

JUDGE JONES

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PHILLIP HERMAN, MARC WEIN,  
MILLENNIUM SERVICES CORP., and  
BRANIN INVESTMENTS, INC.,

Defendants.

00 Civ. ( )

COMPLAINT

FILED  
U.S. DISTRICT COURT  
2000 JUL 27 AM 10:20  
S.D. OF N.Y.

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint

against Phillip Herman ("Herman"), Marc Wein ("M. Wein"), Millennium Services Corp.

("Millennium"), and Branin Investments, Inc. ("Branin") (collectively, the "Defendants"),

alleges as follows:

SUMMARY

1. The Defendants in this action defrauded fifty-six individual investors and one institutional investor of \$4.8 million by offering and selling unregistered securities of Millennium, a start-up company formed by Branin in 1997 purportedly to acquire and operate primarily minority-owned funeral homes located throughout the United States. Herman,

Millennium, and Branin conducted a purported Regulation D offering of Millennium preferred stock between April 1997 and August 1997. M. Wein, a registered representative of FAB Securities of America, Inc., f/k/a RAS Securities, Inc., at the time, sold most of the preferred stock to individual unaccredited investors and received more than \$430,000 for his role in the offering. Herman, the chairman of Millennium and the sole shareholder of Branin, solicited several individual investors in 1997 as well as a \$500,000 investment from an institutional investor in February 1998. In connection with the offering, the Defendants, either directly or indirectly, made material misrepresentations and omissions concerning, among other things, the use of investor proceeds, the progress of Millennium's development into a consolidator of funeral homes, the identity and sophistication of other Millennium investors, and the safety of the Millennium investment.

2. The Defendants, directly or indirectly, have engaged in transactions, acts, practices, and courses of business that constitute violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a), 77e(c), 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

3. Unless the Defendants are permanently enjoined, they will again engage in the transactions, acts, practices and courses of business alleged in this Complaint, and in transactions, acts, practices, and courses of business of similar type and object.

## JURISDICTION AND VENUE

4. The Commission brings this action pursuant to the authority conferred upon it by Section 20 of the Securities Act, 15 U.S.C. § 77t, and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), for a final judgment: (a) permanently enjoining the Defendants from engaging in the transactions, acts, practices, and courses of conduct alleged in this Complaint; (b) directing the Defendants to disgorge their ill-gotten gains, plus prejudgment interest; (c) requiring each Defendant to provide an accounting; (d) ordering the Defendants to pay civil penalties; and (e) imposing such other relief as the court deems necessary and appropriate.

5. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77(d) and 77v(a), and Sections 21(d) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d) and 78aa.

6. The Defendants, directly or indirectly, singly or in concert, have made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein, certain of which occurred in the Southern District of New York, including the offer and sale of securities. In addition, Millennium and Branin share an office located in the Southern District of New York and M. Wein resides in the Southern District of New York.

## DEFENDANTS

7. **Millennium** was incorporated in Delaware on May 20, 1997 and has its principal offices in New York, New York. Known as Golden Eagle Acquisition Corp. ("GEAC") until June 1997, Millennium merged in November 1997 with MSC Delaware Corporation ("MSC"). MSC, incorporated in Delaware on April 14, 1997, was previously known as GEAC Corporation and was reorganized and renamed MSC in June 1997 to serve as a vehicle to raise capital through the stock offering at issue. Millennium and its predecessors (hereinafter individually and collectively "Millennium") are not registered with the Commission. Nor are Millennium's securities registered with the Commission.

8. **Branin** was incorporated in Delaware on May 22, 1994 and has its principal offices in New York, New York. Branin is not registered with the Commission. Branin describes itself as a merchant banker that creates, acquires and manages companies as a service to other companies in exchange for advisory fees.

9. **Herman**, age 53, resides at 18 Branin Road, Medford, New Jersey, 08055, and was the chairman of the board of MSC prior to its merger into Millennium. He has been Millennium's chairman since the company's inception and sole shareholder of Branin since 1994.

10. **M. Wein**, age 41, resides at 3 Hanover Square, #137, New York, New York 10004, and was a registered representative with FAB Securities of America, Inc. ("FAB"), a registered broker-dealer f/k/a RAS Securities, Inc., until he resigned in June 1999.

