

COPY

CAUSE NO. D-1-GV-10-000454

Filed in The District Court
of Travis County, Texas

NOV 22 2011 BP

At
Amalia Rodriguez-Mendoza, Clerk

STATE OF TEXAS,

Plaintiff,

v.

RETIREMENT VALUE, LLC,
RICHARD H. "DICK" GRAY, HILL
COUNTRY FUNDING, LLC, a
Texas Limited Liability Company,
HILL COUNTRY FUNDING, a Nevada
Limited Liability Company, and
WENDY ROGERS,

Defendants,

AND

KIESLING, PORTER, KIESLING, &
FREE, P.C.,

Relief Defendant.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

126th JUDICIAL DISTRICT

**AGREED PERMANENT INJUNCTION ORDER and
FINAL JUDGMENT AS TO DEFENDANT RICHARD H. GRAY**

On this day came on to be considered, the *Second Amended Verified Petition and Application for Ex Parte Temporary Restraining Order, Temporary and Permanent Injunctions, Restitution, Disgorgement, and Appointment of Receiver* ("Petition") filed by the State of Texas at the request of the Deputy Securities Commissioner of Texas, John Morgan, (the "Deputy Commissioner"). The Petition asked the Court to issue a Temporary Restraining Order and, thereafter, Temporary and Permanent Injunctions against **Defendants Retirement Value, LLC, Richard H. "Dick" Gray ("Gray")**, **Bruce Collins ("Collins")**, **Wendy Rogers ("Rogers")**, Hill Country Funding, LLC, a Texas limited liability company and Hill Country Funding, LLC, a Nevada limited liability Company (collectively, "Defendants"), their agents, officers, servants, employees, representatives, attorneys and any other party in active concert with or participation with them who receives actual notice of the order by personal service or otherwise and to enter a final judgment against Defendants.

The Petition further requested the Court maintain the appointment Eduardo S. Espinosa, of K&L Gates, LLP, as Receiver for Defendant Retirement Value, LLC.

On May 5, 2010, the Court issued the First Amended Temporary Restraining Order and Order Appointing Receiver ("First Amended TRO"), which has been extended, by agreement, and is still in full force and effect.

Plaintiff, the State of Texas, appeared by and through Jack Hohengarten, Assistant Attorney General. Defendant Retirement Value, LLC, in receivership, appeared by and through Michael D. Napoli of K&L Gates, LLP, who represents the Receiver, Eduardo S. Espinosa of K&L Gates, LLP. Defendant Richard H. Gray appeared personally.

The Court finds the Court has jurisdiction over the parties and the subject matter herein. The Court finds this Agreed Permanent Injunction Order and Final Judgment as to Defendant Richard H. Gray ("Agreed Order") to be proper, necessary, and in the best interest of justice to be proper, necessary, and in the best interest of justice.

I.
Stipulations

The parties stipulate to the following:

- 1.1 The Court has jurisdiction over Defendant Richard H. Gray and the subject matter of this action.
- 1.2 The State of Texas is duly authorized to bring this cause of action pursuant to state law.
- 1.3 The parties hereto waive the entry of Findings of Fact and Conclusions of Law under Rule 296 of the Texas Rules of Civil Procedure with respect to the entry of this Agreed Order.
- 1.4 This Agreed Order complies with all of the statutory, jurisdictional and procedural requisites for entry and enforcement.
- 1.5 Defendants hereby waive Texas Rules of Civil Procedure 63, and 683 through 689.
- 1.6 Defendant Gray hereby agrees to the continuation of the Appointment of Eduardo S. Espinosa of K&L Gates, LLP as the Receiver of Retirement Value, LLC pursuant to the Court's order dated May 5, 2010 and any subsequent court orders; and further permanently waives any motion or any other action to set the Receiver's appointment aside.
- 1.7 Defendant Gray will turn over to the Retirement Value Receiver the following property held in his name and/or in the name of Catherine Gray:

- a) The residence located at 3606 Comal Springs Dr., Canyon Lake, Texas 78133 (the "Comal Springs House"); and
- b) Generations Federal Credit Union Certificate of Deposit No. xxxxxL18 in the approximate amount of \$51,000 (the "CD").

