

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

FILED
SEP 27 PM 4:20
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

UNITED STATES SECURITIES)
AND EXCHANGE COMMISSION,)
)
Plaintiff,)

v.)

CIVIL ACTION

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,)

CASE NO. IP01-0259-C-H/G

Defendants,)

and)

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

Relief Defendants.)

EXAMINER'S FINAL REPORT

James A. Knauer, the Examiner appointed in this cause, for his Final Report ("Report") respectfully shows the Court as follows:

1. The undersigned was appointed as the Examiner in this cause on February 27, 2001 pursuant to the *Order of Permanent Injunction and Other Equitable Relief* (the "Order") entered by this Court on that date.
2. On March 21, 2001, the Court approved an *Agreed Order Appointing Receiver for Eleven-Eighty Five, LP.* ("1185") which was consented to by 1185. The Agreed Order established a receivership over two assets of 1185, namely a residence located at 746 Stonehill Run, Cincinnati, Ohio [occupied by Defendant John E. Brinker, Jr. (hereafter sometimes referred to as "Brinker") and his immediate family], and 1185's offices at the Eastgate Professional Office Park located at 4360 Ferguson Drive, Cincinnati, Ohio.
3. On March 28, 2001, the Court approved the parties' *Agreed Order appointing Receiver for All Assets and Interests of Relief Defendant Eleven-Eighty Five, LP.* (The "Second Agreed Order") The Second Agreed Order required 1185 to provide the Receiver with an initial listing of its assets and interests by April 9, 2001, and a complete listing no later than April 18, 2001.
4. Finally, the Court approved an *Agreed Order Appointing Receiver Over All Entity Defendants and Relief Defendant Alpha Advantage, II., Inc.* on April 30, 2001 (in light of the fact that the same person is simultaneously serving as the Receiver and Examiner, references hereafter to actions taken by the 'Examiner' shall also include, where appropriate, actions taken by the 'Receiver' since, in many instances, they are indistinguishable and serve a dual purpose, especially in the area of information and record gathering).
5. The Order appointing the Examiner directed that he should file with the Court an initial status report on April 2, 2001.
6. The Examiner filed his initial status report on April 2, 2001.

7. Due to the lack of records and the complexity of the financial affairs of the Defendants and the Relief Defendants, the Examiner filed a Second Status Report on April 26, 2001.

EXAMINER'S DUTIES

8. The Order appointing the Examiner directed him to provide the Court with an accounting of:
 - a. *All funds received directly or indirectly by Defendants or Relief Defendants from investors who invested money in connection with any securities offered, purchased or sold on or before the date of this Order;*
 - b. *The uses to which those funds were put;*
 - c. *The amounts of any remaining funds and their location; and*
 - d. *The amounts returned to investors.*

DEFENDANTS' RECORD PRODUCTION

9. The Examiner's initial review in this cause was in large part delayed until the weekend of March 10, 2001. Although the Examiner had previously received some of the Defendants' banking records from the United States Securities and Exchange Commission ("SEC"), pursuant to the Order, the Defendants were not obligated to produce any business records or other documents relating to the Examiner's investigation until Friday, March 9, 2001.
10. Just prior to the close of business on March 9, 2001 the Defendants

delivered their first documents to the offices of the Examiner. This production consisted of two banker's boxes. One box contained incomplete investor files, arranged alphabetically from "A" to "G." The second box contained incomplete investor files ranging from "H" through "K." No other investor files were produced to the Examiner until March 26, 2001. The balance of documents in the second box included corporate records and limited information concerning the Defendants' bank accounts and transactions.

11. On March 26, 2001 the Defendants produced what they described as their "second submission of documents." To date, notwithstanding the fact they have received approximately \$20,350,000.00 (see discussion in paragraph 26 below) from over six hundred investors and have utilized at least thirty-two bank accounts, the Defendants have produced a total of five partially filled bankers boxes of records, have failed to produce a single check register and few similar records. In response to the Examiner's inquiries concerning the absence of check registers, the Defendants have indirectly advised the Examiner's counsel that the check registers were destroyed "[i]n two (2) floods in the fall of 1999." The Defendants have explained the absence of check registers following the "flood" by representing that checks were thereafter produced and recorded electronically, and that some hard copies of records were produced on March 9, 2001¹. Other records (specifically those relating to a major account maintained by Wellington at Wells Fargo Bank in Nevada) are allegedly in storage in South Carolina and, although requested by the Examiner, they have never been produced.

