

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

STEPHEN KARAKAY, )  
)  
Petitioner, )  
)  
vs. ) Case No. 02-0849  
)  
DEPARTMENT OF BANKING AND )  
FINANCE, )  
)  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

A formal hearing was held before Daniel M. Kilbride,  
Administrative Law Judge, Division of Administrative Hearings,  
on May 17, 2002, in Sarasota, Florida.

APPEARANCES

For Petitioner: Stephen Karakay, pro se  
6615 Markridge Place  
Sarasota, Florida 34231

For Respondent: Cynthia K. Maynard, Esquire  
James H. Harris, Esquire  
Department of Banking and Finance  
The Fletcher Building  
101 East Gaines Street, Suite 526  
Tallahassee, Florida 32399-0350

STATEMENT OF THE ISSUE

Whether Petitioner has proven entitlement to reimbursement  
of investment funds allegedly lost through investments with GIC  
Government Securities, Inc., under Section 517.1203, Florida  
Statutes.

PRELIMINARY STATEMENT

This proceeding arose under Section 517.1203, Florida Statutes, administered by the Department of Banking and Finance ("Respondent"). Under the terms of the statute, Respondent is responsible for evaluating claims filed by investors who suffered financial loss due to the actions of GIC Government Securities, Inc. ("GIC").

Petitioner alleges that he made two investments, one for \$35,000 and one for \$20,000, with GIC in the mid-1980s. Although he acknowledges that he was fully paid on the \$35,000 investment and therefore has no complaint with regard to that investment, Petitioner asserts that the \$20,000 investment was lost and, despite attempts to collect the funds from the U.S. Department of Housing and Urban Development, he has not been reimbursed for any of the \$20,000 investment. In response to Respondent's Notice of Intent to Deny Petitioner's claim under Section 517.1203, Florida Statutes, Petitioner submitted a letter, dated February 11, 2002, which Respondent treated as a petition for formal hearing. On February 26, 2002, this matter was referred to the Division of Administrative Hearings for a formal hearing and discovery ensued. This matter was continued once in order to permit the completion of discovery.

At the hearing, Petitioner, appearing pro se, testified on his own behalf and submitted two exhibits into the record.

Respondent presented testimony from William Reilly, Financial Administrator for Respondent's Division of Securities and Finance, and offered four composite exhibits in evidence. Official recognition was taken of Section 517.1203, Florida Statutes, and the Final Order entered by Respondent on April 25, 1995, in the case of GIC Government Securities, Inc., et al., DBF No. 1745-S-8/92, et al.

A Transcript of the above-styled hearing was filed on June 3, 2002. Petitioner has not filed a proposed recommended order as of the date of this Recommended Order. Respondent submitted its proposals on June 11, 2002.

#### FINDINGS OF FACT

1. On October 22, 1996, Petitioner, a Florida resident, filed a \$20,000 claim pursuant to Section 517.1203, Florida Statutes, with Respondent.

2. On August 13, 1984, Petitioner invested \$10,000 with GIC in what purported to be a six-month GNMA/U.S. Treasury Trust Note, certificate number 1607, dated September 1, 1984, which matured on February 28, 1985. The investment was identified with Elizabeth Karakay's ("Mrs. Karakay"), Petitioner's wife, social security number.

3. Southern Bond Clearing, Inc. was an affiliated company of GIC that functioned as the transfer agent for the GIC investment transactions.

4. Petitioner's original \$10,000 investment in the six-month GNMA/U.S. Treasury Trust Note was repaid to Stephen Karakay through GIC's transfer agent and affiliate company Southern Bond Clearing's check number 421, dated February 28, 1985, issued to "Stephen Karakay, P.O. Box 3344, Sarasota, Florida 33578."

5. Petitioner believed that his \$10,000 investment in the GNMA/U.S. Treasury Trust Note, certificate number 1607, and the \$10,000 Southern Bond Clearing check (number 421) were two distinct investments which, combined, established his alleged \$20,000 investment with GIC. Through the claims process pursuant to Section 517.1203, Florida Statutes, Petitioner made inconsistent statements regarding the amount he allegedly lost through investments with GIC. At various times, Petitioner has claimed (1) that he made a \$20,000 investment, (2) that he made two separate \$10,000 investments, and (3) at still other times, Petitioner referenced having made only a \$10,000 investment.

6. On January 3, 1985, Mrs. Karakay made a \$20,000 investment with GIC to purchase a "GNMA/MTG Backed Coll Inv Note." The investment was identified with Mrs. Karakay's social security number.

