

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**K.W. BROWN & COMPANY,
21ST CENTURY ADVISORS, INC.,
K.W. BROWN INVESTMENTS, INC.,
KENNETH W. BROWN,
WENDY E. BROWN,
MICHAEL S. CIMILLUCA, JR.,**

Defendants.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission (the “Commission”) hereby alleges that:

INTRODUCTION

1. The Commission brings this action to permanently enjoin: (1) two affiliated investment advisers, Defendants K.W. Brown & Company (“Brown & Co.”) and 21st Century Advisors, Inc. (“21st Century”) (collectively the “Advisers”); (2) the Advisers’ affiliated broker-dealer, Defendant K.W. Brown Investments, Inc. (“Brown Investments”); (3) their principals, Defendants Kenneth W. Brown (“Ken Brown”) and Wendy E. Brown (“Wendy Brown”); and (4) a trader for Brown Investments, Defendant Michael S. Cimilluca, Jr. (“Cimilluca”) (collectively “Defendants”) from violating the antifraud, books and records, and investment adviser reporting provisions of the federal securities laws. Unless permanently enjoined, Defendants will continue to violate the securities laws in the future.

2. Beginning no later than 2002 through at least 2004, Ken Brown and Cimilluca improperly profited from trading in securities that the Advisers also bought and sold on behalf of their clients. In September 2002, Ken Brown and Brown Investments hired Cimilluca to day-trade the Brown Investments' proprietary account (the "Brown Trading Account"). As compensation for his day-trading, Cimilluca received 50% of all profits from the Brown Trading Account. From September 2002 to May 2003, Cimilluca was also responsible for executing all of Brown Investments' client trades, including trades for the Advisers' clients who maintained their brokerage accounts at Brown Investments. For these services, Cimilluca was only paid 1% of all commissions generated from trades he executed. Cimilluca's compensation structure created an improper conflict of interest, since it gave him an incentive to steer more profitable trades to the Brown Trading Account, and he repeatedly allocated better prices on securities transactions to the Brown Trading Account than to the Advisers' clients. These favorable trades generated over \$330,000 in profits for the Brown Trading Account. The Advisers failed to implement policies or procedures to prevent or address the conflicts created by Ken Brown's proprietary trading and Cimilluca's compensation structure.

3. The Advisers lacked adequate internal controls and committed numerous books and records and reporting violations beginning no later than 2002 through at least 2004. For example, the Advisers routinely misstated their assets under management in Forms ADV filed with the Commission between May 2002 and March 2004. The Advisers also failed to provide the Commission's staff with required books and records on a timely basis. Ken Brown, along with his wife, Wendy Brown, who performs compliance and reporting duties for the Advisers and Brown Investments are responsible for and/or caused these violations.

DEFENDANTS

4. Brown & Co. is a Florida corporation with its principal place of business in Delray Beach, Florida. Brown & Co. has been registered with the Commission as an investment adviser since 2002. The Brown Family Trust, a trust owned and controlled by Ken and Wendy Brown, owns and controls Brown & Co.

5. 21st Century is a Florida corporation with its principal place of business in Delray Beach, Florida. 21st Century has been registered with the Commission as an investment adviser since 1985 and is owned and controlled by Ken and Wendy Brown.

6. Brown Investments, Inc. is a Florida corporation with its principal place of business in Delray Beach, Florida. Brown Investments has been registered with the Commission as a broker-dealer since 1985. Ken and Wendy Brown own and control Brown Investments.

7. Ken Brown, 57, is a resident of Manalapan, Florida. He is the CEO of Brown & Co., President of 21st Century, and the CEO and a registered representative of Brown Investments.

8. Wendy Brown, 52, is a resident of Manalapan, Florida. She is Ken Brown's wife and the Secretary and Treasurer of 21st Century and Brown & Co. She is also the President and a registered representative of Brown Investments.

9. Cimilluca, 34, is a resident of Coral Springs, Florida. He is a registered representative of Brown Investments.

JURISDICTION AND VENUE

10. The 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, 77t(d) and 77v(a); 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; and Section 214 of the Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. § 80b-14.

11. This Court has personal jurisdiction over Defendants and venue is proper in the Southern District of Florida because the Defendants’ acts and transactions constituting the violations of the Securities Act, the Exchange Act and the Advisers Act occurred in the Southern District of Florida. In addition, the principal offices of the Advisers and Brown Investments are located in the Southern District of Florida and all of the individual defendants reside in the Southern 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 set forth in this Complaint.

