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OFFICE OF ADMINISTRATIVE LAW
Docket No. BOS-04212-2004S

IN THE MATTER OF BRIAN CLARK, LAWRENCE LASALA, CHRISTOPHER LESTER, LOUIS FARKAS	**AMENDED** **ADMINISTRATIVE COMPLAINT**

Pursuant to the authority granted to the Chief of the New Jersey Bureau of Securities ("the Bureau") by the Uniform Securities Law (1997), N.J.S.A. 49:3-47 *et seq.*, (the Securities Law), and based upon the Bureau staff's investigation of the activities of certain individuals in soliciting, offering and selling certain promissory notes, it appears preliminarily that certain persons have violated the Securities Law and, therefore, this Administrative Complaint is being filed and served: to apprise those persons of the appearance of those violations; to afford them the opportunity to respond fully thereto, through counsel or on their own behalf; and to make a final determination as to whether violations have, in fact, occurred, in which event it is anticipated that the sanctions provided for violations of the Securities Law, including civil monetary penalties and revocation of

registration, will be imposed.

1. Respondent Brian Clark ("Clark"), Central Registration Depository ("CRD") No. 1440175, residing at 2 Compton Court, Monroe, New Jersey 08831, had his registration revoked by the New Jersey Bureau of Securities ("Bureau") on September 24, 2003. Clark was registered with the Bureau as an agent of: (1) First Midwest Securities, Inc. from January 24, 2003 to August 7, 2003; (2) American Investment Services, Inc. from July 19, 1999 to June 21, 2002; (3) Horner, Townsend & Kent, Inc. ("HTK") from September 28, 1995 to March 25, 1999; (4) Josephthal Lyon & Ross Incorporated from August 7, 1995 to September 22, 1995; (5) PML Securities Company from March 11, 1993 to July 24, 1995 and (6) Pruco Securities Corporation from November 19, 1986 to July 14, 1992. Clark is also named as an agent and director of LJC Consulting Corp. ("LJC") with a registered office located at 100 Woodbridge Center Drive, Woodbridge, New Jersey. LJC is not registered with the Bureau in any capacity.

2. Respondent Lawrence LaSala ("LaSala"), CRD No. 2237835, residing at 12 Robin Drive, Oak Ridge, New Jersey 07438, has not been registered with the Bureau in any capacity since he terminated his registration as an agent of Washington Square Securities in July 2002. LaSala was registered with the Bureau as an agent of: (1) Washington Square Securities from October 10, 2000 to July 3, 2002; (2) Allmerica Investments, Inc. from November 3, 1999 to September 19, 2000; (3) HTK from August 23, 1995 to November 1, 1999; (4) PML Securities Company from October 14, 1994 to August 22, 1995 and (5) Pruco Securities Corporation from August 3, 1992 to September 15, 1994.

3. Respondent Christopher Lester, ("Lester"), CRD No. 2875370, residing at 23 Canterbury Circle, Somerset New Jersey, 08873, has not been registered with the Bureau in any

capacity since he terminated his registration as an agent of New York Life Securities, Inc. on February 22, 2001. Lester was registered with the Bureau as an agent of: (1) New York Life Securities Inc. from November 24, 1999 to February 22, 2001 and (2) HTK from April 17, 1997 to November 9, 1999.

4. Respondent Louis Farkas ("Farkas"), CRD No. 721857, residing at 315 Conover Place, Red Bank, New Jersey, 07701, is currently registered with the Bureau as an agent of Network 1 Financial Securities, Inc. Farkas was registered with the Bureau as an agent of: (1) 1st Global Capital Corp. from January 26, 1999 to October 12, 2000 and (2) EQ Financial Consultants, Inc. from September 16, 1986 to October 26, 1998.

FACTUAL BACKGROUND

A. First Capital and US Capital

5. First Capital Services, Inc. ("First Capital") was a Florida corporation located in Boca Raton, Florida, which purported to be in the business of commercial factoring. Commercial factoring is a financing method whereby a "factor" purchases account receivables at a discount from a "client" who is unable or unwilling to wait the thirty or more days that it may take to receive payment on a commercial invoice. In exchange for receiving partial payment on an invoice up-front, the client assigns to the factor the right to receive payment from the invoice debtor and the client also pays interest to the factor.