12. The Order did not require the production of any documents relating to the

¹ This information contradicts deposition testimony of a former employee hired in 2000 who wrote checks. He claimed that stubs were kept for all checks. Also, the electronic records were never produced.

Relief Defendants, nor did it require that any individual Defendant (as distinguished from the Defendants who are some type of legal entity, hereafter the "Wellington Companies") produce documents relating to the Examiner's investigation. Moreover, the Order precluded the Examiner from initiating any discovery to third parties (except for financial institutions and investors) until sixty days following his appointment.

13. The Examiner many times requested that the Defendants turn over computers that he had identified as the property of the Wellington Companies. At first counsel for the Defendants agreed to do so, but then refused, claiming that the Defendants had provided hard copies of all the information on the computers to the Examiner. Only after being threatened with a contempt of court order did the Defendants deliver three computers to the Examiner. One of the computers was non-operational and one contained so few records that it appears to the Examiner the records were erased prior to its turnover. A third computer contained numerous business records that had never been previously produced by any Defendant, thus contravening the prior representation of the Defendants that they had produced hard copies of all of their documents. Based upon records obtained through subpoenas, interviews and depositions of former employees, the Examiner is convinced that a number of computers purchased for use in the business of the Defendants have never been turned over to him by any of the Defendants.
14. The Examiner has also received information that prior to surrendering their documents, the Defendants engaged at least one employee in a document shredding operation.
15. The Defendants advised the Examiner through their counsel that they were in the process of having their records from Grenada shipped to the US and

would deliver them to the Examiner. They were never delivered despite several requests. Through counsel it was represented that the Grenada documents never arrived; however, an interview with a former employee confirmed the arrival of the documents and their delivery to John Brinker.

RECORDS AND INFORMATION GATHERING BY THE EXAMINER AND RECEIVER

16. Since his appointment in this action, the Examiner has issued sixty-nine subpoenas to individuals and institutions seeking information about the actions of the Defendants. A list of the subpoenas issued by the Examiner is attached hereto as Exhibit "1". In many instances the response to an initial subpoena required additional subpoenas to the same institution as the records provided by the recipient disclosed other accounts, income or disbursements which were not included in the initial description of the records requested.

17. Some of the institutions from whom information was requested are not within the United States and, while most institutions within the U.S. chose to provide information to the Examiner notwithstanding limitations on the reach of subpoenas issued from this federal district², some of the records deemed important by the Examiner are at financial institutions in Ireland and Grenada. The cost of obtaining counsel in these jurisdictions and taking the actions necessary to obtain the desired documents may not be warranted in view of the available funds of the Receivership Estate.

² FRCP 45 limits requests to non parties to whom subpoenas are issued to produce documents within 100 miles and requires that such subpoenas be issued from the district in which inspection is requested. Nevertheless, most recipients agreed to provide copies via mail in response to subpoenas issued from this district. The cost of conducting inspections throughout the United States would have been prohibitive to the Receivership estate.

18. Depositions have been taken of the following individuals:
 - A. John Andres
 - B. Sandy Harbottle
 - C. John Brinker
 - D. Julieann Brinker
 - E. Donald W. Quales
 - F. Jerry E. Terrill
 - G. Michael Drew
 - H. William Matthew Powers
 - I. Jennifer L. Meyers
 - J. Carol Brinker

19. The depositions of the three Brinkers produced little information since they each asserted their Fifth Amendment rights in response to most substantive questions.

20. Interviews have been conducted with many former employees and individuals who transacted business with one or more of the Defendants.

21. Many investors also provided information to the Examiner.

22. The Examiner also attempted to obtain the mail of the Wellington Companies. These efforts were met with interference by John Brinker, who changed the mailing address of the Wellington Companies several times and insisted that he (Brinker) had the right to receive all of the mail and the option of determining what documents should be forwarded to the

undersigned.³ This process occurred over several months and during this time not one document was forwarded to the Examiner by Mr. Brinker. Eventually, on August 6, 2001 a small stack of mail was sent to the Receiver by Mr. Brinker. It is inconceivable that all of the pertinent mail has been turned over by the Defendants.

