

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

2005 MAY -3 PM 6: 44
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

UNITED STATES SECURITIES)
AND EXCHANGE COMMISSION,)

Plaintiff,)

v.) CIVIL ACTION

JOHN E. BRINKER, JR.,) CASE NO. IP01-0259-C-H/G

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.)

RECEIVER'S FINAL REPORT OF ACTS AND TRANSACTIONS

James A. Knauer, the Receiver for Castlerock Consulting, LLC, Guardian First Limited, Inc., a Nevada corporation, Guardian First Limited, Inc., a Grenada corporation,

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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, Relief Defendants (the "Wellington Companies"), states:

PROCEDURAL HISTORY

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 "First 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 "Second Order"). The Second 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 "Third Order") The Third 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 (the "Fourth Order").
5. On April 2, 2001 the Examiner filed his *Examiner's First Report*. On April 26,

2001, the Examiner filed his *Examiner's Second Report*. On September 27, 2001, the Examiner filed his *Examiner's Final Report*. On June 11, 2002, the Receiver filed his *Receiver's First Report of Acts and Transactions* (the "*Receiver's First Report*").

6. In light of the fact that the Receiver has also served as the Examiner, references hereafter to actions taken by the 'Receiver' shall also include, where appropriate, actions taken by the 'Examiner' since, in many instances, they are indistinguishable and serve a dual purpose, especially in the area of information and record gathering.
7. Each of the prior Examiner's reports and the Receiver's reports are incorporated herein by reference as if set forth in full hereafter (*H.I.*). This report, for the convenience of the Court, will restate and, in some cases, summarize or paraphrase material statements contained in the prior reports in order to give a fairly broad overview of the proceedings.

BACKGROUND

8. The First Order also directed financial institutions to freeze all bank accounts of the Defendants and the individual defendants, namely John E. Brinker, Jr. ("Brinker") and Gary J. Bentz ("Bentz") (referred to jointly hereafter as the "Individual Defendants") in this action.
9. The same order, enjoined and restrained the Defendants and the Individual Defendants from:

"transferring selling, assigning, pledging dissipating, concealing or otherwise disposing of in any manner, any funds, assets, accounts, or other property belonging to Defendants or Relief Defendants or in their possession, custody or control, wherever located."

10. The Receiver's efforts to investigate the Defendants' financial affairs were hampered by John Brinker's, Carol Brinker's, and Julieann Brinker's assertion of their Fifth Amendment right against self-incrimination when deposed. The Receiver chose not to depose Gary Bentz, after being advised by his counsel that he would also assert his Fifth Amendment rights.
11. The scope of the Receiver's investigation extended to many of the assets of the Individual Defendants (since the funding for purchase of the assets was traced back to many of the Wellington Companies), but the Receiver was not appointed as a Receiver over the persons of the Individual Defendants.
12. In his First Receiver's Report the Receiver predicted:

Given the evidence amassed by the Receiver since his appointment, the Receiver deems it likely that all of the assets of the Individual Defendants will become a part of this Receivership either as the proceeds of a succession of fraudulent conveyances or as the result of execution upon a judgment entered in these proceedings against the Individual Defendants

Although this circumstance eventually came to pass, nevertheless, the remaining assets of the Individual Defendants were not significant enough to provide a fund that would materially affect the outcome of this case.
13. Upon his appointment, the Receiver began to locate and take possession of the assets of the Wellington Companies and assess their liabilities. To assist him in this endeavor he engaged, the law firm of Kroger Gardis & Regas, L.L.P., the accounting firm of Birk, Gross, Bell and Coulter, P.C. (the "Accountants"), and, as local counsel in Cincinnati, Ohio, the law firm of Ulmer & Berne, L.L.P. ("Local Counsel"). Later, the Receiver engaged counsel in Grenada to recover disputed assets in that country as discussed, *infra*.

14. The Accountants for the Receiver spent many hours attempting to piece together records that would assist the Receiver in locating the assets of the Wellington Companies and determine their liabilities. A report¹ of the accountants detailing most of their activities was attached to the *Examiner's Final Report* filed with this court on September 27, 2001.
15. The Receiver, his counsel and SEC counsel took depositions and conducted interviews of a number of former Wellington Companies' employees and subpoenaed records of numerous banks and other brokerage firms, financial institutions, and businesses. The Receiver personally responded to the calls and other communications of numerous investors in and creditors of the Wellington Companies.
16. The Receiver applied to the Court to liquidate the assets of the Wellington Companies.