6. From approximately1995 to 1997, First Capital, in an effort to raise funds for its commercial factoring operation, issued, offered and sold promissory notes, Senior Capital Notes, which promised to pay annual rates of interest of 9.25% and higher, to individual investors through a network of agents.

7. The Senior Capital Notes required a minimum investment of $25,000.00 and were for a term of 180 days but could be renewed.

8. First Capital marketed the Senior Capital Notes through agents who earned commissions of between 3% and 6%.

9. First Capital represented, by way of its agents, that investors' money would be used solely to purchase either government or insured corporate receivables.

10. In 1998, US Capital Funding, Inc. ("US Capital"), a Florida corporation located in Lake Worth, Florida, was formed. US Capital was engaged in the selling of promissory notes, US Capital Notes, to individual investors.

11. The US Capital Notes, similar to the Senior Capital Notes: (1) promised to pay annual rates of interest of 9.25% and higher; (2) were marketed through agents who earned commissions of between 3% and 6%; (3) represented by way of its agents that investors' money would be used solely to purchase either government or insured corporate receivables; (4) were for a term of 180 days but could be renewed; and (5) required a minimum investment was $25,000.00.

12. The US Capital Notes were issued, offered and sold by many of the same agents that sold the First Capital Notes.

13. The money invested in the US Capital Notes was used to fund First Capital.

14. In exchange for the investors' money invested in US Capital Notes, First Capital issued corporate notes to US Capital and paid a 10% commission to US Capital on the money it raised.

15. US Capital would seek the necessary funds from First Capital when a US Capital investor sought redemption of the notes.

16. In the summer of 1999, First Capital began defaulting on the corporate notes which it had issued to US Capital. US Capital in turn began having difficulty making the required interest payments to investors and fulfilling requests for redemption of the notes.

17. In October 1999, US Capital sued First Capital for defaulting on its corporate notes which First Capital had issued to US Capital.

18. In May 2000, First Capital filed for Chapter 11 bankruptcy in the United States Bankruptcy Court, Southern District of Florida, West Palm Beach.

19. The defaults by both First Capital and US Capital have resulted in significant losses to investors across the country, including New Jersey investors.

20. Neither the First Capital Notes nor the US Capital Notes were registered or exempt from securities registration with the Bureau.

21. Respondents Clark, LaSala, Lester and Farkas were among the New Jersey agents that sold these notes.

B. <u>The Agents</u>

22. From May 1998 to June 1999, Clark acted as an agent of First Capital and/or US Capital by selling Senior Capital and/or US Capital Notes. At all relevant times, Clark offered and sold the notes in New Jersey.

23. At all relevant times, Clark was a registered agent of HTK, a New Jersey broker-dealer, and was required by industry rules and standards to annually disclose all outside business activity.

24. Clark failed to disclose his outside business activities relating to the sale of the notes for the year 1998.

25. On March 13, 1998, HTK prohibited registered agents from engaging in any transaction with the general public in connection with the First Capital, Senior Capital Notes.

26. On February 11, 1999, HTK issued a cease and desist letter to Clark which unambiguously stated that "promissory notes are not approved as an acceptable outside business activity by our broker/dealer- Horner Townsend & Kent...any further involvement with the promissory note program from 2/9/99 forward will be grounds for immediate termination."

27. Notwithstanding HTK's prohibition, Clark continued to sell the notes through LJC Consulting, an entity formed by Clark and his wife, Lisa J. Clark, for the purpose of selling the notes.

28. Clark offered and sold at least 12 promissory notes to at least 15 New Jersey investors. The sale of these notes totaled approximately $1,571,886.00. In addition, Clark rolled over at least 8 notes for a total of approximately $1,023,943.00.

29. Clark earned approximately $104,515.00 in commissions as a result of the sale of the notes.

30. Clark has never been registered with the Bureau as an agent of First Capital and/or US Capital.

31. From June 1998 to August 1999, Respondent LaSala acted as an agent of First Capital and/or US Capital by selling Senior Capital and/or US Capital Notes. At all relevant times, LaSala's offer and sale of the notes occurred in New Jersey.

32. At all relevant times, LaSala was a registered agent of HTK, a New Jersey broker-dealer, and was required by industry rules and standards to annually disclose all outside business activity.

33. LaSala failed to disclose his outside business activities relating to the notes for the year 1998.

34. On March 13, 1998, HTK prohibited registered agents from engaging in any transaction with the general public in connection with the First Capital, Senior Capital Notes.

