

ORIGINAL

IN THE UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF
DALLAS DIVISION

JUL - 6 2000

CLERK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs

BENJAMIN FRANKLIN COOK, individually and dba
DENNEL FINANCE LIMITED, GERALD LEE PATE,
ELLSWORTH WAYNE McLAWS, and ALAN CLAGG,

Defendants,

and

FPC-1 LIMITED PARTNERSHIP, SAMUEL LIMITED
PARTNERSHIP, ALLIANCE INVESTMENTS CORP.,
CORNERSTONE MANAGEMENT, LLC,
INTERNATIONAL BUSINESS CONSULTANTS
LIMITED, HIGHLANDER LIMITED PARTNERSHIP,
and C. KELLY OLSEN,

Defendants Solely for Purposes
of Equitable Relief

CIVIL ACTION NO.
3:99-CV-0571-R

ENTERED ON DOCKET
JUL - 6 2000
U. S. DISTRICT CLERK'S OFFICE

**AGREED FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF AGAINST GERALD LEE PATE**

Plaintiff Securities and Exchange Commission ("Commission"), having filed its
Complaint matter and Defendant Gerald Lee Pate ("Pate"), through his Stipulation and
Consent ("Consent"), having admitted service of the Summons and of the Complaint,
having admitted the jurisdiction of this Court over him and over the subject matter of this
action, having waived the entry of findings of fact and conclusions of law pursuant to Rule
52 of the Federal Rules of Civil Procedure, having entered into his Consent voluntarily, no

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threats, promises of immunity or assurances having been made by the Commission or by any of its members, officers, agents or representatives to induce him to enter into his Consent, having consented, without admitting or denying any of the allegations in the Commission's Complaint except as to jurisdiction as set forth above, to entry without further notice of this Final Judgment of Permanent Injunction and Other Equitable Relief ("Final Judgment") enjoining Pate from engaging in transactions, acts, practices and courses of business which constitute and would constitute violations of section 17(a) of the Securities Act of 1933, 15 U.S.C. §77q(a), sections 10(b) and 15(a)(1) of the Securities Exchange Act of 1934, 15 U.S.C. §§78j(b) and 78o(a)(1), and Commission Rule 10b-5, 17 C.F.R. §240.10b-5, and, it further appearing that this Court has jurisdiction over Pate and the subject matter of this action; it appearing that no further notice of hearing for the entry of this Final Judgment need be given; and the Court being fully advised in the premises:

I.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED That Pate and his agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined, directly or indirectly, in connection with the purchase or sale of any security, including, but not limited to, the purchase or sale of an investment in a "prime bank" trading program and/or the unfounded promise or representation that repayment of monies previously invested in a "prime bank" trading program is likely to to be made, from making use of any means or

instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange:

- (a) to employ any device, scheme or artifice to defraud;
- (b) to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or
- (c) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That Pate and his agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined, in the offer or sale of securities of any security, including, but not limited to, the offer or sale of an investment in a "prime bank" trading program and/or the unfounded promise or representation that repayment of monies previously invested in a "prime bank" trading program is likely to to be made, from making use of any means or instruments of transportation or communication in interstate commerce, or of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading:
- (c) and/or to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any purchaser.

III.

IT IS FURTHER ORDERED That Pate, his agents, servants, employees, attorneys-in-fact, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, are permanently restrained and enjoined from, directly or indirectly:

- a.) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell any securities through the use or medium of any prospectus or otherwise, unless and until a registration statement is in effect with the Commission as to such securities;
- b.) carrying securities, or causing them to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale, unless and until a registration statement is in effect with the Commission as to such securities; or
- c.) making use of any 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, securities unless a

registration statement has been filed with the Commission as to such securities, or while a registration statement filed with the Commission as to such securities is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding of examination under Section 8 of the Securities Act of 1933, as amended [15 U.S.C. § 77h];

provided, however, that nothing in this Part III shall apply to any security or transaction which is exempt from the provisions of Section 5 of the Securities Act [15 U.S.C. § 77e].

