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JAMES BONINI
CLERK

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

BRADLEY T. SMITH, CONTINENTAL
MIDWEST FINANCIAL, INC., AND
SCIOTO NATIONAL, INC.

Defendants,

BANCSHAREHOLDERS OF AMERICA, INC.,
AND BANCSHARE INVESTORS BROKERAGE, INC.

Relief Defendants.

Case No.: C2 04 0739

Judge Frost

Magistrate Judge Abel

**SECOND AMENDED COMPLAINT FOR
PRELIMINARY AND PERMANENT INJUNCTIONS,
AND OTHER EQUITABLE RELIEF**

Plaintiff United States Securities and Exchange Commission (the "Commission") alleges
as follows:

SUMMARY

1. Since 2002, Defendant Bradley T. Smith ("Smith") has raised approximately \$3.3 million through a series of private offerings of securities issued by business entities under his ownership and control, including Defendants Continental Midwest Financial Inc. ("Continental"), and Scioto National, Inc. ("Scioto") (referred to herein as the "Entity Defendants"). The offering memoranda for these private securities offerings told investors that

the issuing entity would use the proceeds primarily to purchase stock in small and mid-cap banks.

2. Despite representing to investors that 70 to 80% of the proceeds from the offerings would be invested in small bank stock, Smith and the Entity Defendants have used large amounts of the offering proceeds for other purposes. Smith and the Entity Defendants actually used the investor funds to pay Smith's personal expenses, including his house payments and credit card charges for everything from groceries to dating services, and expenses associated with his other various businesses, such as rent for his office space and employee salaries. In short, Smith told investors he would use their money for one purpose but then actually used it for another, *i.e.*, as his own personal piggybank.

3. The Commission brings this action to put a stop to Smith's and the Entity Defendants' fraudulent offer and sale of securities, and misuse of investor funds. The Commission seeks preliminary and permanent relief enjoining Smith and the Entity Defendants from future violations of the federal securities laws, as well as an asset freeze to avoid dissipation of assets pending the resolution of this action and such other ancillary and equitable relief as is sought herein and may be appropriate.

DEFENDANTS

4. Smith, age 56, has been involved in the brokerage industry since the early 1970s and specializes in small community bank stocks. He resides in Columbus, Ohio and conducted his business from offices at 6457 Reflections Drive, Suite 200, Dublin, Ohio 43017. Smith was the President and CEO of BancShares First, Inc. ("BancShares First"), an NASD-registered broker-dealer, and Relief Defendant Bancshareholders of America (the "Adviser"), an Ohio-licensed investment adviser. Smith also served as Chairman, President and sole director of

Defendants Continental, Scioto and Relief Defendant Bancshare Investors Brokerage, Inc. (“BSIB”).

5. Continental is a Florida corporation with its principal place of business at 6457 Reflections Drive, Suite 200, Dublin, Ohio 43017. Continental was founded by Smith in 2002. Smith served as the Chairman, President, Treasurer and sole director of Continental. Continental is in the business of investing in financial services companies and small banks located primarily in the Midwest.

6. Scioto is a Florida corporation with its principal place of business at 6457 Reflections Drive, Suite 200, Dublin, Ohio 43017. Scioto was founded by Smith in 2004. Smith served as the Chairman, President, Treasurer and sole director of Scioto. Scioto is in the business of investing in financial services companies and small banks located primarily in the Midwest.

RELIEF DEFENDANTS

7. BSIB is a Florida corporation with its principal place of business at 6457 Reflections Drive, Suite 200, Dublin, Ohio 43017. BSIB was founded by Smith in 2001. Smith is the Chairman, President, Treasurer and sole director of BSIB.

8. The Adviser is a Florida corporation with its principal place of business at 6457 Reflections Drive, Suite 200, Dublin, Ohio 43017. The Adviser was founded by Smith in 1998 and has been a licensed investment adviser in the state of Ohio since 2001. The Adviser has two clients: the Community Bank Stock Equity Trust (the “Trust”) and Bankstock Investment Partners Series #1, LP, (the “Partnership”). Smith is the President and an owner of the Adviser.

JURISDICTION AND VENUE

9. The Commission brings this action pursuant to the authority conferred on it by Section 20(b) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77t(b)], Sections 21(d) and (e) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §§ 78u(d) and 78u(e)], and Section 209(d) of the Investment Advisers Act of 1940 (the “Advisers Act”) [15 U.S.C. § 80b-9(d)].

10. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Section 27 of the Exchange Act [15 U.S.C. § 78aa], Section 214 of the Advisers Act [15 U.S.C. § 80b-14] and 28 U.S.C. § 1331.

11. Venue is proper in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Section 27 of the Exchange Act [15 U.S.C. § 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

12. 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 Ohio and elsewhere.

13. 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 Ohio and elsewhere.

FACTS

Offer and Sale of Investments in Continental and Scioto

14. Smith holds himself out to investors as a specialist in small bank stocks. His business consists primarily of establishing and operating private companies whose stated purpose is to serve as vehicles for investors to buy small community bank stock. Since 1999, Smith has established a total of seven new businesses, each of which purports to be in the business of investing in bank stocks and was started through a private securities offering.

15. Four of Smith's businesses have made private securities offerings since 2002: Continental, the Trust, the Partnership and Scioto. In connection with each of these private securities offerings, Smith and the issuing entities represented to investors that the issuer would use the offering proceeds to purchase small bank stocks. These four entities controlled by Smith have raised approximately \$3.3 million through these four private securities offerings. This action focuses on two of the four private offerings as described below.

Continental

16. Beginning in July 2002 and continuing until September 2003, under Smith's direction and control, Continental held a private offering of its common stock. Continental officers, including Smith, sold Continental stock. Investors were provided with a private offering memorandum dated July 22, 2002, as well as other written materials and oral representations describing Continental's business and how the proceeds of Continental's private offering would be used.

17. According to the private offering memorandum, a maximum of \$2.27 million would be raised through the offering for the purpose of investing in "financial services companies and minority interests in small banks located primarily in the Midwest."

18. The private offering memorandum contains a section entitled “Estimated Use of Proceeds,” which provides that \$1.85 million, or over 80% of the proceeds, will be used for the “purchase of stock in small banks.”

19. Smith personally sold Continental stock to at least 7 investors. In total, the offering raised \$1,353,803 from 54 investors. The proceeds from the Continental private offering were deposited into a checking account at U.S. Bank. Some portion of the proceeds were later diverted into two other checking accounts. Smith had check-writing authority for each of the three Continental bank accounts.

20. Contrary to the representations in its private offering memorandum, Continental did not use over 80% of the proceeds from the offering to buy small bank stock. Instead, Smith – individually and through his control of Continental as the Chairman, President, Treasurer and sole director – used the funds in Continental’s bank accounts to pay personal expenses and the business expenses of his other businesses. For example, Smith used \$111,210 to pay himself and his employees; he used \$119,712 to pay taxes; he used \$51,825 to pay rent for his offices; and he used \$133,532 to pay his own American Express bills, including clearly personal charges for men’s clothing, nutritional supplements, groceries, gasoline and a dating/escort service.

21. Only \$123,000, or roughly 9%, of the funds raised in the Continental private offering were invested in small bank stock as represented in the offering memorandum. Virtually all of those investments were subsequently liquidated, and the proceeds used by Smith to pay additional personal and unrelated business expenses. As of June 30, 2004, the Continental investments were worth approximately \$10,000.

Scioto

22. From January 2004 through the present, under Smith's direction and control, Scioto has engaged, and is engaging in, a private offering of its common stock. Scioto officers, including Smith, have sold Continental stock in the offering. The offering remains open. As of June 30, 2004, Scioto had raised approximately \$798,000 from 28 investors.

23. Each of the investors in the offering received a private offering memorandum dated January 9, 2004, as well as other written materials and oral representations describing Scioto's business and how the proceeds of Scioto's private offering would be used. The private offering memorandum states that the company's purpose is to invest in "financial services companies and minority interests in small banks located in the Midwest."

24. The private offering memorandum for Scioto further states that a maximum of \$1,008,000 would be raised and that \$700,000, or approximately 70% of the proceeds, would be used for the "purchase of stock in small banks."

25. Contrary to the representations in the private offering memorandum, Scioto did not use 70% of the proceeds from the offering to buy small bank stock. Instead, Smith – individually and through his control as the Chairman, President, Treasurer and sole director of Scioto – used the funds in Scioto's bank accounts to pay personal expenses and the business expenses of his other businesses.

26. The proceeds from the Scioto offering were deposited into a U.S. Bank bank account. As of June 30, 2004, \$140,000 (or roughly 17%) had been transferred to investment accounts. Over \$454,000 has been transferred to Continental accounts and most has been used for payroll, rent and Smith's American Express bills. For example, Smith used funds from the Scioto offering, funneled through the Continental accounts, to pay \$6,089 for clothing, \$225 for

car washes and \$339 for nutritional supplements. Smith also used \$254,502 to pay himself and his employees, and \$16,975 for rent.

