

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

FILED
U.S. DISTRICT COURT
INDIANA SOUTHERN DIVISION

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SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOHN E. BRINKER, JR.,
GARY J. BENTZ,
CASTLEROCK CONSULTING, LLC,
GUARDIAN FIRST LIMITED, INC.
(A NEVADA CORPORATION),
GUARDIAN FIRST LIMITED, INC.
(A GRENADA CORPORATION),
WELLINGTON BANK AND TRUST, LTD.,
WELLINGTON CAPITAL HOLDINGS,
LTD., INC.,
WELLINGTON CAPITAL HOLDINGS, LTD.,
WELLINGTON INTERNATIONAL
INVESTMENTS, INC.,
WELLINGTON FIRST INTERNATIONAL
INVESTMENTS, INC. AND ALL
SUBSEQUENTLY NUMBERED
WELLINGTON INTERNATIONAL
INVESTMENTS, INC. ENTITIES,

Defendants,

and

ALPHA ADVANTAGE II, INC.,
ELEVEN EIGHTY-FIVE, LP AND
STEADFAST MINISTRIES, INC.

Relief Defendants.

CIVIL ACTION
FILE NO.

LP01 - 0259 C H/G

SECURITIES AND EXCHANGE COMMISSION'S COMPLAINT
FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the United States Securities and Exchange Commission

("Commission"), alleges as follows:

SUMMARY

1. From at least June 1998 to the present, Defendants engaged in a Ponzi scheme in which they raised at least \$7.1 million from 256 investors in eleven states by selling investments that purportedly generated returns through trading in prime bank instruments.

2. During this time, Defendants John E. Brinker, Jr. ("Brinker") and Gary J. Bentz ("Bentz") promoted, through Defendant Castlerock Consulting, LLC ("Castlerock"), the fraudulent sale of securities promising investors annual returns of fifty percent (50%) or more.

3. Brinker, Bentz and other Defendants offered and sold investors securities in a trading program (the "Wellington Bank program") offered by Defendant Wellington Bank and Trust, Ltd. ("Wellington Bank"). Investors were told that the Wellington Bank program traded bonds, bank guarantees and letters of credit issued or backed by major banks ("prime bank instruments"). As evidence of their investment, investors were given preferred stock certificates in an entity associated with Wellington Bank. These entities included Defendants Wellington International Investments, Inc., Wellington First International Investments, Inc. and all subsequently numbered Wellington International Investments, Inc. entities ("the Wellington International Defendants") and Guardian First Limited, Inc. of Nevada, Guardian First Limited, Inc. of Grenada and under other names, including Guardian Ltd. and Guardian First Ltd., under which the Guardian First Limited, Inc. entities do business (collectively "Guardian").

4. The Commission, the Federal Deposit Insurance Corporation ("FDIC") and the Board of Governors of the Federal Reserve System, among other federal government entities, have warned the public that trading programs in prime bank instruments do not exist. Further, these agencies have cautioned that investments offered in trading programs of prime bank instruments are fraudulent.

5. Brinker and Bentz and the entities through which they operate and control have not invested investor funds as represented. Instead, they commingled investor funds in a bank account of Defendant Wellington Capital Holdings, Ltd., Inc. ("Wellington Capital Nevada"). Brinker and Bentz transferred at least \$3.4 million of these investor funds to themselves, Castlerock and the relief defendants, Alpha Advantage II, Inc. ("Alpha"), Eleven-Eighty-Five, LP ("1185") and Steadfast Ministries, Inc. ("Steadfast") (collectively "Relief Defendants"), which Brinker and Bentz control. Brinker and Bentz also used approximately \$2.0 million of the funds to pay other investors, apparent finders and other individuals or entities with no apparent involvement in any trading program.

6. Defendants Brinker and Bentz, directly and indirectly, have engaged and, unless enjoined, will continue to engage in acts, practices and courses of business which constitute violations of the registration and antifraud provisions of the federal securities laws [Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§77e(a), 77e(c), 77q(a)], and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)], and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder], and have aided and abetted, and unless enjoined, will continue to aid and abet acts, practices and courses of business which

constitute violations of certain broker-dealer provisions of the federal securities laws [Sections 15(a) and 15(c)(1) of the Exchange Act [15 U.S.C. §§78o(a) and 78o(c)(1)], and Rule 15c1-2 [17 C.F.R. §240.15c1-2] promulgated thereunder].

