

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(West Palm Beach Division)

97-8207

CIV - HURLEY

FRANK L. LYNN, JR.

CASE NO. UNITED STATES DISTRICT JUDGE

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JAMES W. HALL,

Defendant.

COMPLAINT FOR
INJUNCTIVE AND
OTHER RELIEF

Plaintiff, Securities and Exchange Commission
("Commission"), alleges that:

INTRODUCTION

1. The Commission brings this action to prevent Defendant James W. Hall ("Hall") from violating the registration and antifraud provisions of the federal securities laws. Hall, the former president of two related Florida corporations previously engaged in the accounts receivable factoring business, made misrepresentations and omissions of material facts to investors in connection with their investments, resulting in investor losses of millions of dollars.

DEFENDANT AND OTHERS

Defendant

2. James W. Hall is the former president of Intercapital Funding Corporation n/k/a IFC International, Inc. ("IFC") and Intercapital Funding Resources, Inc. n/k/a Prime Capital, Inc. ("IFR") (collectively, "Intercapital"). In November 1990, Hall was disbarred from the State Bar of Iowa for bank fraud.

Committee On Professional Ethics and Conduct of the Iowa State

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Bar Association v. James Hall, Case No. 343/90-1059 (In the Supreme Court of Iowa).

Others

3. Intercapital Funding Corporation n/k/a IFC International, Inc. ("IFC") is a private corporation incorporated in Florida in June 1991 and headquartered in West Palm Beach, Florida.

4. Intercapital Funding Resources, Inc. n/k/a Prime Capital, Inc. ("IFR") is a private corporation incorporated in Florida in May 1993 and headquartered in West Palm Beach, Florida. Initially, IFR was formed as an affiliate of IFC. IFR's operations were managed by the same officers and directors of IFC. Involuntary Chapter 7 bankruptcy proceedings were filed against IFR in March 1995. The proceedings were converted to Chapter 11 bankruptcy in April 1995. In August 1996, IFR was administratively dissolved by the State of Florida for failure to file an annual report.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § § 77t(b), 77t(d) and 77v(a), and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § § 78u(d), 78u(e), and 78aa. The Commission brings this action pursuant to these authorities to restrain and enjoin Defendant Hall from engaging in the acts

and practices complained of herein, and for other equitable relief.

6. At all relevant times, Hall resided and/or conducted business within the Southern District of Florida. Defendant Hall engaged in the acts and practices complained of herein within the Southern District of Florida.

7. Defendant Hall, directly or indirectly, singly or in concert, has made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, or the mails, in connection with the acts, practices, and courses of business complained of herein.

BACKGROUND

8. Intercapital was formed to engage in the business of locating accounts receivable, purchasing them from "clients" at a discount, and then collecting payments from the underlying account debtors.

9. Intercapital used investor funds to finance the accounts receivable purchases.

10. Intercapital - - predominately through Hall - - met with potential investors and subsequently entered into "joint venture" agreements with them, offering up to 30% annual interest on their investments.

11. Investor funds were pooled to purchase the accounts receivable.

JOINT VENTURE AGREEMENT

12. The joint venture agreement entered into between Intercapital and its investors represented, in part, that: (a) the purpose of the joint venture was "solely to buy, sell, and collect" accounts receivable for profit; (b) Intercapital would obtain an insurance policy insuring payment of 100% of all nongovernment accounts receivable; (c) Intercapital would verify the creditworthiness of the seller of the accounts receivable and the validity of the accounts; (d) Intercapital would perform UCC lien searches and file UCC-1 financing statements to perfect title to the accounts receivable; and (e) Intercapital would deliver monthly reports to investors detailing the status of all accounts receivable collections.

13. Hall also made the same representations verbally when meeting with potential investors.

14. The joint venture agreement lacked any provision granting investors access to company books or records or providing them with the right to choose or replace company officers and directors.

15. According to the joint venture agreement, Intercapital was to "perform the day-to-day responsibilities of locating, investigating and collecting the Accounts [receivable] purchased by the Joint Venture."