NOTICE OF THE RECEIVERSHIP

17. The proceedings filed by the SEC against the Wellington Companies were well-publicized in central and southern Indiana, northern Kentucky and western Ohio, the areas in which most of the investors and creditors reside.
18. Due to the large number of creditors and the time required to compile information about the creditors, their claims and the collection and liquidation of assets, the Receiver established a website at www.wellingtonbankinfo.com. The Wellington Receivership website contains copies of all pleadings filed in these proceedings, a listing of miscellaneous information which includes depositions taken by the Receiver in the search for assets; information about the Wellington Companies assets and liabilities;

¹ See parag. 25 and Exhibit 4 of the *Examiner's Final Report*.

copies of many subpoenas issued to banks, individuals and other institutions; and other information which is added to the site as the Receivership progresses.

19. The Receiver and his agents spent many hours compiling the names and addresses of those whom they believed were investors and general creditors of the Wellington Companies, as well as attempting to determine the amounts of their claims.
20. Following his appointment, the Receiver took possession of the mail of the Wellington Companies and caused their mailing addresses to be transferred to a post office box under his control². As a consequence of all of his actions, the Receiver believes that substantially all creditors (the bulk of whom would be characterized as either investors or trade creditors) of the Wellington Companies have been identified.
21. The Receiver believes that he completed a fairly accurate compilation of the number of investors in the Wellington Companies. The estimated total number of investors is 710.
22. A mass mailing to all known investors of the Wellington Companies was made on March 15, 2001 giving notice of the First Order appointing an examiner and requesting investment information in the form of questionnaires that were to be completed and returned. A copy of the form use was attached to the *Receiver's First Report*.
23. Reviewing the questionnaires from the investors that responded to the Examiner's request for information, disclosed that the total amount of

² Even obtaining the mail was a difficult matter as John Brinker, on several occasions, caused the mailing address of the Wellington Companies to be changed without notice to the Receiver.

reported investments was approximately \$20,500,000.

24. A second mailing was sent to the same investors on July 25, 2001, explaining the case and the responsibilities of the Examiner. The letter was also to notify the investors of the Wellington Receivership web site. A copy of this mailing was attached to the Receiver's First Report.
25. The Receiver's accountants worked with the IRS Taxpayer Advocate's office to develop information for investors on how losses incurred in the Ponzi Scheme operated by the Wellington Companies might be treated for tax purposes as discussed in the *Receiver's First Report*. This information was provided to Investor's in 2002.
26. A mailing was sent to all of the known creditors of the Wellington Companies on April 5, 2002, informing them that it was presently unlikely that the Receivership would have the ability to pay their claims. The letter stated, in part:

"I assure you that we have and will continue to make every cost efficient effort to recover assets for your benefit in this case; but candidly, there do not appear to be many places left to look. Unless the claim which the Receivership has against the now closed First International Bank of Grenada (which is, itself, in receivership in Grenada) turns out to have significantly more value than is presently apparent, I believe that you will recover little or nothing through the Receivership.
27. Unfortunately, the foregoing statement was only too accurate as the First International Bank of Grenada Receivership into which the Defendants funneled more than \$10,000,000 of the investors funds remains as an insolvent estate to this day³.
28. Typically, a claims filing process would be initiated in a receivership pursuant

³ See parag. 53, *infra*.

to a request from the Receiver to establish a claims filing bar date, fix the manner for giving notice to claimants and approve the form for the filing of claims. As explained in his *Receiver's First Report*, the Receiver did not request the Court to fix a deadline for the filing of claims in this Receivership since he believed it unlikely there would be funds available to pay unsecured creditor claims. As noted, the claims filing process unfairly implies to the unsophisticated creditor who may not bother to carefully read the entire content of mailings, that some payment may be forthcoming. In light of the rules of this district stating that receiverships shall be conducted "...in accordance with the practice in the administration of estates in bankruptcy..."⁴, the Receiver recommended that no claims filing process be initiated since the practice in bankruptcy cases in this district is not to solicit the filing of claims in cases until there is a likelihood that funds will be available for payment to general unsecured creditors.