7. Defendants Wellington Capital Nevada and Wellington Capital Holdings, Ltd. (“Wellington Capital Bahamas”) (collectively “Wellington Capital”) and Castlerock, directly and indirectly, have engaged in and, unless enjoined, will continue to engage in acts, practices and courses of business which constitute violations of the antifraud, registration and certain broker-dealer provisions of the federal securities laws [Sections 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C. §§77e(a), 77e(c), 77q(a)], and Sections 10(b), 15(a) and 15(c)(1) of the Exchange Act [15 U.S.C. §§78j(b), 78o(a), and 78o(c)(1)], and Rules 10b-5 and 15c1-2 [17 C.F.R. §§240.10b-5 and 240.15c1-2] promulgated thereunder].

8. Defendants Wellington Bank, the Wellington International Defendants, and Guardian, directly and indirectly, have engaged and, unless enjoined, will continue to engage in acts, practices and courses of business which constitute violations of the registration and antifraud provisions of the federal securities laws [Sections 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C. §§77e(a), 77e(c), 77q(a)], and Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder].

JURISDICTION AND VENUE

9. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(e) and 27 of the Exchange Act

[15 U.S.C. §§ 78u(e), 78aa] and 28 U.S.C. §1331. Venue is proper in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. §78aa].

10. The acts, practices, and courses of business constituting the violations alleged herein occurred within the jurisdiction of the United States District Court for the Southern District of Indiana and elsewhere.

11. Defendants, directly and indirectly, have made, and are making, use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts, practices, and courses of business alleged herein in the Southern District of Indiana and elsewhere.

DEFENDANTS

12. Brinker, age 54, resides in Cincinnati, Ohio. From 1992 through August 1998, Brinker was a registered representative of three brokerage firms registered with the Commission. Brinker has never been registered with the Commission as a broker or dealer.

13. Bentz, age 44, resides in Loveland, Ohio. From 1994 through February 1999, Bentz was a registered representative of two brokerage firms. Bentz has never been registered with the Commission as a broker or dealer.

14. Castlerock, located in Cincinnati, Ohio, is an Ohio limited liability company formed in May 1999. Its sole owner is 1185, an Ohio limited partnership. Castlerock has at least eleven employees, including Brinker and Bentz. Castlerock has never been registered with the Commission as a broker or dealer.

15. Guardian First Limited, Inc. was incorporated in Grenada in November 2000 and in Nevada in December 2000. Guardian issues stock certificates delivered by Defendants to investors. No registration statement filed with the Commission is pending or in effect as to any securities issued by Guardian.

16. Wellington Bank is an entity chartered in the Caribbean nation of Grenada. Brinker and Bentz are two of its directors. No registration statement filed with the Commission is pending or in effect as to any securities issued by Wellington Bank.

17. Wellington Capital Nevada was incorporated in Nevada in March 1998. Since then, the Nevada Secretary of State has revoked its registration. Brinker is its president and Bentz is its secretary and treasurer. Brinker and Bentz are Wellington Capital Nevada directors. Wellington Capital Nevada has never been registered with the Commission as a broker or dealer.

18. Wellington Capital Bahamas, an international business corporation, was incorporated in the Bahamas in December 1997. Wellington Capital Bahamas has never been registered with the Commission as a registered broker or dealer.

19. The Wellington International Defendants, legal entity status unknown, are issuers of stock certificates delivered to investors by Defendants. No registration statement is pending or in effect as to any securities issued by the Wellington International Defendants.

RELIEF DEFENDANTS

20. Alpha was incorporated in Nevada in December 1998. Brinker's daughter currently serves as Alpha's president, secretary, and treasurer. Prior to that, Brinker and his wife were its officers.

21. 1185 is an Ohio limited partnership formed in December 1996. Brinker's daughter is its general partner.

22. Steadfast was incorporated by Brinker and two Castlerock employees in Ohio in September 2000. Steadfast is purportedly a charitable religious organization. Steadfast shares office space with Castlerock and 1185.

THE FRAUDULENT SCHEME

Solicitation of Investors

23. From June 1998 through December 2000, Defendants raised approximately \$7.1 million from approximately 256 investors in Indiana, Ohio, Kentucky, West Virginia, Illinois, Delaware, California, Pennsylvania, Tennessee, Texas and Minnesota for investment in the Wellington Bank program. Most investors reside in Indiana and several are elderly.

24. Brinker and Bentz promoted the Wellington Bank program and communicated with investors through Castlerock. Brinker and Bentz solicited investors for the Wellington Bank program by telephone and in person.

25. Brinker and Bentz used paid "finders" to attract potential investors. These finders encouraged potential investors to telephone Brinker and Bentz at Castlerock for

information about the Wellington Bank program. The finders also hosted gatherings in their homes where Brinker and Bentz promoted the Wellington Bank program.