The Comal Springs House and the CD shall be collectively referred to as the "Settlement Property."

- 1.8 All property in the name of Richard or Catherine Gray, save and except the Settlement Property (the "Gray Exempt Property") shall be released from the Receivership and returned to the Grays provided that the distribution of the participation made by Richard Gray in the Resale Life Insurance Policy Program shall be made in accordance with a plan of distribution to be approved by the Court.
- 1.9 Defendant Gray and Catherine Gray hereby agree and hereby waive any right, title or interest in the accounts, money, or other property belonging to or held for the benefit of Defendant Retirement Value or as appears to the Receiver to contain or be derived from proceeds of Defendants' investment programs or used in furtherance thereof, whether such property is real, personal, or mixed, of whatever nature and wherever located whether or not the Receiver, Eduardo S. Espinosa of K&L Gates, LLP, has seized such property in this case save and except for the Gray Exempt Property but including the Settlement Property (the "Receivership Property") and agrees that the proceeds or the Receivership Property may be distributed to investors and other creditors of Retirement Value as authorized by further orders of the Court,.
- 1.10 All parties to this Order herein agree to the terms of this Agreed Order, request the Court to approve it, and waive the right to appeal its validity.
- 1.11 The State of Texas does not waive its right to demand additional enforcement of the laws and regulations of the State of Texas or the United States, except with regard to the imposition of civil fines and civil penalties for any of the Defendant Gray's acts or omissions in violation of the Texas Securities Act, the Texas Deceptive Trade Practices Act, or any other law that could have been asserted in this lawsuit, with regard to Retirement Value, which occurred prior to entry of this Agreed Order.
- 1.12 This Agreed Order is part of a settlement and compromise. It is not an admission of wrongdoing or liability on the part of Defendant Gray or Catherine Gray.

It appearing that no further notice of hearing for the entry of this Agreed Order need be given; the Court being fully advised in the premises, and no just reason for delay appearing:

II.

Permanent Injunction Order

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Clerk of this Court shall issue a Permanent Injunction against the persons and entities named below, with the following force and effect.

TO: Defendant Richard Gray and his affiliates and agents, including but not limited to:

Defendant **RICHARD H. GRAY**; his employees, agents, representatives, and others acting in concert with him who receive actual notice of the Court's order by personal service, facsimile transmission, or otherwise, are hereby **COMMANDED** and **ORDERED** as follows:

Each of you is hereby **RESTRAINED** and **ENJOINED** from taking any and all of the following actions:

- 2.1 **Selling securities.** Promoting, issuing, selling, offering for sale, negotiating for sale, advertising, soliciting, dealing in or distributing any securities, in any way and by any manner or means, either directly or indirectly through investment advisors, investment advisor representatives, agents, "licensees", servants, officers, directors, shareholders, employees, representatives, or any other entity acting for them or on their behalf without complying with the securities registration requirements found in the Texas Securities Act;
- 2.2 **Acting as an agent, dealer or salesman.** Promoting, issuing, selling, offering for sale, negotiating for sale, advertising, soliciting, holding seminars, dealing in or distributing any securities, in any way and by any manner or means, either directly or indirectly through agents, "licensees", servants, officers, directors, shareholders, employees, representatives, or any other entity acting for them or in their behalf, without complying with all dealer and salesman registration requirements of the Texas Securities Act;
- 2.3 **Engaging in fraud.** Engaging in fraud or fraudulent practices in connection with the offer for sale or the sale of securities or in the sale of any other financial product including without limitation, investments in viatical settlement contracts and life settlement contracts or other similar investments predicated upon the proceeds of life insurance policies, in the

