

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION**

STATE OF FLORIDA,
OFFICE OF FINANCIAL REGULATION,

Plaintiff,

vs.

CASE NO.: 50-2021-CA-008718-XXXX-MB

NATIONAL SENIOR INSURANCE, INC.
D/B/A SEEMAN HOLTZ, *et al.*,

Defendants.

_____ /

**OFFICE OF FINANCIAL REGULATION’S RESPONSE IN OPPOSITION TO
DEFENDANT GRACE HOLDINGS, LLC’S MOTION TO DISMISS
AND INCORPORATED MEMORANDUM OF LAW**

COMES NOW, Plaintiff, State of Florida, Office of Financial Regulation (“OFR”), by and through undersigned counsel, and hereby files this response in opposition to the Motion to Dismiss and Incorporated Memorandum of Law (“Motion”),¹ filed on behalf of Defendant Grace Holdings, LLC (“GH”) on January 4, 2022.

1. The Motion’s extended Introduction section, Section I, seeks to portray GH’s lack of liability for the OFR’s legal and equitable claims by focusing not on possible legal defects in the pleadings or causes of action but on a narrative that GH is simply an entity lacking common ownership by or with the individual Defendants in this action, and notwithstanding the OFR’s allegations at paragraphs 100 through 113 of the Complaint as to the involvement of the individual Defendants in GH’s creation and operation (¶¶ 100, 103); GH’s use of the same insurance sales agents employed by Defendant Centurion Insurance Services Group, LLC (despite such agents not

¹ The Motion is virtually identical to the Motion to Dismiss of Marshal Seeman and the twenty-six defendants filed on January 18, 2022 which the court heard and denied on May 18, 2022.

being registered to sell securities) (§§ 101, 104, 105, 107); GH's sale of at least \$25 million in unregistered promissory note securities to many of the same investors who had previously invested in Defendants' other note offerings (§ 101); the movement of investor funds from GH to the Defendant entities (§§ 102 and 103); and GH's misleading failure to disclose to investors its relationship with the other Defendants as well as the other Defendants' desperate financial position (§§ 106-108).

2. GH maintains the complaint should be dismissed for violating Rule 1.110 Fla. R. Civ. P. Section III of the Motion provides: "The complaint should be dismissed for violating Fla. R. Civ. P. 1.110," which rule requires a short and plain statement of the ultimate facts that show the pleader is entitled to relief. In contrast, GH in Section VI maintains that "Plaintiff has not pleaded fraud with particularity" pursuant to Fla. R. Civ. P. 1.120(b). Without reciting the OFR's allegations in their entirety, the OFR's Complaint sets forth short and plain allegations of GH's role in this complex fraud at paragraphs 100 through 113, and additionally addresses comprehensive ultimate facts of this fraudulent enterprise "with particularity" including: a summary of the complex allegations (§§ 1-7); the identity of Defendants and Relief Defendants (§§ 15-43); Defendants' and their note offerings' lack of registration with the OFR (§§ 63-64, 69, 71, 113, 127); the formation and integration of various business entities comprising the enterprise (§§ 44-58, 98-99, 100-128); the operation of a securities note program since 2012 (§§ 44-58); the changes to the program occurring at the formation of Defendant Centurion (§§ 48, 53-54); the financial operating history over-time of Centurion and these affiliated entities (§§ 72-81); the utilization of an affiliated insurance agency to provide sales agents to offer and sell the securities and receive compensation at the direction of the individual Defendants (§§ 62-67); the failure to disclose to investors the enterprise's operating history as set forth in audit reports (§§ 72-75); false

references to Centurion’s control and the investors’ benefit from an insurance agency acquisition business (Relief Defendant Seeman Holtz Property and Casualty, LLC) (¶¶ 76-80); misrepresentations and omissions in offering documents and sales agents’ false representations (¶¶ 85-94); the use of purportedly unaffiliated entities (Defendant Grace Holdings Financial, LLC, and Defendant Prime Short Term Credit, Inc.) (¶¶ 100-128); and the false statements to the OFR (¶¶ 129-131). The OFR’s allegations, while extensive, are necessary to allege the essential ultimate facts of this complicated fraudulent enterprise and provide both the brevity required by Fla. R. Civ. P. 1.110, and the specificity required of Fla. R. Civ. P. 1.120(b). The OFR requests that GH’s motion be denied.

