

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. :

SECURITIES AND EXCHANGE COMMISSION,

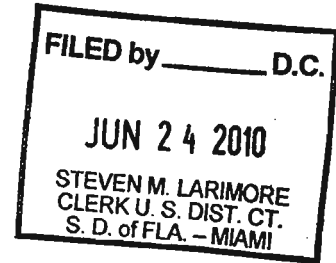
Plaintiff,

v.

ESTATE OF KENNETH WAYNE MCLEOD,
F&S ASSET MANAGEMENT GROUP, INC. and
FEDERAL EMPLOYEE BENEFITS GROUP, INC.,

Defendants.

)
) **10-22078**
)
) **CIV-MORENO**
)
) **UNDER SEAL**
) **/TORRES**



EMERGENCY COMPLAINT

Plaintiff Securities and Exchange Commission alleges as follows:

1. For at least the past two decades, Kenneth Wayne McLeod solicited clients of his registered investment adviser, most of whom were retired federal and state government employees, and other active and retired government employees to invest in a purported bond fund invested in long-term government securities. McLeod offered his clients guaranteed, tax-free returns of eight to ten percent annually in the fund.
2. In reality, the purported bond fund, which McLeod called the FEBG Bond Fund, did not exist. The investment was a Ponzi scheme, through which McLeod appears to have raised funds from approximately 260 investors nationwide. He raised at least \$34 million from the more than 139 investors who are still currently invested.
3. McLeod attracted many of his clients through retirement planning seminars across the country that various federal and state agencies paid him to conduct. McLeod used these presentations to build relationships with the government employees and then solicit them when they retired to roll over their retirement accounts for him to manage through his wholly-owned

registered investment adviser, F&S Asset Management Group, Inc. (“FSAMG”). FSAMG has approximately \$43 million under management for 1,147 clients, most of whom are retired government employees.

4. McLeod also solicited these clients and other active and retired government employees to invest in the purported FEBG Bond Fund. Although McLeod described the fund to investors in various ways, he primarily emphasized that long-term government securities would guarantee the principal. McLeod told at least one investor it was a special fund for “family and friends, and families of the fallen agents.” He sent investors correspondence regarding their investment, including promissory notes and FEBG Bond Fund account statements.

5. In reality, there was no FEBG Bond Fund, McLeod never invested his clients’ money in government securities, and the money was never generating tax-free returns of eight to ten percent annually. McLeod simply used new investor funds to pay prior investors interest and principal, and to provide funds to himself and his companies. Between 2005 and June 2010 alone, McLeod spent more than \$1 million on promotional expenses to bolster his image in the community, including paying for stadium box seats and an annual trip for him and forty friends to the Super Bowl.

6. As result of this conduct, McLeod, FSAMG, and the Federal Employee Benefits Group, Inc. (“FEBG”), the wholly-owned corporation McLeod used to conduct his retirement seminars, violated Section 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §77o(a); Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder; and McLeod and FSAMG also violated Sections 206(1) and (2) of the Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. §§ 80b-6(1) and (2).

7. Following McLeod's sudden death on June 22, 2010, it is unclear who, if anyone, is in control of FEBG and FSAMG. To prevent the dissipation of investor funds and to ensure an orderly and equitable distribution of any remaining assets, the Commission separately seeks emergency relief, including an asset freeze and the appointment of a Receiver.

DEFENDANTS

8. McLeod, who was 48 at the time of his death, was a resident of Jacksonville, Florida. McLeod was the president, CEO, and chief compliance officer of FSAMG, and the president of SEBG.

9. FSAMG is a Florida corporation with its principal place of business in Jacksonville, Florida. FSAMG has been a registered investment adviser since January 2008. It purports to provide "all Federal and State employees with investment strategies that will assist in meeting their financial goals." Most, if not all, of FSAMG's clients are current and former federal and state government employees, the majority of which are current and former law enforcement agents.

10. FEBG is a Florida corporation with its principal place of business in Jacksonville, Florida. FEBG purports to be a financial services and benefits consulting firm focused on federal retirement options, including the Thrift Savings Plan ("TSP"). Through FEBG, McLeod conducted retirement planning seminars for various federal agencies.

JURISDICTION AND VENUE

11. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act, 15 U.S.C. §§ 77t, 77t(d), and 77v(a); Sections 21(d), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e), and 78aa; and Section 214 of the Advisers Act, 15 U.S.C. § 80b-14.

