

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
July 19, 1999

SECURITIES ACT OF 1933
Release No. 7699/July 19, 1999

SECURITIES EXCHANGE ACT OF 1934
Release No. 41624/July 19, 1999

ADMINISTRATIVE PROCEEDING
FILE NO. 3-9894

In the Matter of :
: ORDER MAKING FINDINGS AND IMPOSING
LILA KEITH : REMEDIAL SANCTIONS BY DEFAULT
:

SUMMARY

This decision orders Lila Keith to cease and desist from violations of the antifraud and registration provisions of the securities laws. Keith violated these provisions through her involvement in a scheme to offer "prime bank" investments by promoter Paul J. Edwards. Keith, of the Denver, Colorado, area, maintains that she violated no laws but declined to defend against a cease and desist order.

I. BACKGROUND

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) in this matter on May 11, 1999. The OIP alleges that Keith, acting as an unregistered broker-dealer, was involved in a scheme to offer for sale interests in a "prime bank" investment program in violation of Section 17(a) of the Securities Act of 1933 (Securities Act) and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder. The sanctions at issue under the OIP: are (1) a cease and desist order; and (2) an accounting and disgorgement of ill-gotten gains. The Commission received Keith's June 3, 1999, Answer on June 8.

A prehearing conference was held by telephone on June 18, pursuant to my June 3 Order. Keith did not appear at the prehearing telephone conference, of which she had been notified by the June 3 Order. On June 11, the Division of Enforcement (Division) hand delivered to Keith's place of employment a copy of the June 3 Order and a cover letter requesting Keith to contact the Division about the conference call. The same materials were also sent by Federal Express and certified mail to Keith's home and place of employment. On June 18, the Division attempted on numerous occasions to reach Keith at her home and place of employment, but was unable to reach her at the time set for the prehearing conference. Messages were left on voicemail, with an individual at her place of employment, and on her answering machine at home. Keith did not return the Division's calls or otherwise appear at the prehearing conference.

II. DEFAULT

On June 23, the Division filed a Motion for Default, pursuant to Rules 155(a)(1) and 221(f) of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a)(1) and .221(f). Rule 155(a)(1) provides:

A party to a proceeding may be deemed to be in default and . . . the hearing officer may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails: (1) to appear, in person or through a representative, at a hearing or conference of which that party has been notified; (2) . . . or otherwise to defend the proceeding.

On June 25, I ordered Keith to show cause why she should not be held in default and why I should not impose the sanction requested by the Division against her. In her July 5 response Keith affirmatively declined to defend against a cease and desist order. Concerning disgorgement, she stated that she received no money from the conduct alleged in the OIP.

Keith is in default within the meaning of Rules 155(a)(1) and 221(f). She failed to appear at a prehearing conference of which she had been notified, and, in response to the Order to Show Cause, has affirmatively decided not to defend the cease and desist proceeding. See Rules 155(a)(2) and 220(f).

A. Sanction Requested on Default

The Division requests a cease and desist order. It does not seek disgorgement. It asks that Keith's statement in her July 5 letter that she received no money be deemed a sufficient accounting of proceeds received in connection with the conduct alleged in the OIP.

B. Record

In addition to the OIP, the record, within the meaning of Rule 155, includes: Keith's Answer to the OIP, dated June 3, 1999; the Division's June 23 Motion for Default; my June 25 Order to Show Cause; Keith's July 5, 1999, letter responding to the June 25 Order to Show Cause; and the Division's July 13, 1999, Second Motion for Default.

C. Allegations of the Parties

The Division alleges that Keith offered for sale unregistered securities in a "prime bank" investment program. In response, Keith denies that she violated any laws, but concedes her involvement in activities involving one or more investment programs promoted by Paul J. Edwards. Keith's June 3 Answer states that she did not refer to the programs as "prime bank" investments. She denies that she engaged in "selling," stating that she merely provided information from Edwards to investors, who contacted him directly to negotiate their investments. She claims that the programs were exempt from regulation under the Securities Act and denies fraud, material misrepresentations or omissions, stating that any references to returns were estimates or best efforts, and that any advertisements contained disclaimers. In her July 5 letter Keith continues to maintain that she committed no violations but concedes that she cannot prove that the offerings were exempt from registration and made in good faith. Her efforts to locate the individuals who provided her with information concerning the programs were nonproductive. As to an accounting, she received no money. She disclaims any intention of offering any future programs.

III. FINDINGS AND CONCLUSIONS

Based on the above record, pursuant to Rule 155, I find:

Keith has operated under the name Keith Financial Services; neither is registered with the Commission as a broker-dealer. Keith's regular employment is not in the securities industry. From approximately July to September 1998, via the Internet and other means, Keith solicited investors for a "prime bank" investment program on behalf of its promoter, Paul J. Edwards. Keith established contact with potential investors and facilitated their participation in the program by forwarding documents to, and receiving documents from, investors on behalf of the promoter. She advised investors as to the terms of the program. The program promised investors a 20-to-1 return based on international bank-to-bank trading and/or loan programs. The investment was nonexistent. Keith received no money from her involvement in the "prime bank" program.

The program was a type of prime bank scheme that courts have found subject to the antifraud provisions of the securities laws; the fact that the investments being offered do not exist does not remove them from the reach of the securities laws. See SEC v. Lauer, 52 F.3d 667, 670 (7th Cir. 1995); SEC v. Gallard, 1997 U.S. Dist. LEXIS 19677, at *6-*8 (S.D.N.Y. 1997).

Keith contends that she merely offered information concerning the investment program. However, her activities were "in connection with the purchase or sale" of securities within the

meaning of Section 10(b) of the Exchange Act. Similarly, her activities were “in the offer or sale of” securities within the meaning of Section 17(a) of the Securities Act. Section 2(a)(3) of the Securities Act provides, “The term . . . ‘offer’ shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value.” See Pinter v. Dahl, 486 U.S. 622, 643 (1988); U.S. v. Naftalin, 441 U.S. 768, 773 (1979). Further, the use of disclaimers concerning solicitation, expected rate of return, and exemption from registration requirements does not show that Keith was not soliciting, or was not knowingly or recklessly making material misrepresentations or omissions. Rather the disclaimers show an intent, through formulaic utterances to avoid legal liability.

In conclusion, Keith’s activities in the offer of nonexistent, unregistered “prime bank” investments violated Section 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder. In light of the above and Keith’s decision not to defend the cease and desist proceeding, she will be ordered to cease and desist from such violations.

IV. SANCTION

IT IS ORDERED that, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Lila Keith cease and desist from committing or causing any violations or future violations of Section 17(a) of the Securities Act, Sections 10(b) and 15(a)(1) of the Exchange Act and Rule 10b-5 thereunder.

Carol Fox Foelak
Administrative Law Judge