3. Section III of the Motion also provides: “The court should strike the following paragraphs as containing scandalous and impertinent matter relating to the alleged liability of Mr. Seeman. Mr. Seeman is accused of being architect of a ‘[P]onzi-like scheme’ and the false accusation should be stricken from paragraphs 2, 73, and 97 because it is factually untrue at any level of interpretation of the term ‘[P]onzi.’” The OFR maintains the term “Ponzi scheme” generally refers to a form of fraud that lures investors and pays “profits” to earlier investors with funds from more recent investors. Paragraphs 2, 73, 97 are based on factual allegations made by the OFR throughout the Complaint that lead to the conclusion that Mr. Seeman was engaged in a “[P]onzi like scheme.” There is no legal basis to strike such allegations merely because GH does not agree with the OFR’s factual characterization that “profits” to earlier investors were paid from funds raised from new investors, rather than from the success of the life settlement business, which was not profitable and used funds from new investors to pay policy premiums, to pay investor returns, and to pay investors the return of their principal when not rolled over into a new note. See generally *SEC v. Management Solutions*, 2013 WL 4501088 (S.D. Fla. 2013) (providing examples

of what has been found to constitute Ponzi schemes). The OFR requests that GH's motion be denied.

4. Section IV of the Motion provides: "The allegations against GH are not sufficient to state a cause of action of securities fraud." Count VI of the Complaint alleges violations of subsections 517.301(1)(a)1, 2, and 3, Florida Statutes, entitled *Fraudulent transactions; falsification or concealment of facts*. Subsections 517.301(1)(a)1, 2, and 3, provides the following:

- (1) It is unlawful and a violation of the provisions of this chapter for a person:
 - (a) In connection with the rendering of any investment advice or in connection with the offer, sale, or purchase of any investment or security, including any security exempted under the provisions of s. 517.051 and including any security sold in a transaction exempted under the provisions of s. 517.061, directly or indirectly:
 1. To employ any device, scheme, or artifice to defraud;
 2. To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
 3. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a person.

In Count IV, the OFR realleges Paragraphs 1 through 131, which includes the specific allegations of activities by Defendants incorporating GH into the fraudulent enterprise (¶¶ 100-113), and summarizes the factual basis for the Count as follows at Paragraph 160:

As to Count VI, the Defendants (not including Defendant PSTC), and Holtz, at the direction and control of Mahalic and SH&S, and through the SH Enterprise in Florida, did directly and indirectly, and in connection with the offer and sale of GH notes as investments or securities did: employ various devices, schemes, or artifice to defraud investors; obtain money or property by means of an untrue statement of a material fact or omissions to state a material fact; and engage in transactions, practices, or a course of business that operates or operated as a fraud or deceit upon the investors; a violation of each form of fraud for each offer and sale of an investment or security in this matter.

The OFR maintains it has pled sufficient facts with specificity and alleged a cause of action constituting statutory securities fraud for violations of section 517.301, Florida Statutes. The OFR requests that GH's motion be denied.

5. Section VI of the motion also mistakenly suggests that the OFR failed to allege with specificity a basis to deny a possible securities registration exemption claim by GH: “All the plaintiff says is the securities and transactions were not exempt and denies the presence of a ‘federally covered security.’” GH acknowledges in footnote 1 of its motion that “federal covered securities are those issued pursuant to **exemptions** under federal securities laws and the regulations, like Rule 506 of regulation D” (emphasis added) Pursuant to section 517.171, Florida Statutes, the burden of establishing an exemption from registration of securities, including exemptions arising from a claim that the offering involved a federal covered security, falls upon the claimant. The OFR is not obliged to make allegations negating the possibility of a claim to an exemption or negating a claim to an exemption, as the burden of proof is on the proponent of such a claim. Section 517.171, Florida Statutes, provides:

Burden of proof,— It shall not be necessary to negate any of the exemptions provided in this chapter in any complaint, information, indictment, or other writ or proceedings brought under this chapter; and the burden of establishing the right to any exemption shall be upon the party claiming the benefit of such exemption.

In addition, section 517.07, Florida Statutes, provides:

Registration of securities.—

(1) It is unlawful and a violation of this chapter for any person to sell or offer to sell a security within this state unless the security is exempt under s. 517.051, is sold in a transaction exempt under s. 517.061, is a **federal covered security**, or is registered pursuant to this chapter. (emphasis added)

As set forth in Count VIII of the OFR’s Complaint (¶¶ 168-173), GH is alleged to have violated Section 517.07(1), Florida Statutes, by offering and selling the unregistered note securities within Florida or from Florida on at least 175 occasions. The burden is on Defendant to establish the right to any exemption from registration premised on the status of the offering as a “federal covered

security” that Defendant maintains is derived from a claim to an exemption from registration pursuant to Rule 506 of Regulation D (17 CFR Section 230.506). The OFR requests that GH’s motion be denied.