IDENTIFICATION OF THE DEFENDANTS AND RELIEF DEFENDANTS

23. Through documents provided by the Defendants and available public records, the Examiner attempted to identify the legal status of and organizational information relating to the Defendants and Relief Defendants (*e.g.*, state of incorporation, registered agent, officers, directors, stockholders or members and the like). In undertaking this process, the Examiner has identified additional entities that are not presently parties to this action which he believes are associated with the Defendants. A list of the entities affiliated with the Defendants discovered to date is attached as Exhibit "2."
24. As a result of the financial records compiled by the Examiner he has concluded that the affairs of all of the business entities listed on Exhibit "2" are so intermingled that each is the alter ego of the other. In most instances business was carried on without observance of even the barest of formalities that would make the several entities distinguishable. An example is Exhibit "3" which lists millions of dollars of transfers of funds between the entities, most of which are not for any documented business purpose.

ACCOUNTANTS' REPORT

³ The Receiver eventually solved this problem by serving orders upon postal services in the Cincinnati, Ohio area.

25. On March 5, 2001, this Court authorized the employment of the Birk, Gross, Bell & Coulter as accountants for the Examiner (the "Accountants"). Shortly thereafter the Accountants began their review of the Defendants' and Relief Defendants' financial affairs (to the extent possible, given the documents available). A report summarizing the Accountants' investigation thus far is attached as Exhibit "4."

DETERMINATION OF AMOUNTS RECEIVED FROM INVESTORS

26. As earlier noted, the records of amounts received from investors were woefully inadequate. At the inception of this case the SEC had identified 256 investors in eleven states (see *Complaint for Permanent Injunction and Other Equitable Relief* filed in this cause).
27. Beginning on March 15, 2001, the Examiner provided written notice of these proceedings to the approximately five hundred persons⁴ believed to be investors in one or more of the Wellington Companies. The notice explained the nature of this case, and requested information concerning the nature and amount of the investment. A copy of the notice letter is attached hereto as Exhibit "5."
28. As a consequence of the Examiner's mailing together with responses from investors who learned of the Receivership from other investors or news articles, the Examiner has to date identified six hundred twenty-one (621) investors who claim to have invested a total of twenty million, three hundred forty-seven thousand, five hundred sixty-eight dollars and nineteen cents

⁴ The potential investors were identified by reviewing bank records provided by the SEC together with additional records subpoenaed by the Examiner, primarily copies of investor checks deposited to Defendant's accounts.

(\$20,347,568.19)⁵.

29. These figures are in contrast to the amounts calculated by the Accountants, who have identified investor deposits to accounts of the Defendants totaling sixteen million, four hundred eighty-one thousand, eight hundred eighty-one dollars and seventy-five cents (\$16,481,883.75)⁶. The Accountants' Report also notes that detail is missing⁷ for over \$10,500,000 of deposit activity. Thus the Examiner believes the figures provided from the investor mailing responses is more accurate and the total amount invested is closer to twenty million dollars.

DETERMINATION OF AMOUNTS RETURNED TO INVESTORS

30. The Examiner's mailing to investors requested that investors identify not only amounts that they paid to the Defendants, but amounts that they had been repaid. According to the mailing responses, investors reported receiving two million, seventy-eight thousand, nine hundred seventeen dollars and forty cents \$(2,078,917.40).
31. The Accountants have identified payments to investors by the Defendants totaling five million, twenty-four thousand, nine hundred fifty-eight dollars and

⁵ Since no claim filing deadline has been established in these proceedings, the amounts set out in the investor responses to the Examiner's letter have not been verified nor have the investors been asked to provide any proof of their investment.

⁶ See the *Attachment "A"* to the Accountant's Report which is Exhibit "4".

⁷ Of this amount, more than \$8.9 million represents transactions at overseas banks. In some instances the actual bank statements have not been obtainable, in others the bank statements have been obtained, but the records of the source of the funds for which deposits are shown on the statements are missing or illegible.

nine cents (\$5,024,958.09).⁸ In this instance, the Examiner believes that the Accountants' figures are closer to the correct amount and thus investors were repaid approximately five million dollars.