State of Texas; said fraud including, but not limited to: (i) the making of any misrepresentation, in any manner, of a relevant fact; (ii) the making of any promise or representation or prediction as to the future not made honestly and in good faith; (iii) the intentional failure to disclose a material fact; (iv) the gaining, directly or indirectly, through the sale of any security, of an underwriting or promotion fee or profit, selling or managing commission or profit, so gross or exorbitant as to be unconscionable; (v) the making of an offer containing a statement that is materially misleading or is otherwise likely to deceive the public; and (vi) materially aiding, with intent to deceive or defraud or with reckless disregard for the truth or the law, any person who in any way is participating in fraudulent practices.

- 2.4 Offering, soliciting, negotiating, procuring, selling or effectuating life settlements in Texas without being registered with the Texas Department of Insurance.
- 2.5 Offering, soliciting, negotiating, procuring, participating, contributing or investing in an illusory participation or illusory loan agreement, and in which funds are used to purchase life insurance policies and a thing of value is promised to be paid on the cessation of human life.
- 2.6 Offering participation agreements and/or loan agreements which promise the payment of money or thing of value conditioned on the cessation of human life.
- 2.7 Directly or indirectly doing an act that constitutes the "business of insurance," as that term is defined by section 101.051 of the Texas Insurance Code, except as expressly authorized by statute.
- 2.8 Paying, allowing, giving, or offering to pay, allow or give as an inducement to enter into an agreement a thing of value or other inducement that is not clearly specified in the policy and agreement.
- 2.9 Using a life expectancy certificate on a Texas resident from Midwest Medical Review or any settlement broker that is not registered with the Texas Department of Insurance.
- 2.10 Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement that offers, solicits, negotiates, procures, sells or effectuates the purchase of life insurance through, but not limited to, any of the following statements: "16.5% base line expected income," "participants become irrevocable co-beneficiaries," "upon death of insured,

you receive a pro-rata distribution of the death benefit based upon your original participation amount plus your base-line expected gain," totally objective Life Expectancy underwriter," and "Traditional simple annual growth is 16.5%."

- 2.11 Committing fraudulent and dishonest acts and/or engaging in unfair or deceptive acts or practices in the business of insurance by failing to disclose material facts to insureds and insurers.
- 2.12 Committing fraudulent and dishonest acts and/or engaging in unfair or deceptive acts or practices in connection with the sale of a life settlement by failing to disclose material facts to the purchaser.
- 2.13 Further, Gray agrees and is hereby enjoined to comply with any provision of Tex. Ins. Code Ann. §§ 101.051, 541.051 -.056, 543.003, 841.001 et seq., 1111.001 - 1111.005, 4005.053 and 4005.101 and/or related 28 Tex. Admin. Code §§ 3.1701, et seq. and 21.1 - 21.122. As provided above, this provision is part of a settlement and compromise and is not an admission of wrongdoing or liability on the part of Gray.
- 2.14 For purposes of this Agreed Order, the following words, terms and phrases shall be given the meaning as follows:
 - a) "Security" or "securities" shall include any limited partner interest in a limited partnership, share, stock, treasury stock, stock certificate under a voting trust agreement, collateral trust certificate, equipment trust certificate, preorganization certificate or receipt, subscription or reorganization certificate, note, bond, debenture, mortgage certificate or other evidence of indebtedness, any form of commercial paper, certificate in or under a profit sharing or participation agreement, certificate or any instrument representing any interest in or under an oil, gas or mining lease, fee or title, or any certificate or instrument representing or secured by an interest in any or all of the capital, property, assets, profits or earnings of any company, investment contract, or or any other instrument commonly known as a security, whether similar to those herein referred to or not.
 - b) "Dealer" shall include every person or company other than an agent, who engages in this State either for all or part of his or its time, directly or through an agent, in selling, offering for sale or delivery or soliciting subscriptions to or orders for, or undertaking to dispose of, or to invite offers for any security or securities and every person who deals in any other manner in any security or securities within this State. Any issuer other than a registered dealer of a security or securities, who, directly or through any person or company, other than a registered dealer, offers for sale, sells or

makes sales of its own security or securities shall be deemed a dealer; provided, however, this section or provision shall not apply to such issuer when such security or securities are offered for sale or sold either to a registered dealer or only by or through a registered dealer acting as fiscal agent for the issuer.

