

Defendant **BRETT PITTSENBARGAR** is a resident of Travis County, Texas, and may be served with process at 5910 Courtyard Drive, Suite 105, Austin, Texas 78731. He transacts business under the name BP Financial & Tax Design Group.

Defendant **IRONBRIDGE ASSET FUND, LLC** is a Texas limited liability company with offices in Travis County, Texas, and may be served with process by serving its Manager and President, Brett Pittsenbargar, at 5910 Courtyard Drive, Suite 105, Austin, Texas 78731.

Defendant **IRONBRIDGE ASSET FUND 2, LLC** is a Texas limited liability company with offices in Travis County, Texas, and may be served with process by serving its Manager and President, Brett Pittsenbargar, at 5910 Courtyard Drive, Suite 105, Austin, Texas 78731.

IV.

Jurisdiction; Venue

The Court has jurisdiction over the parties and the subject matter of this suit; venue is proper in Travis County pursuant to the venue provisions of Texas Civil Practices and Remedies Code §§15.002, 15.003 and 15.005.

V.

Background Facts

This case involves a fraudulent scheme whereby Defendants purported to sell investments in Ironbridge Asset Funds to Plaintiff. It began in 2014, when Pittsenbargar convinced Plaintiff to open and fund a retirement account with a third-party custodian, Provident Trust Group, LLC. He told her that was necessary in order to purchase the investments he was going to be recommending to her.

In 2015, Pittsenbargar formed Ironbridge Asset Fund, LLC. He used Plaintiff's investment funds to invest in the Ironbridge Asset Funds, which in turn invested her monies in, among other things, Woodbridge Mortgage Investment Funds.

Plaintiff would show that on or about June 2015, Defendants sold to Plaintiff 4.16 Notes in Ironbridge Asset Fund, LLC, for the sum of \$208,000.00. The Promissory Note and Subscription Agreement for her investment in Ironbridge Asset Fund are attached hereto as Exhibit "A" and incorporated herein for all purposes.

Thereafter, in October of 2015, Defendants sold Plaintiff additional investments in the Ironbridge Funds, for a total of 8.12 Notes in the amount of \$406,000.00. The Promissory Note and Subscription Agreement for Plaintiff's investment in Ironbridge Asset Fund 2, LLC, is attached hereto as Exhibit "B" and incorporated herein for all purposes.

And in October 2015, Defendants sold Plaintiff .24 Notes in Ironbridge Asset Funds for a consideration of \$12,000.00. The Promissory Note and Subscription Agreement for Plaintiff's investment in Ironbridge Asset Fund , LLC, is attached hereto as Exhibit "C" and incorporated herein for all purposes.

All of the Ironbridge Funds invested a significant portion of their assets into different Woodbridge Investment Funds. The total invested by Plaintiff was \$626,000.00. The Defendants have failed and refused to pay the Promissory Notes, all to her damage in the amount of \$626,000.00.

Regulators have been for some time concerned about the fraud perpetrated on investors in connection with their investments in the Woodbridge group of companies. For example:

- The Securities and Exchange Commission filed suit in Cause No. 17-24624, styled *Securities and Exchange Commission v. Robert A. Shapiro, et al*, against the Woodbridge entities for fraud, alleging that the unregistered funds and the owner bilked thousands of investors in a \$1.2 billion Ponzi scheme;
- On July 15, 2015, the Texas State Securities Board entered an emergency Cease and Desist Order in Cause No. EMF-15-CD0-1740, against various Respondents, including Pittsenbarger, which among other things, found that Pittsenbarger was offering securities (Woodbridge funds) in violation of the Texas Securities Act and ordered him to cease and desist from offering any security not registered with the Securities Commissioner and from engaging in any fraud in connection with the offer for sale of any security in Texas.

The above Order of the Texas State Securities Board was later modified, but the Defendants' actions during 2015 were in violation of this Securities Board order.

Defendants' scheme to circumvent the securities laws was to do indirectly what they could not do directly.