6. Section V of the Motion provides: “Violation of Rule 1.130” regarding the obligation to attach instruments on which an action is brought. GH maintains that copies of the notes and Private Placement Memorandums (“PPMs), and presumably other marketing materials like those set forth by the OFR in ¶¶ 92 and 93 of the Complaint, were not attached to the Complaint which makes it deficient. The OFR brings this suit for violations of various provision of chapter 517, Florida Statutes, the Securities and Investor Protection Act. The OFR as Plaintiff is not suing to on the underlying instruments to enforce a contractual or other remedy created by the terms of the instruments. The OFR also was not a party to the instruments but only references the instruments in its Complaint (the notes, PPMs, and marketing materials) as evidence that Defendants had engaged in the sale of securities in the form of notes. Moreover, while the OFR has collected evidence of the notes, PPMs, and marketing materials utilized by Defendants, the OFR believes these instruments were modified by Defendants over time during more than 20 differently named offerings, such that attaching examples to the Complaint rather than in evidentiary submissions would be imprudent. And such sales were made to more than 1000 investors. As the 4th DCA has stated, a document “upon which action may be brought or defense made” is not intended to extend generally to evidence supporting a claim or defense. See *Meadows v. Krischer*, 763 So.2d 1087 (Fla. App. 4 Dist. 1999) (“unlike a contract, note or other document upon which a cause of action is based and which must be attached to the pleading, there is no requirement in the Civil Rules of Procedure which would generally require supporting evidentiary documents . . . to be attached to the petition.”). GH requests that the OFR be compelled to amend

its Complaint to attach at least an exemplar. For the above reasons, the OFR requests that GH's request be denied.

7. Section VI of the motion was addressed above in paragraphs 2. and 5. The OFR requests that GH's request in Section VI be denied.

8. Section VII of the motion provides: "Count XVI should be dismissed because the remedies sought are not among the exclusive remedies provided by the legislature." Count XVI seeks equitable relief from Defendant, for its securities law violations, in the form of an accounting of all funds received and an order requiring the disgorgement of all ill-gotten gains, misappropriations, and unjust enrichment. GH concludes Count XVI needs to be dismissed as section 517.191, Florida Statutes (set forth below), solely provides legal remedies in Circuit Court for the OFR and the Attorney General, and therefore excludes all equitable remedies. GH fails to address the explicit wording in subsection 517.191(1), Florida Statutes, that such legal remedies are "**in addition to any other remedies.**" If such wording was referencing the OFR's ability to bring an administrative action, the legislature would have used "in addition to any other enforcement actions." However, the opportunity for the OFR to bring concurrent administrative enforcement actions is specifically referenced in subsection 517.191(6), Florida Statutes. GH further mistakenly concludes that the provision indicating that the "equity courts shall have jurisdiction of the subject matter" is limited to injunctions as "No other remedy was given in that section." This reading would limit the entire panoply of "other remedies" available in equity. To the contrary, the unqualified grant of statutory authority to issue an injunction has been held to carry with it the full range of equitable remedies, including the power to grant consumer redress and compel disgorgement of profits. *FTC v. Bronson Partners, LLC*, 654 F3d 359, 365 (2d Cir. 2011). The OFR further maintains that the equity courts also have jurisdiction in an action by the

OFR seeking the legal remedies identified subsections 517.191(2) through (5), Florida Statutes (respectively: appointment of administrator or receiver, restitution, and civil penalties), and the court's authority in equity also extend to ancillary equitable remedies necessitated by the circumstances, such as determining the priority of claims, requiring an accounting from Defendant, requiring disgorgement of ill-gotten gains and unjust enrichment by Defendant, and requiring disgorgement in those circumstances where a Defendant's family member or third-party has been shown to have benefitted from a Defendant's violations. For the above reasons, the OFR requests that GH's request to dismiss Count XVI be denied.