16. Investors had no role in any of the management or decision-making process of Intercapital.

17. Hall, as president, typically signed the joint venture agreements on Intercapital's behalf.

INTERCAPITAL'S ACCOUNTS RECEIVABLE

18. As of September 1994: (a) certain of the accounts receivable recorded on Intercapital's books were fictitious; (b) notices of account assignments - - which provide an extra safeguard in the factoring business - - often were not sent to account debtors; (c) Intercapital frequently advanced funds to clients - - a high concentration of whom were in the construction industry - - based solely upon purchase orders, requests for financing or other unperformed contracts; (d) Intercapital failed to maintain proper documentation concerning the creditworthiness of certain accounts receivable sellers and their customers, contrary to representations to investors; (e) many account files lacked adequate documentation on the validity of the factored receivables, thereby increasing the risks to investors; (f) proper UCC-1 financing statements were not recorded in order to perfect title to accounts receivable; (g) Intercapital's accounts receivable were not insured; and (h) almost all of Intercapital's receivables were excessively aged.

19. Due to Hall's funding of purchase orders, requests for financing and other unperformed contracts and Intercapital's failure to perform due diligence or to otherwise verify the validity of the accounts receivable as it had represented it would do, Intercapital was unable to obtain the profits necessary

to fulfill the promised returns to investors, and investors ultimately lost over \$21 million.

MISREPRESENTATIONS AND OMISSIONS OF MATERIAL FACTS

20. Intercapital, through Hall, made misrepresentations and omissions to investors and potential investors regarding, among other things, the use of their monies to fund purchase orders, the failure to perform the promised due diligence, the aging (and risk) of accounts receivable, insurance coverage, Hall's background, and the risks associated with investing with Intercapital.

**Use Of Investor Monies To Fund Purchase Orders,
Requests For Financing And Other Unperformed Contracts**

21. In its joint venture agreements with investors, Intercapital represented that the purpose of the joint venture was "solely to buy, sell, and collect" accounts receivable for profit (emphasis added).

22. In addition, during meetings with potential Intercapital investors, Hall represented that when making funding decisions, Intercapital would ascertain that: (a) Intercapital was using investor funds to purchase valid accounts receivable; (b) the goods underlying the accounts had already been purchased; (c) there were no disputes concerning the goods purchased; (d) the accounts were due and payable; (e) there were no setoffs or deductions; and (f) the accounts would be paid on a timely basis.

23. Contrary to Hall's representations to investors that their funds would be used to purchase valid accounts receivable, from at least late 1993 until July 1994, Intercapital routinely

funded purchase orders, requests for financing and other unperformed contracts.

24. Hall "disguised" purchase orders by having them recorded as invoices in Intercapital's files.

25. Approximately half of investor funds (i.e., \$14 million) were used to fund purchase orders, requests for funding and other unperformed contracts.

26. Investors were not informed that their monies were being used to fund purchase orders instead of accounts receivable.

Failure To Perform Due Diligence

27. Intercapital and Hall created a due diligence procedure manual which outlined the due diligence procedures that Intercapital would conduct.

28. These documents were often shown to investors and potential investors.

29. In fact, due diligence procedures were regularly bypassed.

30. For example, included in the due diligence manual was a sample purchase and sales agreement to be entered into by Intercapital and the seller of the account receivable.

31. The purchase and sale agreement provided, in part, that: (a) receivables purchased by Intercapital were due and collectible in full within no more than 90 days; (b) each account receivable being purchased was current and presently due and owing; (c) payment was not contingent upon fulfillment of any

other obligation at any time; and (d) the accounts were not encumbered by any setoffs, deductions, disputes, contingencies or counterclaims.

32. Yet despite the terms of the purchase and sale agreement, receivables and purchase orders purchased by Intercapital and approved by Hall were usually not due and collectible within 90 days.

33. Furthermore, in light of the funding of purchase orders, each account was not currently due and owing, and payment was in fact contingent upon future obligations.

34. Moreover, in many instances, there were offsets and deductions.

35. Moreover, and in contravention to representations to investors that proper due diligence would be performed, former Intercapital employees were often told by Hall they did not need to verify accounts receivable and did not need to send out notice of assignment letters to the underlying account debtors.

36. In addition, contrary to representations to investors, Intercapital obtained financial statements of the clients and account debtors in only about 50% of its transactions.

37. The failure to send out notice of assignment letters eliminates one of the safeguards in lowering the risk of investing in Intercapital.