12. This Court has personal jurisdiction over Defendants and venue is proper in the Southern District of Florida because many of the Defendants' acts and transactions constituting the violations of the Securities Act, the Exchange Act, and the Advisers Act occurred in the Southern District of Florida. At least twelve of the investors in the purported FEBG Bond Fund, together representing \$9.6 million of the at least \$34 million McLeod raised, are located in the Southern District of Florida. McLeod solicited the investors located here, and regularly corresponded with them while they were located in this District.

13. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business set forth in this Complaint.

FACTUAL ALLEGATIONS

A. Background

14. For more than 20 years, McLeod traveled to various government agencies to conduct FEBG employee benefits counseling and planning seminars. These government agencies paid FEBG up to \$15,000 each for these seminars. FEBG held itself out as a "financial services and benefits consulting firm focused on Federal retirement options" and "dedicated to the complex issues surrounding special group employees, including Law Enforcement Officers, Firefighters and Air Traffic Controllers."

15. FEBG also provided personalized benefits analyses specific to government employees' retirement plans and their financial portfolios. McLeod provided seminar attendees with a questionnaire, which inquired about their salary, retirement plan, and savings account

allocations, among other things. Government employees could return their completed questionnaire to FEBG for an individually customized projection of their retirement income.

16. In addition, FEBG provided recommended allocations among TSP retirement account funds and makes changes in the account for employees who provided their TSP system username and password. For customers wanting additional guidance for things such as leaving federal for private employment, FEBG charged \$300 to conduct a more comprehensive benefit review.

17. FEBG customers could also choose to become clients of FSAMG and have McLeod manage their money. FSAMG has other clients as well, although most are FEBG customers.

18. FSAMG presently has approximately \$43 million in assets under management, all of which are held in custodian accounts at another firm. These funds are almost entirely invested in mutual funds. FSAMG charges its clients a 1% management fee and issues account statements to its clients based on figures provided by the custodial firm.

B. The Ponzi Scheme

19. In addition to the traditional investments McLeod offered through FSAMG, he offered many investors the opportunity to participate in the purportedly tax-free FEBG Bond Fund. McLeod also referred to this fund on different occasions as the FEBG Special Fund or the FEBG Fund.

20. McLeod promised investors guaranteed returns of eight to ten percent and told them that their principal would be invested in and secured by government bonds. McLeod explained to several investors that the fund invested in only long term government securities, which provided a thirteen percent return. McLeod said that he used the three to five percent

spread to expand FEBG and his other businesses, but the investors' principal would remain untouched.

21. McLeod further told investors that their principal would be locked up for various periods of up to eight years, supposedly due to the long term nature of the fund's underlying government securities. Investors had the option to roll over their quarterly interest payments into the fund to earn compound growth, which many investors did. This allowed McLeod to perpetuate the scheme.

22. McLeod did not provide most investors with any offering documents for the purported bond fund. However, some received a "FEBG, Inc. Special Fund" promissory note, which outlined the terms of the investment as described above. Others received memos from McLeod and FEBG noting receipt of their investment and guaranteeing a set rate of return.

23. McLeod also provided some investors with FEBG Bond Fund account statements he created on FEBG letterhead. These statements show the amount of the investors' investment along with inflated account balances reflecting purported interest earned.

24. Both active and retired government employees invested in McLeod's bond fund. Some investors rolled over their federal retirement and savings accounts into the bond fund or invested their inheritances and their children's tuition savings. The purported safety of the bond fund was an important factor in some investors' decision to retire. McLeod told investors that the fund's investors included "high level members of Congress, federal judges, and agency heads."

25. McLeod's records indicate that while some investors may have redeemed their investments, the approximately 139 investors who remain invested in the scheme contributed at least \$34 million. Several of these investors tried to redeem their investments, only to have

McLeod tell them lies, such as there would be a delay in payment because the government was in arrears sending interest checks on the underlying bonds, or because of the purportedly long-term nature of the bonds.

26. The bond fund has been FEBG's greatest source of income for at least the past four years. In fact, FEBG has recently been doing many seminars for free due to restricted government budgets. FEBG has survived on Ponzi proceeds and has not been profitable since at least 2004. Since forming FSAMG in 2008, McLeod has also used Ponzi proceeds to pay FSAMG's payroll and operational expenses.

MISREPRESENTATIONS AND OMISSIONS

27. Defendants made a number of material false statements and omissions to investors orally, in the "FEBG, Inc. Special Fund" promissory notes, in the FEBG Bond Fund account statements, and in correspondence with investors.

28. Most significantly, McLeod, in his representative capacity for FEBG and FSAMG, misrepresented to investors that their money would be placed in a bond fund invested in and secured by government securities. There was, in truth, no fund or other investment vehicle and McLeod never invested any investor money in bonds.