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That Pate and his agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, from inducing or attempting to induce the purchase or sale of any security other than an exempted security (a) unless and until Pate is registered with the Commission under section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. §780(b), or (b)(1) unless Pate's business as a broker and/or dealer is exclusively intrastate and (2) unless Pate, acting as a broker or dealer, does not make use of any facility of a national securities exchange.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That Pate shall disgorge the amount of \$649,196.83, representing his earnings from the conduct alleged in the Complaint, plus prejudgment interest thereon in the amount of \$57,118.80. However, based upon Pate's sworn representations in his Statement of Financial

Condition dated September 15, 1999, \$87,118.80 of the disgorgement amount and prejudgment interest thereon is waived by the Commission, contingent upon the accuracy and completeness of the Statement of Financial Condition and Pate's satisfactory performance of the terms set forth below.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That Pate, in partial satisfaction of his disgorgement obligation as set forth in Paragraph V of this Final Judgment, shall relinquish and convey to the Receiver, no later than 40 days after this Final Judgment is entered by the Court, the following assets:

- A. Monies seized from account number 49643 at Abrams National Bank in the amount of \$269,119.05
- B. Monies seized from account number 49650 at Abrams National Bank in the amount of \$5,765.68
- C. Monies seized from account number 50526 at Abrams National Bank in the amount of \$4,988.27
- D. Monies seized from account number 50534 at Abrams National Bank in the amount of \$4,988.27
- E. Proceeds of \$5,085.56 from the sale of a 1999 Lexus that was owned by Pate
- F. Silver Tea Set valued at \$750.00
- G. Man's Rolex Watch valued at \$5,000
- H. Woman's Rolex Watch valued at \$3,500

Within 40 days after entry of this Final Judgment by the Court, Pate shall execute and deliver to the Receiver a "Conveyance and Relinquishment" in the form appended as Exhibit 1 to the Consent.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That Pate, in further partial satisfaction of his disgorgement obligation as set forth in Paragraph V of this Final Judgment, shall deliver to the Commission cash or cash equivalent in the amount of \$150,000. Pate represents that he has filed to receive a refund of 1998 federal income tax from the Internal Revenue Service and has been notified that he will receive a refund in the amount of \$140,149.49. Upon receipt of the refund from the Internal Revenue Service, Pate shall immediately pay to the Receiver the total sum received from the refund. If, within 40 business days after this Final Judgment is entered by the Court, Pate has not received a refund from the Internal Revenue Service for overpayment of 1998 taxes, Pate shall execute and deliver to the Receiver a promissory note in the original principal amount of \$150,000 in the form appended as Exhibit 2 to Consent. Such promissory note shall be secured by Pate's personal property and by an assignment from Pate of his rights to any refund received from the Internal Revenue Service for an overpayment of 1998 taxes. If, within 40 business days after this Final Judgment is entered by the Court, Pate has not received a refund from the Internal Revenue Service for overpayment of 1998 taxes, Pate shall also execute and deliver an "Assignment of Tax Refund" and "Security Agreement" in the forms appended as Exhibits 3 and 4 respectively to the Consent. If within 40 business days after this Final Judgment is entered by the Court, Pate has received less than \$150,000 as his refund from the

Internal Revenue Service, Pate shall deliver to the Receiver the total amount received from the Internal Revenue Service, a representation and warranty that such sum represents the total amount received from the Internal Revenue Service, and a promissory note in the original principal amount of \$150,000 less the sum received from the Internal Revenue Service that is turned over to the Receiver. In such instance, Pate shall execute and deliver a security agreement for the promissory note in the form appended as Exhibit 4 to the Consent.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That Pate, in further partial satisfaction of his disgorgement obligation as set forth in Paragraph V of this Final Judgment, shall, within 90 days after this Final Judgment is entered by the Court, pay to the Receiver the sum of \$170,000, which Pate shall represent does not represent any proceeds from a refund from the Internal Revenue Service. Simultaneously with the delivery of the sum of \$170,000, Pate shall execute and deliver to the Receiver a "Warranty and Representation of Monies Delivered" in the form appended as Exhibit 5 to the Consent.