29. The Receiver compiled a list of 19 names representing entities that were used by the principals of the Wellington Companies to either receive investor funds, or as a means of diverting funds out of the Wellington Companies (the Wellington Entities"). The Court ordered that all of the assets and liabilities of the Wellington Companies and their affiliates (collectively, the "Wellington Entities") were to be consolidated for the administration of the Receivership, by the *Order for Consolidation of Entities*, entered by the Court on April 24, 2002.

ASSET COLLECTION

30. As more fully described in the *Examiners Final Report* and the *Receiver's First Report*, large amounts of investor funds were used in numerous thinly-capitalized investments in real estate for the benefit of Brinker, Bentz, their

⁴ USDC Southern District of Indiana, L.R. 66.1 (e).

families, and their friends. In most cases no equity existed in the real estate, or the costs of realizing any minimal equity was deemed prohibitive. The Receiver's First Report identified eleven real estate properties into which funds of the Wellington Entities were traced; however, most were in foreclosure.

• Bentz Contempt Proceedings

31. Notably, through a lien search, the Receiver determined Gary Bentz owned real estate at 1822 Duck Creek Road and 2184 Clara Street free and clear of liens until the day before this court froze his assets. On February 26, 2001, he closed on mortgage loans on the two properties. This effectively wiped out approximately \$142,000 of equity in the properties. The two properties were later sold to their land contract purchasers, who were neither investors in Wellington nor Wellington employees. The sales were scrutinized by the Receiver and the SEC, and were approved by this court.
32. Subsequently the SEC requested that Bentz be held in civil contempt for his actions and this Court entered an order, after a hearing on the SEC's motion, finding Bentz in civil contempt on April 19, 2002. The *Entry on Petition to Hold Gary J. Bentz in Civil Contempt* stated the following:

"The court hereby ORDERS defendant Gary J. Bentz to pay...the sum of One Hundred Forty-two Thousand Six Hundred Fifty-six Dollars and 84 cents (\$142,656.84) not later than noon on Wednesday, May 22, 2002. The court also hereby ORDERS defendant Gary J. Bentz to appear in person at a hearing before the court...to show either that he has complied or that he is unable to make such a payment despite having made all reasonable efforts to do so."

33. This Court later found that Bentz had failed to comply with its orders and ordered him jailed on May 23rd, 2002. At a subsequent hearing on May 30,

2002, the Court released Mr. Bentz after he provided additional information on his financial activities that indicated that he had no means of repaying any significant amount of the contempt judgment.

• **Brinker's Stonehill Run Home**

34. Vast sums of money were paid by Brinker for his home which was described in the *Examiner's Final Report*⁵ and the *Receiver's First Report*⁶ as the Stonehill Run property. Brinker and his family were ordered to vacate the residence, which was later sold at Sheriff's sale pursuant to Ohio state court litigation brought by the land contract vendor. Due to prior, perfected secured interests against the residence, superior to that of the Receiver, the sale did not result in any payment to the Receivership estate.

• **Stonehill Run Furnishings**

35. The Receiver determined that significant funds were used by John Brinker to purchase the furnishings for his Stonehill Run home. The Receiver eventually sought and obtained a Court order directing Brinker and his family to vacate their residence and the order also directed that Brinker not remove the furnishings.
36. The Receiver subsequently compiled appraisals of the furnishings, and obtained this Court's authority to sell them for the full appraised value of \$43,420.00. The Court approved the proposed sale on January 16, 2002, and the transaction was consummated shortly thereafter.

• **Julieann Brinker's Boat**

37. Among other notable transfers was approximately \$72,000.00 utilized to

⁵ Examiner's Final Report, at parag. 49

⁶ Receiver's First Report, at parag 35.

purchase a boat for Julieann Brinker. The Brinkers initially refused to surrender the boat, which caused the Receiver to file a turnover motion. The matter was eventually resolved by the submission of an Agreed Entry. Subject to the terms and conditions of this Court's order authorizing the Receiver to sell the boat, the boat was sold by Captain's Cove Marina-West, in Cincinnati, Ohio for approximately \$45,000.00.