35. On February 11, 1999, HTK issued an urgent memorandum to its registered representatives which unambiguously stated that: "promissory notes are not approved as an acceptable outside business activity by our broker/dealer- Horner Townsend & Kent...any deviation to the above is grounds for immediate termination."

36. Notwithstanding HTK's prohibition regarding the sale of the notes, LaSala continued to sell the notes through Clark and LJC.

37. Respondent LaSala sold at least 28 promissory notes to at least 17 New Jersey investors. The sale of the notes totaled approximately $1,261,359.00. LaSala rolled over at least 12 notes for a total of value of approximately $440,862.00.

38. Respondent LaSala earned approximately $26,690.00 in commissions from the sale of the US Capital Notes.

39. LaSala has never been registered with the Bureau as an agent of First Capital and/or US Capital.

40. From June 1998 to July 1999, Respondent Lester acted as an agent of First Capital and/or US Capital by selling Senior Capital and/or US Capital Notes. At all relevant times, Lester's offer and sale of the notes occurred in New Jersey.

41. At all relevant times, Lester was a registered agent of HTK, a New Jersey broker-dealer, and was required by industry rules and standards to annually disclose all outside business

activity.

42. Lester failed to disclose his outside business activities relating to the notes for the year 1998.

43. On March 13, 1998, HTK prohibited registered agents from engaging in any transaction with the general public in connection with the First Capital, Senior Capital Notes.

44. On February 11, 1999, HTK issued an urgent memorandum to its registered representatives which unambiguously stated that: "promissory notes are not approved as an acceptable outside business activity by our broker/dealer- Horner Townsend & Kent...any deviation to the above is grounds for immediate termination."

45. Notwithstanding HTK's prohibition regarding the sale of the notes, Lester continued to sell the notes through Clark and LJC.

46. Respondent Lester sold at least 18 promissory notes to at least 14 New Jersey investors. The sale of these notes totaled at least $779,631.00. Lester rolled over at least 11 notes for a total of $534,974.00.

47. Respondent Lester earned at least $53,244.00 in commissions from the sale of the Senior Capital and/or US Capital Notes.

48. Lester has never been registered with the Bureau as an agent of First Capital and/or US Capital.

49. From December 1997 to May 1999, Respondent Farkas acted as an agent of First Capital and/or US Capital by selling Senior Capital and/or US Capital Notes. At all relevant times, Farkas' offer and sale of the notes occurred in New Jersey.

50. At all relevant times, Farkas was a registered agent of EQ Financial, a registered

broker-dealer, and was required by industry rules and standards to annually disclose all outside business activity.

51. Farkas failed to disclose his outside business activities relating to the Senior Capital and/or US Capital Notes for the years 1997 and 1998.

52. Respondent Farkas sold at least 11 promissory notes to at least 9 New Jersey investors. The sale of these notes totaled at least $400,202.00. Farkas rolled over at least 14 notes for a total of $723,683.00.

53. Farkas earned at least $45,242.00 in commissions in connection with the sale of the notes.

54. Farkas has never been registered as an agent of US Capital and/or First Capital.

C. <u>The Promissory Notes</u>

55. Respondents used written materials, a promotional sales brochure, in effecting or assisting in effecting the sale of the promissory notes to New Jersey investors who expressed interest in the notes. The brochures stated to investors, among other things, that: (1) "this investment is an ideal combination of handsome returns, rock solid safety and liquidity"; and (2) First Capital Services, Inc. will only finance receivables that are underwritten and insured by Continental Insurance Company."

56. In truth and in fact, Continental Insurance Company did not insure the individual investors' investment, but rather, only insured First Capital against loss.

57. The brochure also included description of First Capital's and US Capital's receivable debtor clients along with the promise that all funds would be held in segregated accounts to used only for the purchasing of receivables.

58. In their respective brochures, First Capital and US Capital predicted an annual percentage rate of return of 9.25% and stated that there was no sale charge for the notes. In truth and in fact, commissions of 5% to 6% were paid to agents including the Respondents.

59. The brochure did not: (1) explain the nature of the investment, its inherent risks or uncertainties; (2) failed to disclose whether the notes contained any potential downfalls, disadvantages or risks; and (3) failed to provide any financial disclosures.

