

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
(Tampa Division)

SEP 24 AM 10:12
CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

SHANE T. VAESSEN,
VERONIKA M. VAESSEN,
OTIS HERRING, MARVIN MOSES
TAFT WOMACK, WILLIAM McNAMARA,
DALE VAN WYK, and FRANK GAINES

Defendants,

Case No. 98-1964-CIV-T-261

**COMPLAINT FOR
INJUNCTIVE AND
OTHER RELIEF**

Plaintiff Securities and Exchange Commission ("SEC" or "Commission") alleges as follows:

1. The Commission brings this action for injunctive and other relief to prevent Defendants from violating the federal securities laws by fraudulently offering and selling unregistered securities in the form of investment contracts. From at least 1994 to 1997, Defendants Shane Vaessen ("Vaessen"), Veronika Vaessen ("V. Vaessen") (collectively "the Vaessens"), Otis Herring ("Herring"), Marvin Moses ("Moses"), Taft Womack ("Womack"), William McNamara ("McNamara"), Dale Van Wyk ("Van Wyk"), and Frank Gaines ("Gaines") (collectively "the Sales Agents") raised over \$3.3 million from more than 100 investors in seven states. Approximately half of those investors were unsophisticated and elderly.

WV

1

DEFENDANTS

The Principals

2. Defendant Vaessen, age 54, is a resident of Las Vegas, Nevada. Vaessen created the International Capital Corporation ("ICC 2000") Ponzi scheme, which involved the sale of ICC 2000 Private Placement Agreements, also known as Private Trust Agreements (the "investment contracts" or "securities"). Vaessen was the President and Chief Executive Officer of ICC 2000, a now defunct Nevada corporation, at all relevant times.

3. Defendant V. Vaessen, age 52, is a resident of Las Vegas, Nevada. She was the Secretary and Treasurer of ICC 2000 at all relevant times, and is Vaessen's wife.

The Sales Agents

4. Defendant Herring, age 55, is a resident of Franklin, Tennessee. From at least 1994 to 1996, Herring sold ICC 2000 investment contracts and recruited other sales agents to sell the investment contracts.

5. Defendant Moses, age 46, is a resident of Crystal River, Florida. Moses began selling ICC 2000 investment contracts through Herring in 1995. Moses dealt directly with Vaessen in 1995, and continued selling the investment contracts through April 1997. Moses directly sold ICC 2000 investment contracts to investors and also received commissions from the sales of other sales agents.

6. Defendant Womack, age 55, is a resident of St. Petersburg, Florida. Moses sold the investment contracts from 1995 through 1997. Womack was recruited to sell the investment contracts by Moses and directly sold ICC 2000 investment contracts to investors.

7. Defendant McNamara, age 38, is a resident of Tampa, Florida. McNamara was recruited to sell ICC 2000 investment contracts by Moses from 1995 through 1997. McNamara directly sold ICC 2000 investment contracts to investors.

8. Defendant Van Wyk, age 71, is a resident of Omaha, Nebraska. Van Wyk was originally recruited to be a selling agent by Herring, but he later dealt directly with Vaessen. Van Wyk directly sold ICC 2000 investment contracts to investors from 1995 through 1997, and also earned commissions from the sales of other sales agents. Van Wyk does not hold a securities license.

9. Defendant Gaines, age 60, is a resident of Lebanon, Indiana. Gaines was a selling agent recruited by Van Wyk. Gaines directly sold ICC 2000 investment contracts to investors from 1996 through 1997.

JURISDICTION AND VENUE

10. 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.

11. Certain of the acts and transactions constituting violations of the Securities Act and the Exchange Act have occurred within the Middle District of Florida. Defendants Moses, Womack, and McNamara reside in the Middle District of Florida. Defendants have engaged in many of the acts and practices complained of herein within the Middle District of Florida.

12. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and

communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business complained of herein.

THE FRAUDULENT SCHEME

The Principals

13. The Vaessens and the Sales Agents offered and sold \$3.3 million of ICC 2000 investment contracts from at least 1994 through 1997, made misrepresentations of material fact, and failed to disclose material information concerning the use of investor funds and the risks associated with the investment.

14. Vaessen and V. Vaessen engaged in and operated the ICC 2000 investment contracts scheme together. Vaessen is described in ICC 2000 literature as an "Investment Manager," who "deals regularly in large bank debenture instruments such as bank guarantees, notes, CD's, stand-by letters of credit, and other documentary letters of credit." The ICC 2000 investment contracts touted Vaessen as having "the banking introductions and contracts . . . [and] particularized expertise in the procedural and transactional aspects of this type of venture and has the capacity and the necessary skill . . . to cause the issuance and subsequent discounting and funding of the issued instruments for a profit."