27. In addition, \$30,000 was used to pay back one of Smith's employees who had loaned money to Continental and \$30,000 was used to pay for a Marco Island marketing event which Smith sponsored in January 2004.

Misrepresentations of Material Fact

28. From at least July 2002 to September 2003, Smith and Continental, in connection with the offer and sale of Continental stock, made material misstatements and omissions to investors. Among other things, Smith and Continental misrepresented that Continental's purpose was to invest in small banks, and that the majority of the funds Continental raised would be so invested. Smith and Continental also omitted to tell investors that the funds they invested would be used to pay Smith's personal expenses as well as the expenses of other businesses. Smith and Continental knew or were reckless in not knowing that they used investor funds in a manner inconsistent with the representations they had made in offering and selling Continental stock.

29. From at least January 2004 to August 2004, Smith and Scioto, in connection with the offer and sale of Scioto stock, made and are making, numerous material misrepresentations to investors. Smith and Scioto misrepresented that Scioto's purpose was to invest in small banks and that the majority of the funds Scioto raised would be so invested. Smith and Scioto also omitted to tell investors that the funds they invested would be used to pay Smith's personal expenses as well as the expenses of other businesses. Smith and Scioto knew or were reckless in not knowing that they used investor funds in a manner inconsistent with the representations they had made in offering and selling Scioto stock.

30. These misrepresentations are material and go the heart of the investments. A reasonable investor would want to know that the funds intended for investment in small bank stocks were diverted for Smith's personal use and to pay unrelated business expenses. Furthermore, Smith's and the Entity Defendants' misrepresentations to investors and misuse of the money raised in the private securities offerings operated as an ongoing device or scheme to defraud investors.

Loans to Relief Defendants

31. The Defendants' accounting records indicate that as of July 31, 2004, Continental had loaned \$313,012.99 in investor proceeds to BSIB and \$166,757.40 in investor proceeds to the Adviser. The accounting records also indicate that Scioto loaned \$464,535.46 in investor proceeds to the Adviser.

The Threat of Ongoing Solicitation and Use

32. There is a reasonable likelihood that Smith and the Entity Defendants will engage in future violations of the securities laws.

33. The Partnership and Scioto continued to solicit new investors up until the time this action was filed. Smith and the Entity Defendants are likely to misappropriate additional investor funds raised through the sale of securities. Smith has been spending between \$70,000 and \$100,000 per month of investor funds to pay his personal expenses and to keep his various businesses operating.

COUNT I Against Smith, Continental and Scioto for Violations of Section 17(a)(1) of the Securities Act

34. Paragraphs 1 through 33 are realleged and incorporated by reference herein.

35. At the times alleged in this Complaint, Defendants, in the offer and sale of securities in the form of stock, 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, all as more fully described above.

36. In the offer and sale of securities described above and as part of the scheme to defraud, Defendants have made and are making false and misleading statements of material fact or 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 to investors and prospective investors regarding, among other things, the use of investor funds.

37. Defendants knew or were reckless in not knowing that the statements described herein were materially false and misleading.

38. By reason of the activities described herein, Defendants have violated and are violating Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II
Against Smith, Continental and Scioto for Violations of
Section 17(a)(2) and 17(a)(3) of the Securities Act

39. Paragraphs 1 through 33 are realleged and incorporated by reference herein.

40. At the times alleged in this Complaint, Defendants, in the offer and sale of securities in the form of stock, 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 or omissions 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 of securities.

41. By reason of the activities described herein, 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 III
Against Smith, Continental and Scioto for Violations of Section 10(b)
of the Exchange Act and Rule 10b-5 Thereunder

42. Paragraphs 1 through 33 are realleged and incorporated by reference as if set forth fully herein.

43. At the times alleged in the Complaint, Defendants, in connection with the purchase and sale of securities in the form of stock, 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.

44. Defendants knew or were reckless in not knowing that the statements or omissions described herein were materially false or misleading.