60. Without disclosure to the investors, US Capital pooled all the investor money into a general corporate account which funded First Capital commercial factoring operation.

61. The total amount of money invested in the US Capital Notes by New Jersey investors was in excess of $5 million dollars.

COUNT I
Offering and Selling Unregistered Securities
N.J.S.A. 49:3-60
(Respondents Clark, LaSala, Lester and Farkas)

62. The allegations in the preceding paragraphs are incorporated into this count as if fully set forth herein.

63. The promissory notes sold by Respondents Clark, LaSala, Lester and Farkas, were securities, as defined in N.J.S.A. 49:3-49(m) of the New Jersey Uniform Securities Law, N.J.S.A. 49:3-47 et seq. ("Securities Law").

64. Respondents Clark, LaSala, Lester and Farkas offered or sold unregistered securities to, from or within New Jersey.

65. The securities offered or sold to, from or within New Jersey by Respondents Clark, LaSala, Lester and Farkas were not registered securities with the Bureau as required by N.J.S.A.

49:3-60 or exempt from registration.

66. The securities offered or sold to, from or within New Jersey by Respondents Clark, LaSala, Lester and Farkas were required to be registered.

67. Each offer to sell and sale by Respondents Clark, LaSala, Lester and Farkas of unregistered securities were made in violation of N.J.S.A. 49:3-60.

68. Each violation of N.J.S.A. 49:3-60 is a separate violation of that statute and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

COUNT II
Acting as Agents without Registration
N.J.S.A. 49:3-56(a)
(Respondents Clark, LaSala, Lester and Farkas)

69. The allegations in the preceding paragraphs are incorporated into this count as if fully set forth herein.

70. Respondents Clark, LaSala, Lester and Farkas represented First Capital and/or US Capital in effecting or attempting to effect transactions in unregistered securities from, in or within New Jersey and, thus, acted as an agent, as defined in section 49:3-49(b) of the Securities Law, without being registered with the Bureau.

71. Said respondents violated N.J.S.A. 49:3-56(a) which requires, among other things, that only persons registered with the Bureau may lawfully act as agents.

72. Each instance of said respondent so acting constitutes a separate violation of N.J.S.A. 49:3-56(a) and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

COUNT III

Making Materially False and Misleading Statements and Omitting Facts Necessary to Make Statements Made Not Misleading
N.J.S.A. 49:3-52(b)
(Respondents Clark, LaSala, Lester and Farkas)

73. The allegations in the preceding paragraphs are incorporated into this count as if fully set forth herein.

74. Respondents Clark, LaSala, Lester and Farkas made materially false and misleading statements and omitted material facts, in statements to investors in connection with the offer and sale of securities.

75. Among the materially false and misleading statements, and omitted material facts, told to investors were:

(a) the failure to advise investors that the securities were sold by unregistered individuals in violation of the New Jersey Uniform Securities Law;

(b) First Capital Services, Inc. will only finance receivables that are underwritten and insured by Continental Insurance Company;

(c) all funds would be held in segregated accounts to used only for the purchasing of receivables; and

(d) that there was no sale charge for the notes.

76. Each materially false or misleading statement is a violation of N.J.S.A. 49:3-52.

77. Each violation of N.J.S.A. 49:3-52 is a separate violation of that statute and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

COUNT IV
Engaging in Dishonest or Unethical Practices in the Securities Business
N.J.S.A. 49:3-58(a)(2)(vii)
(Respondents Clark, LaSala, Lester and Farkas)

78. The allegations in the preceding paragraphs are incorporated into this count as if fully set forth herein.

79. Respondents Clark, LaSala, and Lester as registered agents of HTK were required by industry rules and standards to annually disclose all outside business activity.

80. Respondent Farkas as registered agent of EQ Financial was required by industry rules and standards to annually disclose all outside business activity.

81. Respondents Clark, LaSala, Lester and Farkas failed to disclose their outside business activities relating to the Senior Capital Notes and US Capital Notes.

82. By failing to disclose their outside business activities and engaging in outside business activity and accepting compensation for such activity Respondents violated NASD Rules 3040 and 3030.

83. Respondents failure to disclose their outside business activities and engaging in outside business activity and accepting compensation for such activity constitutes dishonest or unethical business practices in the securities business.

84. Respondents' dishonest and unethical business practices are grounds to suspend or revoke each Respondent's registration pursuant to N.J.S.A. 49:3-58(a)(2)(vii).