USES TO WHICH INVESTOR FUNDS WERE PUT

32. According to information summarized by the Accountants, the uses of investor funds appears to break down into several categories which are⁹:

A.	Investment purchases ¹⁰	\$6,487,426.01
B.	Funds disbursed to Brinker or Bentz or for their benefit	\$2,819,613.54

⁸ A portion of these payments, as yet unidentified, represents 'commissions' paid to persons who solicited investments, but who are also identified as investors.

⁹ These amounts are summarized from Attachment "A" of the Accountant's Report.

¹⁰

Using the term "investments" to describe the expenditure of the funds received by Brinker, Bentz and the companies they controlled in this paragraph is somewhat tongue in cheek. Most all of the payments that the Examiner has referred to as "investments" would not be so characterized by persons possessing any skill or competence in this area. It is the Examiner's conclusion that almost all of the "investments" of the money received by the Defendants were reckless gambles that no person possessing any investment skill would have undertaken when acting as a fiduciary. For example, there is little or no record of any due diligence or investment analysis prior to disbursement of the funds. There are few (and in some cases no) records of any kind for investments totaling millions of dollars. Defendants Brinker and Bentz did not have education or training that would qualify them to operate a company that provided investment advice. Many of the disbursements that are characterized as investments were to persons who have since been identified as the perpetrators of other Ponzi Schemes. Like the returns promised to investors in Brinker and Bentz's companies, most of the records that are available concerning the investments made by Brinker and Bentz reflect poorly documented agreements that promise returns of 50% or more over short periods of time (in some cases as little as 30 days).

C.	Payments for business expenses, including payroll ¹¹	\$1,885,250.75
D.	Payments to investors	\$5,024,958.09
E.	Miscellaneous	\$5,229,482.16
F.	Bank Charges	\$ 215,383.80
	TOTAL	\$21,662,114.35

Investment Purchases

33. Of the approximately \$6.5 million of "investment" purchases identified above, the Examiner has been unable to identify one investment that may have value to date.
34. For example, almost two months after the Defendants were to have turned over their records to the Examiner, an attorney representing some of the Defendants¹² sent a letter dated May 21, 2001 describing investments totaling \$2,530,452.13. Not a single record of these investments was turned over to the Examiner¹³ until a subsequent letter was sent to the Defendants' counsel. These investments were as follows:

Investment Description	Amount
Gary Growden / Asset International	\$1,000,000.00
Porterhouse-Pierson America / Michael Schuda	\$ 537,500.00

¹¹ The business expenses included lavish trips, first class airfares and accommodations showered on large investors, persons used to promote the investment scheme, and friends and family members.

¹² The Defendants do not have counsel of record in these proceedings; however, all communication with the Defendants has been through counsel representing them outside of these proceedings.

¹³ This was 60 days after the Defendants were to have produced all of their records to the Examiner.

Mounties Investments	\$ 400,000.00
Kenneth T. MacKinnon	\$ 90,000.00
Summit Ridge Marketing / John Belle	\$ 502,952.13
TOTAL	\$2,530,452.13

35. The money transferred to Mr. Growden and Asset International was to be invested in a program offered by Advance Local Development Corporation. Advance Local Development Corporation have been sued in federal court by the United States Securities and Exchange Commission and accused of operating a Ponzi Scheme. Their assets have been frozen by court orders.
36. Porterhouse-Pierson is no longer in operation.
37. Mounties Investments is the subject of collection actions in Grenada for over \$1,000,000 in which it pleads only that it made its best efforts to turn a profit, but failed to do so. It is apparently insolvent. See attached Exhibit "5" from the Grenada High Court of Justice.
38. The Examiner has been unable to locate Kenneth T. MacKinnon (apparently he is an Australian).
39. The Examiner has been unable to locate Summit Ridge Marketing / John Belle.

⇒ *Investments in First International Bank of Grenada*

40. The single largest placement of investor monies was with the First International Bank of Grenada ("FIB"). Copies of various certificates representing obligations of FIB to the Wellington Companies totaling