45. By reason of the activities described herein, Defendants violated and are violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

COUNT IV
Against Smith for Violations of Section 20(a) of the Exchange Act

46. Paragraphs 1 through 45 are realleged and incorporated by reference as if set forth fully herein.

47. As Chairman, President and sole director of Defendants Continental and Scioto, Smith possessed, directly or indirectly, the power to direct or control Continental's and Scioto's management, policies and business activities, including the private securities offerings and the use of proceeds from the offerings. Among other things, Smith reviewed and approved the written materials provided by Continental and Scioto to their investors and instructed other individuals employed by Continental and Scioto as to what information to give investors orally and in writing. Smith also controlled Continental's and Scioto's bank accounts and made the decisions as to how the investors' funds were used. Accordingly, Smith is a control person of Continental and Scioto pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

48. By reason of the foregoing, Smith is liable as a controlling person for Continental's and Scioto's 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] thereunder, and unless enjoined, will continue to cause violations of these provisions of the Exchange Act and rule thereunder.

COUNT V
Against Smith for Aiding and Abetting Violations of Section 10(b)
of the Exchange Act and Rule 10b-5 Thereunder

49. Paragraphs 1 through 48 are realleged and incorporated by reference as if fully set forth herein.

50. At the times alleged in the Complaint, Smith, directly or indirectly, aided and abetted Continental's and Scioto's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Specifically, Smith knowingly provided substantial assistance to Continental

and Scioto, in connection with the purchase and sale of securities in the form of stock and by the use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly, to employ devices, schemes and artifices to defraud, make untrue statements of material fact and omit 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 engage 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.

51. Smith knew or was reckless in not knowing that the statements or omissions described herein were materially false or misleading.

52. By reason of the activities described herein, Smith has aided and abetted Continental's and Scioto's 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] thereunder, and unless enjoined, will continue to cause violations of these provisions.

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that the Court:

I.

Find that Defendants committed the violations alleged above.

II.

Grant Orders of Preliminary and Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining Defendants Smith, Continental, and Scioto, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the Orders of Preliminary and Permanent Injunction, by personal service or otherwise, and each of them, from,

directly or indirectly, engaging in the acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§77q(a)(1), 77q(a)(2) and 77q(a)(3)] and Sections 10(b) and 20(a) of the Exchange Act [15 U.S.C. §78j(b)], and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

III.

Grant an Order requiring Defendants Smith, Continental, and Scioto, and Relief Defendants the Adviser and BSIB to disgorge all profits or proceeds that they have received as a result of the acts and courses of conduct complained of herein, with prejudgment interest.

IV.

Grant an Order prohibiting Defendants Smith, Continental and Scioto, and Relief Defendants the Adviser and BSIB, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the Order of Preliminary Injunction and the Order of Permanent Injunction by personal service or otherwise, and each of them, from directly or indirectly:

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

B. destroying, mutilating, concealing, altering or disposing of in any manner, any of the books, records, documents, correspondence, brochures, manuals, obligations or other property (including records contained on any computer or computer diskette) pertaining to the offer and sale of securities of Continental, the Partnership, Scioto or the Trust, wherever located.

V.

Grant an Order requiring Defendants Smith, Continental and Scioto, and Relief Defendants the Adviser and BSIB, to:

- A. produce to the Plaintiff all current accountant's reports, bank statements, documents indicating title to real or personal property, and any other indicia of ownership or interest in property of any of the Defendants, which indicia of ownership or interest are now in the Defendants' actual or constructive possession;
- B. produce to the Plaintiff all books, records and other documents in their actual or constructive possession relating to the offer or sale of securities issued by Continental, the Trust, the Partnership and Scioto; and
- C. provide to the Court an accounting of all funds received from investors in connection with the investments in the private securities offerings of Continental, the Trust, the Partnership and Scioto, the uses to which such investor funds were put and the amounts of any remaining such funds and their location, and an accounting of any remaining assets of the Defendants, and their location; provided, however, that nothing in the Order shall be construed to require Defendants to abandon any constitutional or other legal privilege which they may have available to them.

VI.

Grant an Order directing the Defendants to pay civil fines and/or penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

VII.

Retain jurisdiction of this action in accordance with the principals of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VIII.

Grant Orders for such further relief as the Court may deem appropriate.

Dated: April 15, 2005

Respectfully submitted,

/s/ Andrea R. Wood
Andrea R. Wood (IL ID # 6256883)
Erik J. Lillya (IL ID # 6207675)
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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing **Second Amended Complaint for Preliminary and Permanent Injunctions, and Other Equitable Relief** was served upon the following counsel of record:

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By electronic service, this 15th day of April, 2005.

/s/ Andrea R. Wood
Andrea R. Wood