## DEFENDANTS' FRAUDULENT CONDUCT

11. According to April 1997 and June 1997 "Confidential Business Plan[s]," Branin planned to develop Millennium on an expedited basis into a "consolidator" that owned and managed several dozen funeral homes and that rivaled the six other consolidators of funeral homes in the United States and Canada. These plans called for rapid infusion of capital into Millennium and "an aggressive acquisition strategy" over two years. The Confidential Business Plans envisioned that Millennium would own 28 funeral homes by year two, and then realize one of two exit strategies: Millennium either would (1) launch an initial public offering; or (2) sell its business to one of the larger consolidators. According to the Confidential Business Plans and Millennium's August 1997 "Confidential Offering Memorandum" ("Offering Memorandum"), Millennium, for the most part, anticipated making 100% cash purchases of funeral homes.

12. Between April 1997 and September 1997, Millennium conducted an offering of 12% Cumulative Convertible Preferred Stock ("Preferred Stock"). The offering purported to qualify as a private placement for accredited investors only under Regulation D. Millennium and Branin, through Herman, retained M. Wein, then a registered representative at FAB, to solicit investors. Between April 1997 and September 1997, M. Wein solicited fifty-six individuals to invest \$4.3 million in the Preferred Stock. M. Wein was paid \$437,000 of the offering proceeds for his role in the offering.

13. Each of the Defendants made representations in the offer and sale and in connection with the purchase and sale of Millennium's securities. M. Wein made

representations directly to investors orally and by sending certain investors written materials, including the Confidential Business Plans and Offering Memorandum. Herman made representations, directly and indirectly, by oral communications and by providing certain investors written materials, including the Confidential Business Plans and the Offering Memorandum. Branin and Millennium made representations to investors through Herman as sole shareholder of Branin and chairman of Millennium, directly or indirectly, by oral communications and by providing certain investors written materials, including the Confidential Business Plans and the Offering Memorandum.

14. Through Herman, Branin and Millennium also raised \$500,000 by selling common stock in Millennium an institutional investor in February 1998. During September and October 1997, Herman made representations to this investor orally and provided the investor with written materials, including the Offering Memorandum and the June 1997 Confidential Business Plan.

15. As alleged in more detail in paragraphs 17 through 30 below, the Defendants made four categories of material misrepresentations in offering and selling Millennium securities. First, the Defendants falsely represented that investor proceeds would fund Millennium's purchase of funeral homes when at least half of the proceeds went to other Branin-related businesses, M. Wein, and other improper uses. Second, the Defendants falsely represented that Millennium already had acquired several funeral homes prior to the offering, even though it had not acquired any homes by that point. Third, the Defendants falsely represented the identity and sophistication of other Millennium investors. Specifically, Herman falsely told at least one investor that the other Millennium investors were members of either the

management team or the Bacardi rum family and M. Wein told potential investors that he had invested his own money in Millennium. Fourth, M. Wein falsely represented the investment in Millennium as “risk-free” and failed to disclose that Millennium stock was not appropriate for unaccredited investors. Each of the Defendants knew or was reckless in not knowing that these representations were false and misleading when made.

***Misrepresentations and Omissions Concerning Use of Proceeds***

16. Each of the Defendants represented, orally and in written materials, that investor proceeds would fund Millennium’s purchase of funeral homes and Millennium’s operations.

Among other things:

- a) ***M. Wein*** told investors orally that Millennium would direct the proceeds raised from the offering to the purchase of funeral homes. M. Wein also provided to certain investors written materials, including the Confidential Business Plans and the Offering Memorandum which explained that Millennium would use the offering proceeds to acquire funeral homes and for other working capital purposes.
- b) ***Herman*** also told investors, directly or indirectly, that Millennium would use investor proceeds to acquire funeral homes orally and in written materials, including the Confidential Business Plans and the Offering Memorandum.
- c) ***Millennium and Branin*** made representations that the offering proceeds would be used to purchase funeral homes, through Herman, who owned and operated Branin and who served as chairman of Millennium. Millennium and

Branin also made representations about the use of the offering proceeds in the Confidential Business Plans and the Offering Memorandum.