• Automobiles and Other Vehicles

38. Brinker and Bentz used their credit to purchase and lease a variety of automobiles in their personal names as well as those of the Wellington Companies⁷, but most of the payments were made by the Wellington Companies. Virtually all of the automobiles were leased or purchased with little or no down payment and all were foreclosed or repossessed with the exception of the 1986 Mercury Capri (which had no lien) that was owned by the Wellington Companies. Despite a demand for its turnover, Mr. Brinker continued to drive the Mercury Capri and wrecked it eradicating any value. The Examiner's Final Report detailed seventeen automobiles that were owned or controlled by Brinker and Bentz.

• Funds Converted by Brinker and Bentz

39. The *Accountant's Report* (attached to the *Examiner's Final Report* as Exhibit "4") identifies \$2,819,613.54 that was received by the Individual Defendants.
40. As detailed in the *Receiver's First Report*, the Receiver believed the actual figure was much higher.

⁷ The First Order freezing the Defendant's assets was entered on February 27, 2001 and it was the product of negotiations between counsel for the SEC and the counsel for Brinker and Bentz. Despite knowing the order freezing his assets was imminent, Bentz leased a new 2001 Lincoln LS on February 15, 2001 and a new 2001 Honda Civic on February 24, 2001.

• Office Equipment

41. Through subpoenas and bank records, the Receiver determined that well over \$150,000 of office furnishings were purchased for use at the offices of the Wellington Entities in Ohio and Grenada.
42. The Receiver engaged in litigation with the Wellington Entities' Ohio landlord who asserted a superior interest in office partitions claimed by the Receiver. Pursuant to this Court's order of February 6, 2002, the successor tenant of 1185's former offices purchased the office partitions for \$10,000.00.⁸
43. Office equipment was purchased for the Grenada offices of the Wellington Companies for \$45,412.45 (which included over \$6,000.00 in shipping costs to Grenada). According to interviews conducted of former Grenada Employees, John Brinker advised them to take the furnishings as compensation for unpaid wages and to pay unpaid bills⁹. No money or property was recovered related to this claim.
44. The Receiver identified a variety of additional office equipment which was located at the home of John Brinker and various offices used by the Wellington Companies. The equipment sold for \$7,613.87 at an auction approved by this Court.

• Other Recoveries

⁸Notwithstanding the equipment's exorbitant purchase price, the Receiver's expert witnesses engaged to testify at the scheduled trial believed this settlement to be a fair price. Their conclusion was largely influenced by an oversupply of used office equipment in the Cincinnati area.

⁹This information was obtained from interviews with former employees living in Grenada.

Jerry Terrill Loan

45. The Receiver collected a loan made to Jerry Terrill that resulted in the payment of \$80,000.00 to the Receivership.

Bentz Stock Account

46. On May 29, 2002, Bentz, by counsel, and the Receiver agreed that a certain stock account in the name of Bentz was created with funds from the Wellington Entities and Bentz turned over the funds in the account to the Receiver in the sum of \$15,779.87

Capitol Bank and GIFSA Claims

47. Bank statements from Capitol Bank International Ltd. (Capitol Bank) indicated that funds of the Wellington Entities were in Grenada in two accounts totaling \$68,975.63, which were to have been repatriated by the Defendants within 14 days of the filing of the *Examiner's Final Report*, as ordered by the Court. Despite Wellington's request, Capitol Bank refused to return the funds. The Receiver met in Grenada with bank officials, who confirmed the existence of the accounts and the approximate balances on hand. Despite the Receiver's persistent efforts to recoup the funds, the bank continued to ignore the Receiver's requests for turnover of the funds, providing various non-compelling and irrational arguments. The Receiver consulted with the SEC's Office of International Affairs, but was unable to effect a recovery and eventually hired Grenadian counsel to assist him in obtaining the bank deposits.
48. The Receiver contracted with Grenadian counsel to attempt recovery of the Capitol Bank account for a contingent fee of a \$1,000 retainer plus 10% of the recovery. This court approved the engagement of the Grenadian counsel on November 27, 2002.