15. V. Vaessen was the Secretary and Treasurer of ICC 2000. V. Vaessen engaged in numerous activities which promoted the ICC 2000 scheme. As the person handling back-office responsibilities, she signed her name to many ICC 2000 investment contracts, signed many of the interest and principal checks provided to investors, and was a signatory on some ICC 2000 bank accounts. V. Vaessen also signed many checks that paid for the Vaessens' personal expenditures from investor funds.

The Security: The ICC 2000 Investment Contracts

16. The Vaessens and the Sales Agents represented to investors that their funds were pooled in bank accounts and offered to “Major Brokerage Companies” as collateral to purchase and sell Guaranteed Insurance Contracts (“GICs”). Vaessen purportedly received a bank note issued by the bank holding the pooled investor funds which was used to purchase GICs at discount from insurance companies. The ICC 2000 investment contracts were purportedly secure and risk-free because invested funds were left in the bank accounts in which they had been deposited.

17. Investors were instructed to wire funds to a bank account controlled by the Vaessens. In return, investors were provided with a written ICC 2000 investment contract, a specified number of post-dated checks purportedly representing interest payments for the investment, and one post-dated check representing a return of the investor’s principal.

18. The ICC 2000 investment contracts, signed by Vaessen as “CEO and Principal” and by V. Vaessen as “Witness for the Trustee,” “guaranteed” that ICC 2000 would pay the described “profit” to investors, that ICC 2000 had already contacted third parties to “secure and/or ensure the principal and profits and to transact on behalf” of the investor, and that ICC 2000 had “particularized expertise in the procedural and transactional aspects and . . . [is] able to cause [the investor’s principal] to be returned to the [investor] with a profit.” The contract did not disclose any risk of the investment.

19. From at least 1994 to some time in 1995, investors were promised an annual return of 40% on their investments. In 1995, the promised annual return was reduced to between 10% and 20%.

The Sales Agents

20. The ICC 2000 investment contracts were sold in Florida, Georgia, Indiana, Nebraska, Michigan, Tennessee, and California by ICC 2000 Sales Agents, including Defendants Herring, Moses, Womack, McNamara, Van Wyk, and Gaines.

21. Sales Agents received high sales commissions. From at least 1994 to 1995, commissions to Sales Agents were as much as 56% of the amount of each investment contract sold. In 1995, sales commissions were reduced to between 20% and 6.75%. In addition, some sales agents who recruited others into the ICC 2000 program could make a commission from the sales of sales agents that they had recruited.

22. Herring sold ICC 2000 investment contracts between 1994 and 1996 to residents of the area surrounding Nashville, Tennessee. Herring made commissions of up to 56% for many ICC 2000 investment contracts he directly sold. In addition, Herring made up to a 36% commission on the sales of sales agents he had recruited.

23. Herring assisted Vaessen in developing materials used to promote the ICC 2000 investment contracts to potential investors, including a "Thumbnail sketch of Investment Manager," which was a summary description of Vaessen, and included information regarding Vaessen's purported investing background, including such statements as:

- a) "Mr. Vaessen had worked with all the larger of the giant European banks and clearing houses for nearly 30 years";
- b) "Mr. Vaessen deals regularly in large bank debenture instruments such as bank guarantees, notes, CD's, stand-by letters of credit, and other documentary letters of credit. These are bought, traded, and sold through Mr. Vaessen and his many banking officials as contacts [*sic*]"; and

- c) "The Vaessens' [sic] recognize the fact that you must have safety and must feel secure in order to invest your savings. They only invest your monies where they feel they can obtain these goals."

24. Moses, Womack, and McNamara all worked out of the same Tampa, Florida office, and sold ICC 2000 investment contracts from at least 1995 to 1997. Initially, Moses, Womack, and McNamara sold the investment contracts through Herring. In 1996, Moses, Womack and McNamara began dealing directly with Vaessen.

25. Moses originally heard about the ICC 2000 program from Womack. Womack and McNamara worked with Moses to learn more about the program by:

- a) discussing it with Herring;
- b) having Womack attend a meeting that Vaessen hosted at a hotel in Las Vegas, Nevada with other sales agents; and
- c) having McNamara research GICs at the local public library. McNamara then prepared written materials for the use of Womack, Moses, and himself in selling the ICC 2000 program.

26. Van Wyk sold ICC 2000 investment contracts from approximately May 1994 to March 1996. In addition to his own sales, Van Wyk earned commissions on sales by Gaines, whom he recruited for the ICC 2000 program in 1995.

27. Gaines sold ICC 2000 investment contracts from at least December 1995 to January 1997.

28. Van Wyk earned commissions of 56%, and Gaines earned a "referral's percentage" of 20% for each contract sold by Gaines. Thus, 76% of each investors' principal was paid out to Van Wyk and Gaines as commissions for the contracts that Gaines sold.