17. These representations concerning the use of proceeds were false. Herman, Millennium and Branin did not use a significant portion of the offering proceeds to purchase funeral homes, but instead, diverted the proceeds to other businesses controlled by Herman, to M. Wein and other recipients other than Millennium. For example, between May 1997 and January 1998, Herman and Branin funneled at least \$1.5 million in offering proceeds to Carpet Barn/Nations Flooring Inc. ("Nations Flooring"), a Branin affiliate. Millennium investor proceeds enabled Nations Flooring to make dividend payments to its shareholders and to make quarterly payments to its creditors. During 1997, Herman and Branin directed additional investor proceeds to two other Branin affiliates, American Rockwool Acquisition Corp. and SAC. As of December 31, 1997, Branin and its affiliates owed approximately \$2.5 million to Millennium. Moreover, contrary to the Offering Memorandum, which stated that no person would receive any compensation for soliciting investments in Millennium, another \$437,000 in investor proceeds went to pay M. Wein's sales commissions. Finally, the Defendants failed to disclose that a portion of the offering proceeds would be used to pay dividends to Millennium preferred shareholders.

18. Herman, and through Herman, Branin and Millennium, knew or were reckless in not knowing that Millennium proceeds were not being used as described to investors. Herman, and through Herman, Branin, personally directed the diversion of those proceeds to Branin and other Branin affiliates controlled by Herman.



19. During the Offering, M. Wein knew or was reckless in not knowing that the investor proceeds were not going to the purchase of funeral homes or the operations of Millennium. First, M. Wein had received and would continue to receive ten percent of the offering proceeds as compensation for conducting the offering. Second, M. Wein told third parties that Millennium planned to use offering proceeds to pay dividends to the investors.

***Misrepresentations Concerning Millennium's Progress***

20. M. Wein, Herman, and through Herman, Branin and Millennium, made representations concerning Millennium's progress in developing into a "consolidator" of funeral homes. Among other things:

- a) *M. Wein*, during the offering, told at least one investor that Millennium already owned six-to-seven funeral homes, other investors that it owned ten-to-fifteen funeral homes, and another investor that it had purchased twenty minority-owned funeral homes.
- b) *Herman*, in June 1997, told actual or potential investors that Millennium had already acquired a "few" homes. Herman also told at least one potential investor that Millennium was "not a speculative start-up company" and that if Millennium liquidated the homes already acquired, investors would receive back his full investment.

21. These representations were false. Millennium did not buy any funeral homes in 1997, let alone during the offering period. Millennium never purchased more than four funeral homes and directed only a fraction of the proceeds raised from investors to those purchases. As a

result, Millennium shouldered significant loans to finance the bulk of the purchase price.

Millennium, therefore, did not adhere to its plans to pay cash for funeral homes, as anticipated in the Offering Memorandum and the Confidential Business Plans.

22. During the offering, M. Wein knew or was reckless in not knowing that Millennium had not acquired any funeral homes. Between at least June 1997 and November 1997, M. Wein told third parties that Millennium had not yet acquired any funeral homes.

23. Herman, and through Herman, Branin and Millennium, knew or were reckless in not knowing when Herman represented that Millennium already had acquired funeral homes that Millennium had made no such acquisitions. Herman, as chairman of Millennium, controlled Millennium's bank account and knew how its funds were being spent and knew Millennium's operations.

***Misrepresentations Concerning Other Investors***

24. M. Wein, Herman, and through Herman, Branin and Millennium, made representations to actual or potential investors concerning the identity and sophistication of other investors in Millennium. Among other things:

a) ***Herman*** told at least one investor that all Millennium investors were accredited and that Millennium's investors were either members of the Bacardi rum family or members of the Branin management team. Herman's assertion is reinforced in the Offering Memorandum he provided to that investor and others, which states that all of the preferred shareholders will be accredited. Moreover, in December 1997, Herman filed the Commission's Form D for the Millennium

offering, in which Millennium represented that all of its Preferred Stock shareholders were accredited.

b) *M. Wein*, as part of his sales pitch, told investors that he personally had invested in Millennium. To some of these investors, he described his investment as substantial.

25. These representations concerning the identity and sophistication of the other Millennium investors were false. M. Wein solicited fifty-six individual investors, none of whom were members of the Bacardi rum family or the Branin management team. Moreover, at least thirty of these investors were not even accredited investors under Regulation D. Moreover, M. Wein never personally invested in Millennium. Although M. Wein obtained 250,000 shares of Millennium stock, he received these shares for free as additional compensation for conducting the offering.

26. Herman, and through Herman, Branin and Millennium, knew that no members of the Bacardi rum family or the Branin management team had invested in Millennium. Herman, and through him, Branin and Millennium, also knew or were reckless in not knowing that most of M. Wein's fifty-six individual investors were unaccredited. Herman knew that subscription agreements purportedly signed by Millennium investors contained representations that made no sense on their face and knew or was reckless in not knowing that M. Wein had forged the signatures of investors on certain subscription agreements. Herman took no steps to determine whether the investors were accredited even though Branin personnel raised the issue with Herman.