WHEREFORE, based upon the above, the Bureau Chief makes the following findings:

1. That Respondents Clark, LaSala, Lester and Farkas engaged in the acts and practices as set forth above;

2. That such acts and practices constituted violations of N.J.S.A. 49:3-60, N.J.S.A. 49:3-56(a), N.J.S.A. 49:3-52(b) and N.J.S.A. 49:3-58(a)(2)(vii), as well as the applicable Regulations thereunder;

3. That, for the reasons stated above, the revocation of Respondent LaSala's Lester's and Farkas' agent registration is in the public interest;

4. Pursuant to N.J.S.A. 49:3-69(a), it is in the public interest for the entry of an order for Respondents Clark, LaSala, Lester and Farkas to cease and desist from issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, advertising or distributing any securities from or within this State in violation of the Uniform Securities Law (1997), N.J.S.A. 49:3-47 *et seq.*, and in particular N.J.S.A. 49:3-52, 56 and 60.

DEMAND FOR RELIEF

WHEREFORE, as to Counts I - IV, the Bureau Chief hereby orders:

1. Revocation of the agent registration of LaSala, Lester and Farkas as of the date of this order pursuant to N.J.S.A 49:3-58;

2. The Assessment of civil monetary penalties against Respondents, pursuant to N.J.S.A. 49:3-70.1 in the amount of $200,000.00 against Brian Clark; in the amount of $60,000.00 against Lawrence LaSala; in the amount of $100,000.00 against Christopher Lester; and in the amount of $90,000.00 against Louis Farkas.

3. Pursuant to N.J.S.A. 49:3-69(a), Respondents shall cease and desist from issuing, selling, offering for sale, purchasing, offering to purchase, promoting,

negotiating, advertising or distributing any securities from or within this State in violation of the Uniform Securities Law (1997), N.J.S.A. 49:3-47 *et seq.*, and in particular N.J.S.A. 49:3-52, 56 and 60;

DATED: August 27, 2004

BY: Franklin L. Widmann
Franklin L. Widmann
Chief, Bureau of Securities

NOTICE OF RIGHT TO HEARING

Pursuant to the Uniform Securities Law (1997), N.J.S.A. 49:3-47 *et seq.*, specifically, N.J.S.A. 49:3-58(c), "The Bureau Chief, for good cause shown, may by order summarily postpone, suspend, revoke or deny any registration, pending final determination of any proceeding under this section. Upon entry of the order, the bureau chief shall promptly notify the applicant or registrant, ... that the order has been entered and of the reasons therefor." Furthermore, pursuant to N.J.S.A. 49:3-58 (c)(1) "The bureau chief shall entertain on no less than three days notice a written application to lift the summary postponement, suspension or revocation on written application...but need not, hold a hearing and hear testimony, but shall provide to the applicant or registrant a written statement of the reasons for the summary postponement, suspension or revocation."

The applicant shall have up to 15 days to respond to the Bureau Chief in the form of a written answer and written request for a hearing. The written answer must specifically address each of the allegations set forth in the Order. A general denial is unacceptable. At any hearing involving this matter, an individual respondent may appear on his/her own behalf or be represented by an attorney.

Orders issued pursuant to this subsection to suspend or revoke any registration shall be subject to an application to vacate upon 10 days notice, and a preliminary hearing on the order to suspend or revoke any registration shall be held in any event within 20 days after it is requested, and the filing of a motion to vacate the order shall toll the time for filing an answer and written request for a hearing.

If an applicant or registrant fails to respond by filing a written answer and request for a hearing with the Bureau Chief within the 15 day prescribed period, the registrant shall have waived

the opportunity to be heard and the order shall remain in effect until modified or vacated.

NOTICE OF OTHER ENFORCEMENT REMEDIES

You are advised that the Uniform Securities Law provides several enforcement remedies, which are available to be exercised by the Bureau Chief, either alone or in combination. These remedies include, in addition to this action revoking your registration, the right to seek and obtain injunctive and ancillary relief in a civil enforcement action, N.J.S.A. 49:3-69, and the right to seek and obtain civil penalties in an administrative or civil action, N.J.S.A. 49:3-70.1.

You are further advised that the entry of the relief requested does not preclude the Bureau Chief from seeking and obtaining other enforcement remedies against you in connection with the claims made against you in this action.