7. From February 1985 through July 2, 1985, Mrs. Karakay was issued monthly interest payments on her \$20,000 investment with GIC. On July 2, 1985, and July 19, 1985, Mrs. Karakay was

issued two checks, in the amounts of \$441.05 and \$20.52, identified as "return principal." Also on July 2, 1985, Mrs. Karakay's Delmar Trust investment was rolled over into a GNMA bond in the amount of \$19,558.95 with a refund amount of \$441.05. The combined total of the rollover GNMA and the refund equaled Mrs. Karakay's initial \$20,000 investment with GIC in the Delmar Trust.

8. GIC sent a letter, dated June 20, 1985, to Petitioner in which it discussed the rolling-over of \$20,000 from the "investment trust" to a "GNMA bond." This \$20,000 was the proceeds of Mrs. Karakay's earlier investment of July 1985.

9. GIC's letter, dated June 20, 1985, to Petitioner states that the "investment trust note of \$20,000 is being rolled over into a GNMA Bond" and that the "investment of the bond will not be exactly \$20,000 so therefore, a refund will be coming."

10. There was no evidence produced or testimony offered, aside from conclusory statements by Petitioner, indicating that Petitioner had a \$20,000 investment with GIC that was separate and distinct from Mrs. Karakay's investment.

11. Based upon a review of the dates and contents of various documents placed into evidence, it is clear that the GIC June 20, 1985, letter referred to the liquidation and rolling over of Mrs. Karakay's initial \$20,000, used to purchase a "GNMA/MTG Backed Coll Inv Note," into the purchase of a GNMA

bond in the amount of \$19,558.95 with a refund amount of \$441.05.

12. Petitioner acknowledged that he filed a claim with the Securities Guaranty Fund, pursuant to Sections 517.131 and 517.141, Florida Statutes, to recover the same \$20,000 investment at issue in this case. Petitioner did not request an administrative hearing when he received Respondent's Notice of Intent to Deny his claim against the Securities Guaranty Fund, thus the denial became final.

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over this matter pursuant to the authority of Sections 120.569 and 120.57, Florida Statutes.

14. Subsection 517.1203(2)(a), Florida Statutes, states in pertinent part:

[M]oneys allocated to the Securities Guaranty Fund . . . shall be used . . . to pay investors who have filed claims with the Department of Banking and Finance after October 1, 1996, and on or before December 31, 1998, who have:

1. Received a final judgment against an associated person of GIC Government Securities, Inc., based upon allegations which would amount to a violation of Section 517.07 or Section 517.301; or
2. Demonstrated to the department that the claimant has suffered monetary damages as a result of the acts or actions of GIC Government Securities, Inc., or any

associated person thereof, based upon allegations which would amount to a violation of Section 517.07 or 517.301.

15. Respondent is charged with the responsibility and duty of determining under Section 517.1203, Florida Statutes, claimant's entitlement to the funds purportedly lost as a result of doing business with GIC.

16. Petitioner has the burden of establishing entitlement to the funds claimed. Antel v. Department of Professional Regulation, 522 So. 2d 1056 (Fla. 5th DCA 1988); Florida Department of Transportation v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981).

17. Petitioner sincerely argues that the funds he paid to GIC for the GNMA/U.S. Treasury Trust Note, certificate number 1607, should be aggregated with the funds that were transferred to Petitioner by Southern Bond Clearing, Inc., in check number 421. Petitioner argues that the combination of the funds paid to GIC plus the funds Southern Bond Clearing paid to Petitioner though check number 421 should be aggregated. Petitioner claims that his aggregate investment was acknowledged by GIC's letter to him of June 20, 1985.

18. However, the greater weight of evidence established that Petitioner's original \$10,000 investment in September 1984 to purchase the GNMA/U.S. Treasury Trust Note was paid to him in the form of a check from Southern Bond Clearing, Inc., check

number 421, and dated February 28, 1985, to "Stephen Karakay, P.O. Box 3344, Sarasota, Florida 33578."

19. The evidence also clearly showed that Petitioner's wife made an investment of \$20,000, which is not claimed by Petitioner and was not at issue in this hearing, which investment was consistently referenced by Petitioner's wife's social security number and which was referred to in the June 20, 1985, letter from GIC to Petitioner.

20. Petitioner has failed to meet his burden and prove his entitlement to payment of his claim.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby

RECOMMENDED that a final order be entered denying Petitioner's claim.

DONE AND ENTERED this 19th day of June, 2002, in Tallahassee, Leon County, Florida.

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DANIEL M. KILBRIDE  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 19th day of June, 2002.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.