27. M. Wein knew that he had received his shares in Millennium for free as additional compensation for conducting the offering and invested none of his own money in the start-up.

*Misrepresentations Concerning the Safety of the Investment*

28. To numerous potential investors, M. Wein represented Millennium as a “risk-free” investment in which stockholders would double or triple their money.

29. M. Wein’s representations about the safety of the Millennium investment were false. According to the Offering Memorandum, which was not sent to many investors, the Preferred Stock was “speculative, involve[d] a high degree of risk, and should be purchased only by persons who can afford to lose their entire investment.”

30. At the time that M. Wein made these representations, he knew or was reckless in not knowing that Millennium actually was a speculative investment appropriate only for accredited investors. In June 1997, M. Wein described the investment to a longtime friend and customer as “risky” and told that customer that Millennium could “go bust.” Moreover, before that customer invested, M. Wein reportedly gave him a copy of the Offering Memorandum, which, as discussed above, describes Millennium as a high-risk investment. Despite this knowledge, M. Wein solicited at least thirty unaccredited investors to invest in Millennium.

**FIRST CLAIM FOR RELIEF**

*Violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a),  
Section 10 (b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5  
thereunder, 17 C.F.R. § 240.10b-5 by all Defendants*

31. The Commission repeats and realleges the allegations contained in paragraphs 1 through 30 above.

32. The Defendants, directly or indirectly, knowingly or recklessly, by the use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce or by the use of the mails, in the offer or sale, or in connection with the purchase or sale, of securities: (a) have employed devices, schemes or artifices to defraud; (b) have made untrue statements of material facts, and have omitted to state material facts necessary to make the statements, in light of the circumstances under which they were made, not misleading; or (c) have engaged in transactions, acts, practices, and courses of business which have operated as a fraud or deceit upon any person.

33. The Defendants offered and sold Millennium stock by making the false and misleading misrepresentations described in paragraphs 11 through 30 above.

34. At the time they made the misrepresentations described in paragraphs 11 through 30 above, the Defendants knew or were reckless in not knowing that these misrepresentations were false and misleading.

35. The false and misleading statements made by the Defendants, as set forth in paragraphs 11 through 30 above, were material.

36. By reason of the transactions, acts, practices, and courses of business set forth above, the Defendants have violated and, unless restrained and enjoined, will again violate Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

### **SECOND CLAIM FOR RELIEF**

#### *Violations of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c) by all Defendants*

37. The Commission repeats and realleges the allegations contained in paragraphs 1 through 30 above.

38. The Defendants sold and offered to sell Millennium's securities when no registration statement was filed or in effect as to such securities and no exemptions from registration were available to Millennium.

39. The Defendants, directly or indirectly, have made use of the instruments or means of transportation or communication in interstate commerce, or of the mails, to sell and offer to sell securities, when no registration statement had been filed or was in effect as to such securities, and when no exemption from registration was available.

40. By reason of the foregoing, the Defendants, singly or in concert, directly or indirectly, have violated and, unless permanently enjoined, will again violate Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c).

## RELIEF SOUGHT

WHEREFORE, Plaintiff Commission respectfully requests a Final Judgment:

A. Permanently enjoining the Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

B. Permanently enjoining the Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from 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.

C. Permanently enjoining the Defendants and their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violations of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c).

D. Directing the Defendants, jointly and severally, to disgorge all ill-gotten profits, gains, income and benefits, derived, directly or indirectly, as a result of the violative conduct alleged herein, plus prejudgment interest.

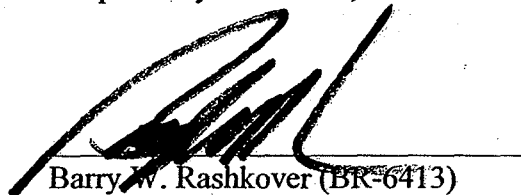
E. Ordering that each of the Defendants file with this Court and serve upon plaintiff Commission a verified written accounting of all assets, and all money or property acquired or disposed of from January 1, 1997 to the date of the accounting.

F. Assessing civil penalties against each of the Defendants pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), for the violations alleged herein.

G. Granting such other relief as this Court may deem just and proper.

Dated: July 22, 2000 —  
New York, NY

Respectfully Submitted,



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