26. From in or about May 1999 to in or about March 2000, a Castlerock agent placed blind advertisements promoting investment opportunities in a free newspaper aimed at senior citizens in Delaware. In November 1999, at least one investor invested \$35,000 in the Wellington Bank program after seeing the advertisement. In December 1999, Castlerock paid the agent who placed the advertisement a commission of \$1,900.

27. At in-person meetings, Brinker and Bentz distributed Wellington Bank program offering materials.

28. Brinker and Bentz told investors that the Wellington Bank program produces returns by trading in bonds, bank guarantees, or letters of credit issued or backed by major banks. In fact, trading programs in such prime bank instruments do not exist.

29. Brinker and Bentz sold investors preferred stock of the Wellington International Defendants and Guardian through the Wellington Bank program and, in offering materials and oral statements, promised investors annual returns of 50% or more.

30. Through Castlerock, Brinker and Bentz sent investors certificates for stock in the Wellington International Defendants and Guardian.

31. Defendants deposited investor funds into a Wellington Capital Nevada bank account.

32. Brinker and Bentz are the signatories on the Wellington Capital Nevada account.

The Wellington Bank Program

33. According to the offering materials the Wellington Bank program pays an annual or quarterly yield with annual returns of up to 50%, although Brinker, Bentz and other written documents have promised investors greater returns.

34. The stated minimum investment in Wellington Bank preferred stock is \$5,000, although several investors have invested less than \$5,000.

35. To entice investors, the offering materials claim the preferred stock value does not fluctuate, is not subject to U.S. treasury regulations and need not be reported as ownership in a foreign corporation.

36. The offering materials specify that the high returns quoted for the Wellington Bank program are generated from trading in letters of credit and bank guarantees of major financial institutions. In addition, Bentz represented to at least one investor that Wellington Bank is able to generate such high returns by buying several million dollars in bonds from major banks and then immediately reselling them to another buyer at a substantial profit. As warned by the Commission and the FDIC, however, the trading programs described in the offering materials and by Bentz do not exist.

37. Further, Wellington Bank falsely promises investors that their investments will be insured. The offering materials claim that investors' principal and interest are "insured" by the "International Deposit Indemnity Corporation" or "IDIC." Bentz has represented to some investors that the IDIC is the "international" version of the FDIC, and that for every dollar of principal an investor loses, the IDIC will pay the investor

45. Brinker, Bentz and Castlerock used a third-party administrator to process the rollovers.

46. Brinker, Bentz and Castlerock instructed investors to execute "interested party designation" forms, naming Wellington Capital as their financial advisor and authorizing Bentz and several Castlerock employees to have access to information about their accounts.

47. Brinker, Bentz and Castlerock also instructed investors to complete "buy direction" letters instructing the third-party administrator to purchase preferred stock in "Wellington International Investments, Inc.," make checks payable to "Wellington Capital" and send them to Castlerock in Cincinnati.

Concealment of the Scheme

48. In or about October 2000, Cincinnati and Indianapolis newspaper articles reported that the Indiana and Ohio authorities were investigating the Wellington Bank program.

49. Thereafter, several investors contacted Brinker, Bentz, and Castlerock and demanded a refund or a return due on their investments. Brinker, Bentz and other Castlerock employees told some of these investors that they would receive refunds of their investments. To date, these investors have not received any refunds. Brinker, Bentz and other Castlerock employees also told some investors that their money was temporarily unavailable. In fact, most of investor funds were allocated by Brinker and Bentz to individuals or entities unrelated to any legitimate investment purpose.

50. In October 2000, after Defendants became aware that state regulatory agencies were investigating the Wellington Bank program, Wellington Capital sent investors letters signed by Brinker and Bentz, which stated that to accommodate a new computer system, investors were required to return their Wellington International preferred stock certificates to Wellington Capital for "replacement" certificates issued by Guardian.

The Use of Investor Proceeds

51. Most, if not all, investor funds solicited by Brinker, Bentz and Castlerock for the Wellington Bank program are deposited in the Wellington Capital account.

52. From June 1998 through December 2000, approximately \$7.6 million was deposited into the Wellington Capital account of which at least \$7.1 million was investor funds.