29. Despite this, McLeod referred to the fund as the FEBG Bond Fund and the FEBG account statements purport to reflect "FEBG Bond Activity."

30. The FEBG Special Fund Promissory notes indicated that the investors' principal "will be placed in an account secured by government securities" and will remain "untouched in government securities."

31. In his letter to investors, McLeod wrote, “With all of the Ponzi Scams going on around the world I wanted to insure you that this account is 100% secured by US Gov’t Securities and the principal is never touched until liquidated.”

32. McLeod told one investor, “FEBG is 100% Gov’t securities so unless the [government] goes out of the business all ok there too!”

33. McLeod also promised investors a guaranteed rate of return of eight to ten percent, but failed to disclose that this guarantee was impossible to fulfill because the investment was a Ponzi scheme. FEBG had insufficient income to pay investors other than from money from new investors.

34. McLeod perpetuated the scheme by lulling investors with false account statements for the FEBG Bond Fund. These account statements show fictitious account balances and purported interest earned by the investors.

35. Finally, Defendants misappropriated the offering proceeds to conduct a Ponzi scheme, and to pay distributions to McLeod, and at least \$1 million in extravagant entertainment expenditures.

CLAIMS FOR RELIEF

COUNT I

FRAUD IN VIOLATION OF SECTIONS 17(a)(1) OF THE SECURITIES ACT

36. The Commission repeats and realleges Paragraphs 1 through 35 of this Complaint as if fully set forth herein.

37. From 1988 through June 2010, Defendants, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of

the mails, in the offer or sale of securities, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

38. By reason of the foregoing, Defendants have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

COUNT II

FRAUD IN VIOLATION OF SECTIONS 17(a)(2) AND 17(a)(3) OF THE SECURITIES ACT

39. The Commission repeats and realleges Paragraphs 1 through 35 of this Complaint as if fully set forth herein.

40. From 1988 through June 2010, Defendants, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities: (a) obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (b) engaged in transactions, practices and courses of business which have operated as a fraud or deceit upon purchasers of such securities.

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

COUNT III

**FRAUD IN VIOLATION OF SECTION 10(b) OF THE
EXCHANGE ACT AND RULE 10b-5 THEREUNDER**

42. The Commission repeats and realleges paragraphs 1 through 35 of this Complaint as if fully set forth herein.

43. From 1988 through June 2010, Defendants, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts and/or 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/or (c) engaged in acts, practices and courses of business which have operated, and will continue to operate as a fraud upon the purchasers of such securities.

44. By reason of the foregoing, Defendants, directly and indirectly, violated and, unless enjoined, will continue to violate Section 10(b) of the Securities Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder.

COUNT IV

FRAUD IN VIOLATION OF SECTIONS 206(1) AND 206(2)

(Against FSAMG and the Estate of Wayne McLeod)

45. The Commission repeats and realleges paragraphs 1 through 35 of this Complaint as if fully set forth herein.

46. From 1988 through June 2010, FSAMG and McLeod, by use of the mails, and the means and instrumentality of interstate commerce, directly or indirectly, knowingly, willfully or recklessly: (a) employed devices, schemes or artifices to defraud clients or prospective clients;

and (b) engaged in transactions, practices and courses of business that operated as a fraud or deceit upon clients or prospective clients.

47. Among other things, FSAMG and McLeod made untrue statements of material facts and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to any client or prospective client and otherwise engaged in acts, practices, and courses of business that were fraudulent, deceptive, or manipulative with respect to its clients or prospective clients.

48. By reason of the foregoing, FSAMG and McLeod, directly and indirectly, violated and, unless enjoined, will continue to violate Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and (2).

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I. Declaratory Relief

Declare, determine and find that Defendants committed the violations of the federal securities laws alleged in this Complaint.

II. Permanent Injunctive Relief

Issue a Permanent Injunction restraining and enjoining FSAMG and FEBG from violating: (i) Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a); (ii) Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77(q)(a)(2) and 77(q)(a)(3); (iii) Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5; and FSAMG from violating Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and (2).

III. Disgorgement

Issue an Order requiring Defendants to disgorge all ill-gotten profits or proceeds they received as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest.

IV. Penalties

Issue an Order directing FSAMG and FEBG to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d); Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3); and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9.

V. Further Relief

Grant such other and further relief as may be necessary and appropriate.


VI. Retention of Jurisdiction

Further, the Commission respectfully requests the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may hereby be entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

June 24, 2010

By:



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