29. No registration statement was filed or in effect with the Commission pursuant to the Securities Act with respect to the securities and transactions described herein.

MATERIAL MISREPRESENTATIONS AND OMISSIONS

30. In connection with the purchase or sale, and in the offer or sale of ICC 2000 investment contracts, Vaessen and V. Vaessen knowingly or recklessly made material misrepresentations and/or omissions of material facts, including:

- a) that ICC 2000 investment contracts were secure and risk-free;
- b) investor funds were deposited and maintained in bank accounts; and
- c) that ICC 2000 provided invested funds to "Major Brokerage Companies" as collateral for the purchase of GICs.

31. In fact, investor funds were not secure and risk free because Vaessen and V. Vaessen withdrew investor funds from the bank accounts in which they had been deposited and used the investor funds to pay off earlier investors, to pay sales commissions of up to 56%, and to pay for the Vaessens own personal expenditures, including cash expenditures, mortgage payments, construction and remodeling work performed on the Vaessen's residence, jewelry for V. Vaessen, and personal credit card account charges.

32. No ICC 2000 or Vaessen bank accounts reflect any investment activity which would substantiate Vaessen's representation that the money was invested in GICs. No large blocks of funds were transferred from the accounts to be used for any kind of large scale investment activity. Vaessen and V. Vaessen knew, or were reckless in not

knowing, that the representations that invested funds were used to purchase GICs were false.

33. Defendants Herring, Moses, Womack, McNamara, Van Wyk, and Gaines provided prospective investors with descriptive materials relating to the ICC 2000 investment contract. Each of them knew, or were reckless in representing to investors that:

- a) that ICC 2000 investment contracts were not secure and risk-free;
- b) investor funds were not deposited and maintained in bank accounts; and
- c) that ICC 2000 did not provide invested funds to "Major Brokerage Companies" as collateral for the purchase of GICs.

34. Defendants Herring, Moses, Womack, McNamara, Van Wyk, and Gaines knowingly or recklessly made additional material misrepresentations and/or omissions of material facts, including:

- a) that sales commission of up to 56% were paid from investor funds;
- b) that ICC 2000 investment contracts were not secure and risk-free because ICC 2000 interest and principal checks were returned for insufficient funds; and
- c) that they continued to sell the ICC 2000 investment even after they knew that the Vaessens had forced investors to accept new contracts, capitalizing interest and principal due, and lowering interest payments.

35. In addition, Herring promoted the fraudulent scheme by preparing materials for potential investors, including a "Thumbnail sketch of Investment Manager," which was a summary description of Vaessen. Herring knew, or was reckless in not knowing, that information he included regarding Vaessen's purported investing background was false, including such statements as:

- a) "Mr. Vaessen had worked with all the larger of the giant European banks and clearing houses for nearly 30 years";
- b) "Mr. Vaessen deals regularly in large bank debenture instruments such as bank guarantees, notes, CD's, stand-by letters of credit, and other documentary letters of credit. These are bought, traded, and sold through Mr. Vaessen and his many banking officials as contacts [*sic*]"; and
- c) "The Vaessens' [*sic*] recognize the fact that you must have safety and must feel secure in order to invest your savings. They only invest your monies where they feel they can obtain these goals."

36. Moses, Womack, and McNamara perpetuated the fraudulent scheme, preparing ICC 2000 investment contracts and investor interest and principal checks themselves in 1996, after the ICC 2000 scheme began collapsing. Moses, Womack, and McNamara knew, or were reckless in not knowing that ICC 2000 investor checks were bouncing from the Vaessens ICC 2000 bank accounts. Nonetheless, Moses, Womack, and McNamara perpetuated the ICC 2000 Ponzi scheme, using a rubber stamp with Vaessen's signature, and an ICC 2000 bank account located in Tampa, Florida, knowing, or recklessly disregarding, that the ICC 2000 investment contracts they were preparing were fraudulent, and that investor funds they were collecting were being used to pay off earlier investors and to pay sales commissions.

COUNT I

**(Vaessen, V. Vaessen, Herring, Moses, Womack, McNamara, Van Wyk, and
Gaines)**

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

37. The Commission repeats and realleges herein paragraphs 1 through 36 of this Complaint.

38. Since a date unknown but since at least 1994 through to the present, Defendants Vaessen, V. Vaessen, Herring, Moses, Womack, McNamara, Van Wyk, and Gaines, directly and indirectly, have:

- i) 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;
- ii) 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, as described herein,

without a registration statement having been filed or being in effect with the Commission as to such securities.