53. Of the \$7.6 million deposited into the Wellington Capital account, Brinker and Bentz transferred approximately \$5.4 million out of the account unrelated to any legitimate investment purpose, including: \$2.0 million to pay investors, apparent finders, and other individuals or entities with no apparent involvement in any trading program; \$1.4 million to 1185; \$1.3 million to Castlerock; \$386,500 to Bentz; \$297,780 to Brinker; \$80,000 to Steadfast; and \$5,000 to Alpha.

54. In addition, on or about December 1, 2000, the third-party administrator, at Brinker's direction, wired \$150,000 of one investor's funds to Alpha's bank account.

COUNT I
Violations of Sections 5(a) and 5(c) of the Securities Act
[15 U.S.C. § 77e(a) and 77e(c)]

55. Paragraphs 1 through 54 are realleged and incorporated by reference herein.

56. At the times alleged in this Complaint, Defendants, directly and indirectly, made and are making use of the means and instruments of transportation and communication in interstate commerce and of the mails to offer and sell, through the use or medium of a prospectus or otherwise, securities, including securities in the Wellington Bank program such as preferred stock in Guardian and the Wellington International entities, and carried and are carrying such securities and caused and are causing them to be carried through the mails and interstate commerce by the means and instruments of transportation for the purpose of sale and delivery after sale.

57. No registration as to the securities described in Paragraph 56 above is in effect nor has any registration statement been filed with the Commission.

58. By reason of the activities described in Paragraphs 55 through 57 above, Defendants have violated and are violating Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. § 77e(a) and 77e(c)].

COUNT II
Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]

59. Paragraphs 1 through 54 are realleged and incorporated by reference herein.

60. At the times alleged in this Complaint, Defendants, in the offer and sale of securities, including securities in the Wellington Bank program such as preferred

stock in Guardian and the Wellington International entities, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, have employed and are employing devices, schemes and artifices to defraud.

61. In the offer and sale of securities described above in Paragraph 60, and as part of the scheme to defraud, Defendants have made and are making false and misleading statements of material fact and have omitted and are omitting to state material facts to investors and prospective investors regarding, among other things: the use of investor funds, the safety of investor funds, the existence of prime bank trading programs, guarantees regarding the investment, and the existence of insurance on the investments, all as more fully described above in Paragraph 59 above.

62. Defendants knew or were reckless in not knowing of the facts and circumstances described in Paragraphs 59 through 61 above.

63. By reason of the activities described in Paragraphs 59 through 62 above, Defendants have violated and are violating Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT III

Violations of Section 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(2) and 77q(a)(3)]

64. Paragraphs 1 through 54 are realleged and incorporated by reference herein.

65. At the times alleged in this Complaint, Defendants, in the offer and sale of securities described above in Paragraph 60, by the use of the means or instruments

of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, have obtained and are obtaining money and property by means of untrue statements of material facts and have omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and have engaged and are engaging in transactions, practices or courses of business which operated and will operate as a fraud and deceit upon purchasers and prospective purchasers as more fully described in Paragraph 64 above.

66. By reason of the activities described in Paragraphs 64 and 65 above, Defendants have violated and are violating Section 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(2) and 77q(a)(3)].

COUNT IV
Violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)]
and Rule 10b-5 [17 C.F.R. §240.10b-5] Promulgated Thereunder

67. Paragraphs 1 through 54 are realleged and incorporated by reference as if set forth fully herein.

68. At the times alleged in the Complaint, Defendants, in connection with the purchase and sale of securities described above in Paragraph 60, by the use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly, have employed and are employing devices, schemes and artifices to defraud; have made and are making untrue statements of material fact and have and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and have engaged and are

engaging in acts, practices and courses of business which have operated and will operate as a fraud and deceit upon purchasers and sellers of such securities as more fully described in Paragraph 67 above.

69. Defendants knew or were reckless in not knowing of the activities described in Paragraphs 67 and 68 above.

70. By reason of the activities described in Paragraphs 67 through 69 above, Defendants violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder.

COUNT V

Violations of and Aiding and Abetting Violations of Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)]

71. Paragraphs 1 through 54 are realleged and incorporated by reference herein.

72. At the times alleged in this Complaint, Wellington Capital Nevada, Wellington Capital Bahamas and Castlerock have made and are in the business of effecting transactions in securities for the accounts of others, as more fully described in Paragraph 71 above.

73. Wellington Capital Nevada, Wellington Capital Bahamas and Castlerock have made and are making use of the mails and the means and instrumentalities of interstate commerce to effect transactions in and to induce or attempt to induce the purchase of securities, as more fully described in Paragraphs 71 through 72 above.

74. At all times alleged in this Complaint, Wellington Capital Nevada, Wellington Capital Bahamas and Castlerock were not registered with the Commission