- c) "Agent" shall include every person or company employed or appointed or authorized by a dealer to sell, offer for sale or delivery, or solicit subscriptions to or orders for, or deal in any other manner, in securities within this State, whether by direct act or through subagents; provided, that the officers of a corporation or partners of a partnership shall not be deemed agents solely because of their status as officers or partners, where such corporation or partnership is registered as a securities dealer under the Texas Securities Act.
- d) "Investment adviser" shall include a person who, for compensation, engages in the business of advising another, either directly or through publications or writings, with respect to the value of securities or to the advisability of investing in, purchasing, or selling securities or a person who, for compensation and as part of a regular business, issues or adopts analyses or a report concerning securities.
- e) "Investment adviser representative" or "representative of an investment adviser" shall include each person or company who, for compensation, is employed, appointed, or authorized by an investment adviser to solicit clients for the investment adviser or who, on behalf of an investment adviser, provides investment advice, directly or through subagents, to the investment adviser's clients. The term does not include a partner of a partnership or an officer of a corporation or other entity that is registered as an investment adviser under the Texas Securities Act solely because of the person's status as an officer or partner of that entity.
- f) "Sale", "offer for sale", or "sell" shall include every disposition, or attempt to dispose of a security for value. The term "sale" means and includes contracts and agreements whereby securities are sold, traded or exchanged for money, property or other things of value, or any transfer or agreement to transfer, in trust or otherwise. Any security given, or delivered with, or as a bonus on account of any purchase of securities or other thing of value, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. The term "sell" means any act by which a sale is made, and the term "sale" or "offer for sale" shall include a subscription, an option for sale, a solicitation of

sale, a solicitation of an offer to buy, an attempt to sell, or an offer to sell, directly or by an agent, by a circular, letter, or advertisement or otherwise, including the deposit in a United States Post Office or mail box or in any manner in the United States mails within this State of a letter, circular or other advertising matter. Nothing herein shall limit or diminish the full meaning of the terms "sale," "sell" or "offer for sale" as used by or accepted in courts of law or equity. The sale of a security under conditions which entitle the purchaser or subsequent holder to exchange the same for, or to purchase some other security, shall not be deemed to be a sale or offer for sale of such other security; but no exchange for or sale of such other security shall ever be made unless and until the sale thereof shall have been first authorized in Texas under the Securities Act, if not exempt thereunder, or by any other provisions of law.

g) "Issuer" shall mean and include every company or person who proposes to issue, has issued, or shall hereafter issue any security.

- 2.15 **Dissipation of Assets** Disposing of, converting, dissipating, using, releasing, transferring, withdrawing, selling, assigning, canceling, hypothecating, or concealing any Receivership Property.
- 2.16 **Destruction or Removal of books and records.** Intentionally obstructing the Receiver or his designees from investigating, gaining access to, examining, or acquiring the originals or copies of any and all books, records, Property (as defined herein) or other materials concerning any business conducted by Defendant Retirement Value, LLC, such as by destroying or intentionally concealing such books, records, Property or other materials.
- 2.17 **Claims against Retirement Value or its property.** Making any claim, charge, or offset, commencing or prosecuting any action, appeal, or arbitration, including administrative proceedings, obtaining any preference, judgment, attachment, garnishment, or other lien, or making any levy against Defendant Retirement Value, LLC; any of the Receivership Property (as defined herein) or against the Receiver or the Plaintiff save and except for the interest in the Re-Sale Life Insurance Policy Program that Defendant Gray purchased on March 29, 2010 in the face amount of \$27,099.56 (the "Gray Participation")
- 2.18 **Interfering with investigation.** Obstructing, hampering, seeking to delay, or interfering in any manner with any investigation of the sale of securities by Retirement Value, LLC, any of its agents, or its "licensees", conducted pursuant to the lawful authority of the Texas State Securities Board, the Office of the Attorney General, the Receiver, or any other law enforcement or governmental authority;