517.191 Injunction to restrain violations; civil penalties; enforcement by Attorney General.—

(1) When it appears to the office, either upon complaint or otherwise, that a person has engaged or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the office may investigate; and whenever it shall believe from evidence satisfactory to it that any such person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the office may, **in addition to any other remedies**, bring action in the name and on behalf of the state against such person and any other person concerned in or in any way participating in or about to participate in such practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter to enjoin such person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter. In any such court proceedings, the office may apply for, and on due showing be entitled to have issued, the court's subpoena requiring forthwith the appearance of any defendant and her or his employees, associated persons, or agents and the production of documents, books, and records that may appear necessary for the hearing of such petition, to testify or give evidence concerning the acts or conduct or things complained of in such application for injunction. In such action, the equity courts shall have jurisdiction of the subject matter, and a judgment may be entered awarding such injunction as may be proper.
injunction as may be proper.

(2) In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in any such court proceedings, the court shall have the power and jurisdiction, upon application of the office, to impound and to appoint a receiver or administrator for the property, assets, and business of the defendant, including, but not limited to, the

books, records, documents, and papers appertaining thereto. Such receiver or administrator, when appointed and qualified, shall have all powers and duties as to custody, collection, administration, winding up, and liquidation of said property and business as shall from time to time be conferred upon her or him by the court. In any such action, the court may issue orders and decrees staying all pending suits and enjoining any further suits affecting the receiver's or administrator's custody or possession of the said property, assets, and business or, in its discretion, may with the consent of the presiding judge of the circuit require that all such suits be assigned to the circuit court judge appointing the said receiver or administrator.

(3) In addition to, or in lieu of, any other remedies provided by this chapter, the office may apply to the court hearing this matter for an order directing the defendant to make restitution of those sums shown by the office to have been obtained in violation of any of the provisions of this chapter. The office has standing to request such restitution on behalf of victims in cases brought by the office under this chapter, regardless of the appointment of an administrator or receiver under subsection (2) or an injunction under subsection (1). Further, such restitution shall, at the option of the court, be payable to the administrator or receiver appointed pursuant to this section or directly to the persons whose assets were obtained in violation of this chapter.

(4) In addition to any other remedies provided by this chapter, the office may apply to the court hearing the matter for, and the court shall have jurisdiction to impose, a civil penalty against any person found to have violated any provision of this chapter, any rule or order adopted by the commission or office, or any written agreement entered into with the office in an amount not to exceed \$10,000 for a natural person or \$25,000 for any other person, or the gross amount of any pecuniary gain to such defendant for each such violation other than a violation of s. 517.301 plus \$50,000 for a natural person or \$250,000 for any other person, or the gross amount of any pecuniary gain to such defendant for each violation of s. 517.301. All civil penalties collected pursuant to this subsection shall be deposited into the Anti-Fraud Trust Fund.

(5) In addition to all other means provided by law for enforcing any of the provisions of this chapter, when the Attorney General, upon complaint or otherwise, has reason to believe that a person has engaged or is engaged in any act or practice constituting a violation of s. 517.275, s. 517.301, s. 517.311, or s. 517.312, or any rule or order issued under such sections, the Attorney General may investigate and bring an action to enforce these provisions as provided in ss. 517.171, 517.201, and 517.2015 after receiving written approval from the office. Such an action may be brought against such person and any other person in any way participating in such act or practice or engaging in such act or practice or doing any act in furtherance of such act or practice, to obtain injunctive relief, restitution, civil penalties, and any remedies provided for in this section. The Attorney General may recover any costs and attorney fees related to the Attorney General's investigation or enforcement of this section. Notwithstanding any other provision

of law, moneys recovered by the Attorney General for costs, attorney fees, and civil penalties for a violation of s. 517.275, s. 517.301, s. 517.311, or s. 517.312, or any rule or order issued pursuant to such sections, shall be deposited in the Legal Affairs Revolving Trust Fund. The Legal Affairs Revolving Trust Fund may be used to investigate and enforce this section.

(6) This section does not limit the authority of the office to bring an administrative action against any person that is the subject of a civil action brought pursuant to this section or limit the authority of the office to engage in investigations or enforcement actions with the Attorney General. However, a person may not be subject to both a civil penalty under subsection (4) and an administrative fine under s. 517.221(3) as the result of the same facts.

(7) Notwithstanding s. 95.11(4)(e), an enforcement action brought under this section based on a violation of any provision of this chapter or any rule or order issued under this chapter shall be brought within 6 years after the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, but not more than 8 years after the date such violation occurred.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response in Opposition to Motion to Dismiss, has been furnished by using the Florida Courts E-Filing Portal to all parties of record and to the below parties on this 1st day of July 2022.

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/s/ A. Gregory Melchior
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