On or about December 4, 2017, Woodbridge Mortgage Investment Fund filed a voluntary petition for reorganization under Chapter 11 in the United States Bankruptcy Court for the District of Delaware. It is in joint administration with Woodbridge Group of Companies, LLC.

Although Cynthia owned Woodbridge investments, she cannot participate in any distributions as a creditor, since her funds were held through Ironbridge, which was excluded from the class of creditors. Accordingly, Plaintiff lost not only her investment but also her claim as a creditor in the Woodbridge bankruptcy.

The Defendants used Plaintiff's investment funds to invest in Woodbridge Funds, which Defendants knew were both fraudulent and in violation of the securities laws of the State of Texas as well as State Board of Securities orders.

VI.

Breach of Fiduciary Duty

Plaintiff incorporates by reference all of the allegations contained in paragraphs I through V as fully as though set out herein.

Defendants owed Plaintiff a fiduciary duty. Their fiduciary duty to Plaintiff includes the duty (1) of loyalty and utmost good faith; (2) of candor; (3) to refrain from self-dealing; (4) to act with integrity of the strictest kind; (5) of full disclosure; (6) of the utmost good faith in their relations with Plaintiff; and (7) of fair and honest dealings.

Defendants breached their fiduciary duty to Plaintiff by their actions described above. As a direct and foreseeable consequence of Defendants' breach of fiduciary duty, Plaintiff has been damaged in an amount exceeding the minimum jurisdictional limits of

the Court.

Furthermore, Brett Pittsenbarger is the Manager and control person of Ironbridge and as such Pittsenbarger owes a fiduciary duty to Plaintiff. Plaintiff has not received any payment on the promissory note, or any financial or accounting documents. Ironbridge and Pittsenbarger are liable to Plaintiff for her actual and exemplary damages resulting from their breach of fiduciary duty.

VII.

Breach of Contract

Plaintiff incorporates all of the allegations contained in paragraphs I through VI herein. The Defendants have breached their contract with Plaintiff. As a result, the Plaintiff has been damaged in an amount exceeding the minimum jurisdictional limits of the Court.

VIII.

Violations of the Texas Securities Act

Plaintiff would show that such actions on the part of Defendants violate the Texas Securities Act or "Blue Sky Law," Tex.Civ. Code Ann., Section 581-33. The Texas Securities Act prohibits material misrepresentations or omissions by sellers in the sale of securities. Plaintiff requests all relief to which she is entitled under Section 581-33, including the consideration paid, rescission, interest and attorney's fees.

Section 33 of the Texas Securities Act, Vernon's Ann. Civ. St, Article 581-33 (2001), gives buyers the right to recover for material untruths or omissions in the sale of securities. Vernon's Ann.Civ.Stat. art. 581-33. Liability may be based not only on a false statement, but also on omissions to state a material fact necessary to make other statements not misleading. *Lutheran Bhd. vs. Kidder Peabody & Co., Inc.*, 829 S.W.2d 300, 306 (Tex.Civ.App. - Texarkana 1992), remanded at 840 S.W.2d 384 (1992). When there is a duty to speak, silence may be as misleading as a positive misrepresentation of existing facts. *Rowntree v. Rice*, 426 S.W.2d 890, 892 (Tex.Civ.App. - San Antonio 1968, writ ref. n.r.e.). A buyer who

prevails may recover the consideration paid for the securities plus interest thereon at the legal rate from the date of purchase, less the value of the security at the time she disposed of it plus the amount of any income she received on the security. Consideration includes any commissions paid by the buyer. Under the Act, a rescinding buyer may recover the consideration paid for the security, plus interest at the legal rate from the date of purchase, less the amount of income received on the security. Prejudgment interest is recoverable on a rescission claim. *Russell v. French & Assoc., Inc.*, 709 S.W.2d 312, 315 (Tex.Civ.App. - Texarkana, writ ref. n.r.e.).

IX.