38. Investors and potential investors were not told that in certain transactions, Intercapital did not provide notice of assignment letters to accounts debtors.

Falsification And Creation Of Records

39. Hall instructed Intercapital employees to designate certain files as having been "verified" i.e., Intercapital had verified the creditworthiness of the seller of the accounts receivable and the validity of the account, when, in fact, no verification had been performed.

40. Hall also directed them to create notice of assignment letters and place them in Intercapital's files, regardless of whether such letters had actually been sent to the account debtors.

41. At least one former Intercapital employee sometimes created invoice numbers so purchase orders would appear to be bona fide accounts receivable.

42. Hall then showed these fabricated records to investors and auditors.

43. In addition, Hall instructed another former employee to create invoices for a client who had submitted purchase orders.

44. Hall directed employees to falsify corporate records to corroborate Intercapital's representations to investors that proper due diligence was performed on accounts receivable when, in fact, Hall had instructed them not to perform certain due diligence when purchasing certain accounts receivable.

Failure To Obtain Insurance

45. In its initial joint venture agreement, Intercapital represented to investors that the company would obtain an

insurance policy insuring payment of 100% of all nongovernment accounts receivable.

46. However, Intercapital's insurance policy: (a) provided for a \$20,000 deductible and a 10% co-payment; (b) had a coverage limit of \$500,000; and (c) limited the coverage available to certain categories of accounts receivable, and, therefore, precluded Intercapital from collecting the face value of particular receivables.

47. Intercapital's insurance policy terminated November 30, 1993.

48. On or about February 3, 1994, Hall sent a letter to investors stating that in the future, Intercapital would arrange for the purchase of insurance on receivables "to be insured on a per transaction, per client basis."

49. The letter further provided that Intercapital would not insure "obvious good credits such as Fortune 1000 credits or situations where to do so would not make good business sense, such as a transaction which is going to pay quickly, which we monitor and if payment is delayed, insurance can be purchased in a sufficient time frame."

50. In fact, Intercapital failed to obtain any insurance coverage on any account receivable after the expiration of its insurance policy on November 30, 1993.

Aging Of Accounts Receivable

51. In a letter drafted, in part, by Hall, and provided to potential investors during approximately the first six months of

Intercapital's operations, Intercapital represented that the accounts receivable it purchased "usually [paid] in thirty to forty-five days...[and therefore] the investment is very liquid."

52. Hall and Intercapital represented to investors that the accounts were paid in "a very reasonable amount of time", i.e., within 90 days or less, and, therefore, an investment with Intercapital was liquid.

53. Hall and Intercapital failed to disclose to investors and prospective investors that Intercapital continued to fund clients' requests for financing, accounts receivable and purchase orders sold by clients whose accounts were already past due.

54. In fact, some accounts receivable Intercapital had purchased were over 300 days past due.

55. Nevertheless, Intercapital continued to fund clients who already had accounts with Intercapital that were past due.

56. As of July 1994, Intercapital's average account was six months past due and approximately 20% of the accounts were over one year past due.

Hall's Disbarment For Bank Fraud

57. When meeting with potential investors, Hall sometimes represented that he was an attorney.

58. Hall, however, failed to disclose to investors and potential investors that in November 1990, he was disbarred from the State Bar of Iowa for bank fraud.

59. Hall's disbarment stemmed from a \$350,000 loan Hall received from [a bank in Iowa], allegedly through "dishonesty, and numerous business ventures with a client..."

60. Hall was found to have: (a) misrepresented the purpose of bank loans he obtained; (b) made false statements regarding the transaction in a sworn deposition and in a response to an inquiry by Iowa's Committee on Professional Ethics and Conduct; and (c) committed violations in connection with business ventures with clients of his during a period of more than four years.

COUNT I

**SALE OF UNREGISTERED SECURITIES
VIOLATIONS OF SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT**

61. The Commission repeats and reallege paragraphs 1 through 60 of the Complaint.

62. No registration statement has been filed or is in effect with the Commission pursuant to the Securities Act and no exemption from registration exists with respect to the securities and transactions described herein.

