

51-7-24 Sales and purchase in violation -- Remedies -- Limitation of action.

- (1)
 - (a) Each certified investment adviser or certified dealer who transacts securities business with a public treasurer in violation of this chapter or any rule made or order issued under authority of this chapter is liable to the public treasurer.
 - (b) The public treasurer may either sue to recover either:
 - (i) damages, if the public treasurer no longer owns the security; or
 - (ii) the sum of the following, less the amount of any income received on the security upon the tender of the security:
 - (A) the consideration paid for the security;
 - (B) interest at 12% per year from the date of payment;
 - (C) costs; and
 - (D) reasonable attorney's fees.
 - (c) Damages are the amount that would be recoverable upon a tender less the value of the security when the public treasurer disposed of it and interest at 12% per year from the date of disposition.
- (2) If the court finds that the violation was reckless or indifferent, the court may, in a suit brought under Subsection (1), award an amount equal to three times the consideration paid for the security before adding interest, costs, and attorney's fees and before subtracting the income received from the sale of the security.
- (3)
 - (a) Each person who directly or indirectly controls a seller or buyer or investment adviser is liable under Subsection (1).
 - (b) Except as provided in Subsection (3)(c), the following are liable jointly and severally with and to the same extent as the seller or purchaser:
 - (i) each partner, officer, or director of a seller or buyer;
 - (ii) each person occupying a similar status or performing similar functions;
 - (iii) each employee of a seller or buyer who materially aids in the sale or purchase;
 - (iv) each certified investment adviser who materially aids in providing the advice; and
 - (v) each broker-dealer or agent who materially aids or abets in the sale.
 - (c) The nonseller or nonpurchaser is not liable under Subsection (3)(b) if the nonseller or nonpurchaser proves that he did not know or should have known, and in exercise of reasonable care could not or should not have known, of the existence of the facts that caused the alleged liability.
- (4) An action to enforce any liability under this section must begin within five years of the act or transaction constituting the violation or two years after the discovery by the public treasurer of the facts constituting the violation, whichever occurs later.
- (5) A person may not base any suit on a contract if:
 - (a) the person made or engaged in the performance of the contract in violation of this chapter or any rule or order issued under the authority of this chapter; or
 - (b) the person acquired any purported right under the contract with knowledge of the facts by reason of which the making of the contract or the performance of the contract was a violation of this chapter or any rule or order issued under the authority of this chapter.
- (6) A condition, stipulation, or provision binding a treasurer acquiring a security to waive compliance with this chapter or a rule made or order issued under authority of this chapter is void.
- (7) The rights and remedies provided by this section are in addition to any other rights or remedies that may exist at law or in equity.

Enacted by Chapter 248, 2004 General Session