- 2.19 **Interfering with the Receiver or the Receivership Estate.** Interfering with, obstructing, or hampering the Receiver appointed for Retirement Value, LLC, including accessing or using any web site, telephone, voice mail, or electronic mail account owned or used by Defendant Retirement Value, LLC
- 2.20 Provided however, nothing in this permanent injunction is intended to prohibit Defendant Gray from promoting, issuing, selling, offering for sale, negotiating for sale, advertising, soliciting, dealing in or distributing any securities, including, investments in viatical settlement contracts and life settlement contracts or other similar investments predicated upon the proceeds of life insurance policies **so long as such action is in compliance with this Agreed Order, the Texas Securities Act and any other State or Federal law.**

YOU ARE FURTHER SPECIFICALLY ORDERED, TO THE EXTENT YOU HAVE NOT DONE SO IN COMPLIANCE WITH THE TEMPORARY RESTRAINING ORDER AND ORDER APPOINTING RECEIVER, AND TO THE EXTENT ANY OF THE FOLLOWING ITEMS ARE WITHIN YOUR CUSTODY, CARE OR CONTROL, YOU AND EACH OF YOU ARE ORDERED TO PERFORM THE FOLLOWING ACTS:

- 2.21 Immediately place in the possession of the Receiver appointed herein, Eduardo S. Espinosa of K&L Gates, LLP, or one or more of his designated agents for the purpose of this turnover, all of the books, records, documents and other records, whether written, graphic, photographed, magnetically recorded, electronically recorded, generated by computer, or stored in a computer or other device, including said computer or other device, pertaining to Retirement Value, LLC;
- 2.22 Immediately place in the possession of the Receiver appointed herein, Eduardo S. Espinosa of K&L Gates, LLP, or one or more of his designated agents for the purpose of this turnover, all Receivership Property;
- 2.23 Repatriate to an account under the sole control of the Receiver any of the Receivership Property held either by Defendant Gray or his agents, for Defendant Gray's benefit, or held under any Defendant Gray's direct or indirect control, individually or jointly, and immediately notify the Receiver of the institution and account in which any repatriated funds are located;
- 2.24 Provide to the Receiver a list of all investors in investment programs offered and sold by Retirement Value, LLC, including addresses and phone numbers;

- 2.25 Provide the Receiver with a full accounting of all of the Receivership Property held by Defendant Gray; for Defendant Gray's benefit; or under Defendant Gray's direct or indirect control, individually or jointly;
- 2.26 Prevent any transfer, disposition, or dissipation whatsoever of any Receivership Property controlled by the Defendant Gray, either directly or indirectly;
- 2.27 Provide the Receiver or his designated agents access to Defendant Retirement Value, LLC's records and documents held by financial institutions wherever located; and

III.

Defendant Gray's Waiver of Interest in Receivership Estate

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant Gray waives and relinquishes all claims to the Receivership Property, except for his interests in the Gray Participation.

IV.

Civil Fines and Civil Penalties

The State and the Receiver waive the right to obtain a judgment against Defendant Gray for any civil fines or civil penalties for any conduct relating to the State's petition and the causes of action therein. The State's and the Receiver's waivers herein of civil fines and civil penalties does not apply to anyone other than Defendant Gray, and in no way do such waivers affect the State's or the Receiver's rights to pursue civil fines, civil penalties, damages, or other sums from any agents who offered for sale or sold the investments in viatical settlement contracts or life settlement contracts or other similar investments predicated upon the proceeds of life insurance policies, issued by, for or on behalf of Retirement Value, LLC; from any officer, manager, employee or owner of Retirement Value, LLC; and person controlled by, controlling, subject to common control with acting in concert with Retirement Value LLC or Defendant Gray, or from any person doing business with or having done business with Retirement Value, LLC or Defendant Gray.