63. From a date unknown, but since at least late 1993 through July 1994, Defendant Hall, directly or indirectly, singly and in concert:

- a. made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities as described herein through the use or medium of a prospectus or otherwise;
- b. carried securities or cause such securities, as described herein, to be carried through the mails or in

interstate commerce, by means or instruments of transportation, for the purpose of sale or delivery after sale; or

- c. made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy, through the use or medium of any prospectus or otherwise, the securities described herein, without a registration statement having been filed or being in effect with the Commission;

including but not limited to, the activities described in paragraphs 1 through 60, above.

64. By reason of the foregoing, Defendant Hall, directly or indirectly, singly and in concert, has violated and unless enjoined will continue to violate Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. § 77e(a) and 77e(c).

COUNT II

FRAUD

VIOLATIONS OF SECTION 17(a)(1) OF THE SECURITIES ACT

65. The Commission repeats and realleges paragraphs 1 through 60 of the Complaint.

66. Since a date unknown, but since at least late 1993 through July 1994, Defendant Hall, directly or indirectly, by use of the mails, the means or instruments of transportation or communication in interstate commerce, and the means or instrumentalities of interstate commerce, in the offer or sale of securities, as described herein, knowingly, willfully, or

recklessly employing devices, schemes or artifices to defraud, including but not limited to, the activities described in paragraphs 1 through 60, above.

67. By reason of the foregoing, Defendant Hall, directly or indirectly, has violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

COUNT III

**FRAUD
VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT
AND RULE 10b-5, THEREUNDER**

68. The Commission repeats and realleges paragraphs 1 through 60 of its Complaint.

69. Since a date unknown, but since at least late 1993 through July 1994, Defendant Hall, directly or indirectly, by the use of the means or instruments of interstate commerce or of the mails, in connection with the purchase or sale of securities, as described herein, knowingly, willfully or recklessly: (i) employed devices, schemes or artifices to defraud; (ii) made untrue statements of material facts or 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; or (iii) engaged in acts, practices and courses of business which have operated as a fraud upon the purchasers of such securities, including but not limited to, making the misrepresentations and omissions of material fact described in paragraphs 1 through 60, above.

70. By reason of the foregoing, Defendant Hall, directly or indirectly, has violated and, unless enjoined, will continue to violate 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

**FRAUD
VIOLATIONS OF SECTIONS 17(a)(2) AND
17(a)(3) OF THE SECURITIES ACT**

71. The Commission repeats and realleges paragraphs 1 through 60 of its Complaint.

72. Since a date unknown, but since at least late 1993 through July 1994, Defendant Hall, directly or indirectly, by use of the mails and the means or instruments of transportation or communication in interstate commerce, in the offer or sale of securities: (i) obtained money or property by means of untrue statements of material facts or omissions to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (ii) engaged in acts, practices and courses of business which operated as a fraud or deceit upon purchasers and prospective purchasers of such securities, including, but not limited to, the activities described in paragraphs 1 through 60, above.

73. By reason of the foregoing, Defendant Hall, directly or indirectly, has violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77(q)(a)(2) and 77(q)(a)(3).

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I

Declaratory Relief

Declare, determine and find that Defendant Hall committed the violations of the federal securities laws alleged herein.

II

Permanent Injunctive Relief

Issue a Permanent Injunction, restraining and enjoining Defendant Hall, his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating Sections 5(a), 5(c) and 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5, thereunder.

III

Accounting and Disgorgement

Issue an Order requiring an accounting by Defendant Hall of all proceeds received by him, directly or indirectly, pursuant to the scheme described in this Complaint, and requiring that Hall disgorge all such proceeds, with prejudgment interest, to effect the remedial purposes of the federal securities laws.

IV

Civil Money Penalties

Issue an Order directing Defendant Hall to pay civil money 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. § 78(d)(3), for violations of the federal securities laws as complained herein occurring after October 15, 1990.

V

Further Relief

Grant such other and further relief as may be necessary and appropriate.

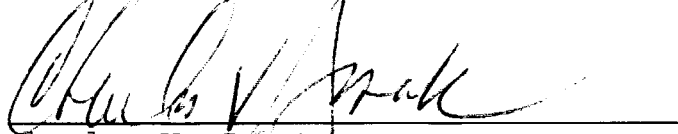
VI

Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may hereby be entered, or to entertain any suitable application or motion by

the Commission for additional relief within the jurisdiction of
this Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles V. Senatore", is written over a horizontal line.

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