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That, based upon Pate's sworn representations in his Sworn Statement of Financial Condition submitted to the Commission, the Court is not ordering him to pay a civil money penalty pursuant to the provisions of section 20(d) of the Securities Act of 1933, 15 U.S.C. § 77t(d), and section 21(d)(3) of the Securities Exchange Act of 1934, 15 U.S.C. §78u(d)(3).

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That the determination not to impose a civil penalty and to waive payment of a portion of the disgorgement amount and prejudgment interest thereon is expressly contingent upon the accuracy and completeness of Pate's Sworn Statement of Financial Condition. If, at any time following the entry of this Final Judgment the Commission obtains information indicating that Pate's representations to the Commission concerning his assets, income, liabilities and/or net worth were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Pate, petition this Court for an order requiring Pate to disgorge \$649,196.83, plus prejudgment and postjudgment interest thereon, less the value of all disgorgement previously made by Pate, and a civil penalty. In connection with any such petition, the only issues shall be whether the financial information provided by Pate was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, and the amount of civil penalty to be imposed. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Pate to pay funds or assets, directing the forfeiture of any assets and imposing sanctions for contempt of this Final Judgment, and the Commission may also request additional discovery. Pate may not, by way of defense to such petition, challenge the validity of his Consent or this Final Judgment, contest the allegations in the Complaint filed by the Commission or the amount of disgorgement and interest or assert that disgorgement or payment of a civil penalty should not be ordered.

XI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That the Consent filed herein be, and the same is hereby, incorporated in this Final Judgment with the same force and effect as if fully set forth herein.

XII.

IT IS FURTHER ORDERED ADJUDGED AND DECREED That this Court shall retain jurisdiction of this action for all purposes, including for purposes of entertaining any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court, including but not limited to the relief requested by the Commission in its Complaint in this action.

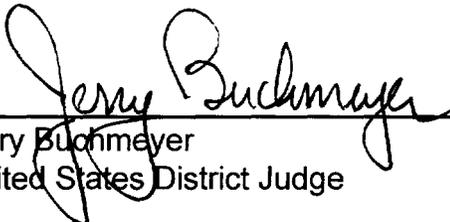
XIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That this Final Judgment of Permanent Injunction and Other Equitable Relief may be served upon Pate in person or by mail either by the United States marshal, the Clerk of the Court or any member of the staff of the Commission.

XIV.

There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Final Judgment as to defendant Gerald Pate pursuant to Rule 54 of the Federal Rules of Civil Procedure.

DATED and SIGNED this 6 day of July, 2000.



Jerry Buchmeyer
United States District Judge

Agreed As To Form And Substance:

A handwritten signature in cursive script, reading "Gerald Lee Pate", written over a horizontal line.

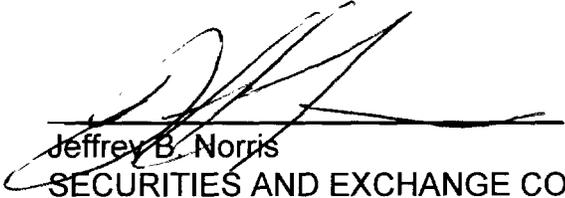
Gerald Lee Pate

Approved As To Form:

A handwritten signature in cursive script, reading "T. Alan Owen", written over a horizontal line.

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Jeffrey B. Norris

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Attorneys for Securities and Exchange Commission

CERTIFICATE OF SERVICE

I hereby certify that on this the 23rd day of May, 2000, a true and correct copy of the foregoing document was served by First Class Mail on the following individuals and entities:

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Registered Agent for Alliance Investment
Corporation
On behalf of FPC-1 Limited Partnership,
Highlander Limited Partnership, and Alliance
Investments Corp

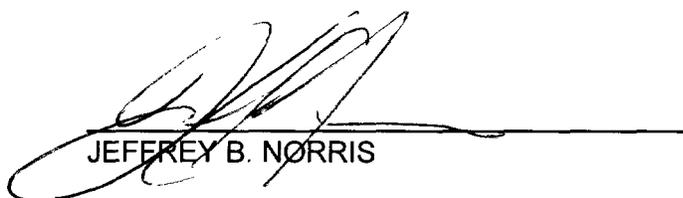
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