39. By reason of the foregoing, Defendants Vaessen, V. Vaessen, Herring, Moses, Womack, McNamara, Van Wyk, and Gaines, have 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

**(Vaessen, V. Vaessen, Herring, Moses, Womack, McNamara, Van Wyk, and
Gaines)**

**FRAUD IN VIOLATION OF
SECTION 17(a)(1) OF THE SECURITIES ACT**

40. The Commission repeats and realleges herein paragraphs 1 through 36 of this Complaint.

41. Since a date unknown but since at least 1994 through to the present, Defendants Vaessen and V. Vaessen, Herring, Moses, Womack, McNamara, Van Wyk, and Gaines, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, in the offer or sale of securities, as described herein, have knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

42. By reason of the foregoing, Defendants Vaessen and V. Vaessen, Herring, Moses, Womack, McNamara, Van Wyk, and Gaines, have 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

**(Vaessen, V. Vaessen, Herring, Moses, Womack, McNamara, Van Wyk, and
Gaines)**

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

43. The Commission repeats and realleges herein paragraphs 1 through 36 of this Complaint.

44. Since a date unknown but since at least 1993 through to the present, Defendants Vaessen, and V. Vaessen, Herring, Moses, Womack, McNamara, Van Wyk, and

Gaines, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails, in the offer or sale of securities, as described herein, have:

a) obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or

b) engaged in transactions, practices and courses of business which are now operating and will operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

45. By reason of the foregoing, Defendants Vaessen, and V. Vaessen, Herring, Moses, Womack, McNamara, Van Wyk, and Gaines, have 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).

COUNT IV

(Vaessen, V. Vaessen, Herring, Moses, Womack, McNamara, Van Wyk, and Gaines)

FRAUD IN VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5

46. The Commission repeats and realleges herein paragraphs 1 through 36 of this Complaint.

47. Since a date unknown but since at least 1994 through to the present, Defendants, Vaessen, and V. Vaessen, Herring, Moses, Womack, McNamara, Van Wyk, and Gaines, directly or indirectly, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities have knowingly, willfully and/or recklessly:

- c) employed devices, schemes or artifices to defraud;
- d) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or
- e) engaged in acts, practices and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

48. By reason of the foregoing, Defendants Vaessen and V. Vaessen, Herring, Moses, Womack, McNamara, Van Wyk, and Gaines, have 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 V

(Herring, Moses, Womack, McNamara, Van Wyk, and Gaines)

OPERATING AS UNREGISTERED BROKER-DEALERS IN VIOLATION OF SECTION 15(a)(1) OF THE EXCHANGE ACT

49. The Commission repeats and realleges herein paragraphs 1 through 36 of this Complaint.

50. Since a date unknown, but since at least 1994 through the present, Defendants Herring, Moses, Womack, McNamara, Van Wyk, and Gaines, directly and indirectly, by the used of the means and instrumentality of interstate commerce, and of the mails, have each engaged in the business of effecting transactions in securities for the accounts of others and have induced and effected the purchase and sale of securities while not themselves registered with the SEC in accordance with the provisions of Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b).

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Declaratory Relief

Declare, determine and find that Defendants Vaessen and V. Vaessen, Herring, Moses, Womack, McNamara, Van Wyk, and Gaines, committed the violations of the federal securities laws alleged herein.

II.

Permanent Injunctive Relief

Issue a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction, restraining and enjoining Defendants Vaessen and V. Vaessen, Herring, Moses, Womack, McNamara, Van Wyk, and Gaines, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating: a) Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c); b) Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a); c) 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); d) 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 e) Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1).

III.

Disgorgement

Issue an Order requiring Defendants Vaessen and V. Vaessen, jointly and severally, and Herring, Moses, Womack, McNamara, Van Wyk, and Gaines, to disgorge all ill-gotten profits or proceeds that they have received as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest.

IV.

Penalties

Issue an Order directing Defendants Vaessen and V. Vaessen, Herring, Moses, Womack, McNamara, Van Wyk, and Gaines, to pay civil money penalties 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. § 78(d)(3).

V.

Accounting

Issue an Order requiring accountings by Vaessen, and V. Vaessen, Herring, Moses, Womack, McNamara, Van Wyk, and Gaines.

VI.

Further Relief

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

VII.

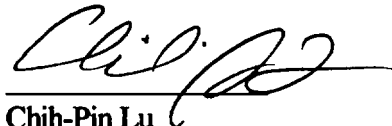
Retention of Jurisdiction

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.

Dated: September 23, 1998

Respectfully submitted,

By:



Chih-Pin Lu
Senior Counsel
Fla. Bar No. 983322

Glenn Harris
Regional Trial Counsel
Fla. Bar No. 357588

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
1401 Brickell Avenue, Suite 200
Miami, Florida 33131
Telephone: (305) 982-6341
Facsimile: (305) 536-7465

J:\PROJECTS\COMMON\BRANCH-1\CHIH-PIN\CC\COMPLAIN.FIN