Liability of Control Persons and Assistants

Plaintiff incorporates all of the allegations contained in paragraphs I through VIII herein. Defendants are each liable insofar as they are "control persons and aiders." The Texas Securities Act provides that "a person who directly or indirectly controls a seller, buyer, or issuer of a security is liable under Section 33A, 33B or 33C jointly and severally with the seller, buyer, or issuer, and to the same extent as if he were the seller, buyer or issuer . . ." As such, Plaintiff is entitled to recover against each Defendant.

X.

Common Law Fraudulent Misrepresentation

Plaintiff adopts and incorporates herein all of the allegations contained in paragraphs I through IX herein as fully as though set out *in haec verba*. Plaintiff would show that such conduct on the part of Defendants constitutes false and fraudulent misrepresentation of material facts. Defendants intentionally and/or negligently made various misrepresentations to Plaintiff which she relied upon in purchasing the securities.

As a direct and proximate result of the false, fraudulent and misleading conduct on the part of Defendants, the Plaintiff has been damaged in an amount exceeding the minimum jurisdictional limits of the Court.

XI.

Fraudulent Inducement to Enter into a Contract

Plaintiff incorporates all of the allegations contained in paragraphs I through XII as fully as though set out herein. Plaintiff would show that Defendants fraudulently induced her to enter into the transactions and purchase of the securities.

As an inducement for her to purchase the securities, Defendants made false representations to her. Defendants' conduct as described herein constituted false and material misrepresentations of material facts and conspiracy to commit fraud. As a result, Plaintiff seeks damages in an amount exceeding the minimum jurisdictional limits of the Court.

XII.

Statutory Fraud under the Texas Business and Commerce Code

Plaintiff incorporates all of the allegations contained in paragraphs I through XI herein. Plaintiff would further show that the Defendants made false representations of past or existing facts made to Plaintiff for the purpose of inducing her to enter into the transactions and that she relied on such representations in entering into the contract. Further, Defendant failed to disclose material facts. The representations and omissions violate Tex.Bus. & Com. Code §27.01. Plaintiff suffered damages as a result of Defendants' misrepresentations. Furthermore, Defendants are liable to Plaintiff for exemplary damages because Defendants made the misrepresentations with actual awareness of their falsity. Even to the extent that the statements of Defendants were not fraudulent, they constitute negligent misrepresentations. As a direct and proximate result of these violations, Plaintiff has been damaged in an amount exceeding the minimum jurisdictional limits of the Court, and she seeks to recover all damages, including economic loss and attorney's fees pursuant to §27.01 of the Texas Business and Commerce Code.

XIII.

Damages

As a direct and proximate result of the breach of fiduciary duties and negligence, Plaintiff has suffered damages in an amount exceeding the minimum jurisdictional limits of the Court.

XIV.

Punitive and Exemplary Damages

Plaintiff would further show that the conduct on the part of Defendants was willful and wanton, intentional or done with reckless disregard for the rights of others, and as a result Plaintiff is entitled to recover, in addition to her actual and compensatory damages, punitive and exemplary damages in an amount exceeding the minimum jurisdictional limits of the Court.

XV.

Attorney's Fees

Plaintiff would further show that she is entitled to reasonable attorney's fees against Defendants, which Plaintiff says would be the sum of at least \$50,000.00 for one trial or hearing hereof, and an additional sum of \$30,000.00 if appealed to the Court of Appeals and the further sum of \$25,000.00 if an appeal or *writ of certiorari* is filed with the Supreme Court of Texas, all to her damage in such amounts.

XVI.

Conditions Precedent

All conditions precedent to the filing of this action have been met.

Jury Demand

Plaintiff respectfully requests a trial by jury.

Prayer for Relief

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendants be cited to appear and answer herein according to law, and that upon final hearing hereof, Plaintiff have and recover judgment against the Defendants, jointly and severally, for the sum of \$626,000.00, interest on her investments from the date of purchase to time of judgment, reasonable attorney's fees with conditional awards as alleged, punitive and exemplary damages, pre-judgment interest as allowed by law, interest on the judgment at the highest lawful rate, all Court costs, and for such other and further relief, general or special, at law or in equity, to which she may be justly entitled.

Respectfully submitted,

LEWINSLAW, P.C.

/s/ Richard A. Lewins

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