviser of cheating them and violating securities rules.

The award came after the group, made up mainly of retirees, took its claim to arbitration before the National Association of Securities Dealers.

The 18 investors argued that Walnut Street Securities, a MetLife Company, failed to supervise its associate, Foil & Associates Financial Services of Kannapolis, in 1999 and 2000 as the local firm peddled investments in pay phone and Internet kiosk businesses.

They said Marie Foil's sales staff pushed the pay phones as "recession-proof" investments through her offices in Kannapolis, Mooresville and Lake Norman. With each \$7,000 investment, the investors said, they were told they would receive a 14 percent annual return.

The pay phone investment was with ETS Payphones, a now-bankrupt Georgia firm that collapsed after defrauding thousands of investors of more than \$400 million.

What the investors say they weren't told was that "ETS offered about \$1,500 of every \$7,000 sale - or about 22 percent - sales commission," despite NASD recommendations that commissions for brokers not exceed 5 percent.

They claimed that "ETS used the investment capital contributed by new investors to make distributions to old investors," and that "ETS Payphones never generated enough revenue for it to make the fixed monthly payment to investors."

Attempts to reach Foil at her office were not successful, and her husband said she was out of town Saturday night singing with her gospel group.

Earlier this year, the man behind ETS, Charles Edwards, was convicted of money laundering, wire fraud and conspiracy and sentenced to 13 years in prison.

### **Passing the buck**

The investors, who come from China Grove, Kannapolis, Salisbury, Norwood, East Spencer, Cornelius, Davidson and Concord, claimed that Foil - Walnut Street's registered representative - and her sales team "sold \$30 million in ETS Payphones to more than a thousand victims."

When suit was filed in Cabarrus County by the estate of a woman who had lost \$280,000, Foil reportedly blamed it on "some people that worked at my company."

But the claim before the NASD argued that Foil not only knew about the ETS pitch but also hosted a seminar for potential investors at the Kannapolis Country Club, where she introduced Edwards as the keynote speaker.

### **'The duty and authority'**

In their claim, the North Carolina investors said that "as the ETS Payphone Ponzi scheme began its death cycle in 2000, Foil accelerated her sales of 'Web Booth Internet Kiosks' to customers." They claim it was an unregistered security illegally sold in the state.

Though little of the ETS empire remained after litigation and bankruptcy, the area investors - including a widowed and retired nursing home orderly, a couple who once owned a carpet store and an 81-year-old widow who retired as a child care provider - went after Walnut Street Securities, claiming the national firm knew that Foil was selling ETSPayphones, which was prohibited.

"WSS had the duty and authority to control Foil's activities, because Foil was licensed with WSS and because Foil engaged in such activities from a WSS business location," the claim reads.

The investors' lawyer said WSS dropped Foil as a representative in 2001. Such actions must be announced publicly, and he said WSS reported she was dropped for failing to disclose outside activities.

### **'A great day'**

In its ruling, the NASD arbitration board ruled that Walnut Street Securities is liable on the claim of failure to supervise, and "shall pay to claimants damages in the amount of \$1,051,851.40, plus interest."

The board rejected claims for punitive damages and attorney fees, though WSS must pay administrative fees.

"This is a great day for North Carolina investors," said John Chapman, the Ohio attorney who represented the claimants. "This award serves notice on brokerage firms like Walnut Street that they had better keep a sharp lookout for agent misconduct, or pay the consequences."

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