This Agreed Order is meant to be a full, final, and complete resolution of the civil obligations of Defendant Gray to the State.

V.

General Provisions

- 5.1 This order may be executed in multiple parts, which together shall constitute a single original instrument. Any executed signature page to this order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
- 5.2 Each of the undersigned representatives of the parties to this order certifies that he or she is fully authorized to enter into the terms and conditions of the order and to legally execute and bind that party to this order.
- 5.3 There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Agreed Order pursuant to Rule 301 of the Texas Rules of Civil Procedure.

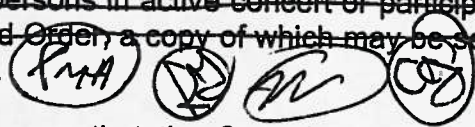
VI.

Other Orders

IT IS FURTHER ORDERED that except for an act of willful malfeasance or gross negligence, the Receiver shall not be liable for any loss or damage incurred by the receivership estate, or by Defendant Gray, his clients or associates, or his subsidiaries or affiliates, their officers, directors, agents, and employees, or by any of Defendant Gray's creditors or equity holders because of any act performed or not performed by him or his agents or assigns in connection with the discharge of his duties and responsibilities under the order(s) appointing him Receiver of Retirement Value, LLC.

IT IS FURTHER ORDERED that no bond is required of the State of Texas pursuant to TEX. GOV'T CODE §6.001, and this Agreed Permanent Injunction Order and Final Judgment as to Defendant Richard H. Gray shall issue and be effective immediately.

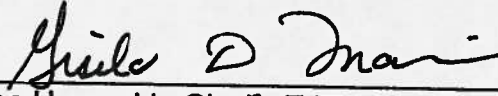
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this action for all purposes.

IT IS FURTHER ORDERED this Agreed Order shall be binding on Defendant Richard H. Gray and upon those persons in active concert or participation with him who receive actual notice of the Agreed Order, a copy of which may be served in person, by mail, or by any officer of the State. 

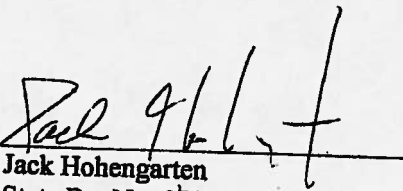
IT IS FURTHER ORDERED that the State have all writs of execution and other process necessary to enforce this Agreed Order.

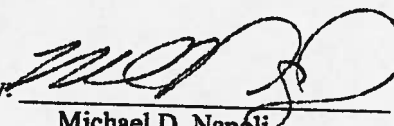
All costs are taxed against the party incurring same, for which no execution shall issue, said costs having been paid.

SIGNED this the 22 day of ~~May, 2014~~ ^{November} 2 15 P.m.


The Honorable Gisela Triana-Doyal,
Judge Presiding

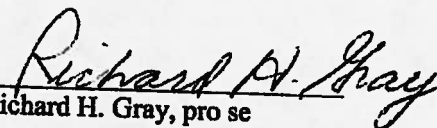
APPROVED & ENTRY REQUESTED BY:

By: 
Jack Hohengarten
State Bar No. 09812200*

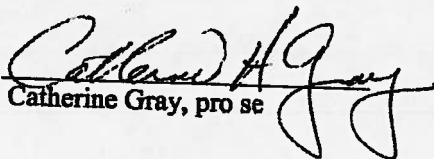
By: 
Michael D. Napoli
State Bar No. 14803400

COUNSEL FOR THE STATE

COUNSEL FOR RECEIVER

By: 
Richard H. Gray, pro se

AGREED:

By: 
Catherine Gray, pro se