FACTUAL ALLEGATIONS

13. Brown and Co. and 21st Century are each registered as investment advisers and each have separate management agreements; however, they are essentially one entity. The Advisers and Brown Investments obtain most of their clients through a radio show Ken Brown hosts that airs every weekday morning and evening on a Palm Beach, Florida radio station.

14. The Advisers’ clients are charged fees based upon assets under management and, depending on the investment portfolio, may pay commissions on trades executed at Brown Investments. Although the Advisers’ Forms ADV make reference to an Investment Committee that makes decisions relating to the investment strategy and recommendations for the Advisers’ clients, the Investment Committee authority begins and ends with Ken Brown. Accordingly, Ken Brown makes investment decisions for the Advisers’ clients.

A. Conflicts of Interest

15. In September 2002, Ken Brown and Brown Investments hired Cimilluca to day-trade the Brown Trading Account. As compensation for his day-trading, Cimilluca received 50% of all profits from the Brown Trading Account. Cimilluca's compensation from day-trading this account totaled more than \$800,000 in 2003.

16. From September 2002 through the end of May 2003, Cimilluca was also responsible for processing all of Brown Investments' client trades, including trades for the Advisers' clients who maintained their brokerage accounts at Brown Investments. For these services, Cimilluca was paid 1% of all trade execution commissions, amounting to less than \$12,000 annually. Cimilluca's compensation structure created an improper conflict of interest, since it provided him an incentive to direct profitable trades to the Brown Trading Account rather than to the Advisers' client accounts.

17. From September 2002 through at least the end of May 2003, Cimilluca regularly and knowingly traded the Brown Trading Account in the same securities, and on the same days, as the Advisers' clients traded. During this same time period, the Brown Trading Account profited by more than \$330,000 at the expense of, or contrary to the advice given to, the Advisers' clients. This occurred in three ways. First, the Brown Trading Account often *purchased* the same securities on the same day as the Advisers' clients and received a *lower* price than the clients. For instance, on February 26, 2003, the Brown Trading Account bought Overture Services, Inc. ("OVER") for \$15.89 a share, while the Advisers' clients paid \$19.54 a share. Second, the Brown Trading Account *sold* the same securities on the same day as the Advisers' clients and received a *higher* price for those sales than the Advisers' clients. For example, on September 13, 2002, the Brown Trading Account sold Anglogold Limited ADR

(“AU”) for \$27.77 a share, while the Advisers’ clients only received \$25.95 a share. Third, the Brown Trading Account made trades that contradicted the advice that the Advisers gave to their clients. The Brown Trading Account frequently *bought or sold* securities in the *opposite* direction of the Advisers’ clients. Approximately 150 of these improper trades occurred during this nine-month period.

18. Ken Brown made the investment decisions for the Advisers’ clients, and he routinely reviewed the trading activity in the Brown Trading Account. Accordingly, Ken Brown knew or was extremely reckless in not knowing that this conflict of interest and improper trading was occurring. In addition, the Advisers, Brown Investments, and Cimilluca knew or were extremely reckless in not knowing that this conflict of interest and improper trading was occurring, since they had actual or constructive knowledge that it was occurring.

B. Failure to Address or Disclose the Conflicts of Interest

19. The Advisers lacked policies and procedures that would have prevented the improper conflict of interest. For example, the Advisers did not implement blackout periods, pre-approval requirements, or monitor trading patterns to detect or eliminate the conflicts of interest inherent in Cimilluca’s day-trading and compensation structure. The Advisers also lacked procedures to ensure their clients received the best price for their trades.

20. In March 2003, the Commission’s examination staff conducted an examination of the Advisers and identified several instances of the improper trading as well as a lack of policies and procedures to detect such trading. In a June 10, 2003 letter, the examination staff notified Ken Brown and the Advisers about deficiencies regarding, among other things:

- Breaches of fiduciary duty with respect to failure to detect improper trading activities in the Brown Trading Account.
- On approximately 44 different days, the Brown Trading Account *purchased* the same securities on the same day as the Advisers' clients and received a better price ranging from \$.20 to \$3.65 per share.
- On approximately 32 different days, the Brown Trading Account *sold* the same securities on the same day as the Advisers' clients and received a better price ranging from \$.20 to \$1.82 per share.
- On approximately 75 different days, the Brown Trading Account *bought or sold* securities in the *opposite* direction of the Advisers' clients.
- The Advisers lacked adequate specific trading procedures, did not have any controls in place to prevent improper personal trading, and that Cimilluca had a personal financial interest in the Brown Trading Account.

21. Even after being notified of the improprieties, Ken Brown, Cimilluca, the Advisers, and Brown Investments caused the Brown Trading Account to continue trading in the same securities and receive better prices than the Advisers' clients. For example, between June 10, 2003 and March 2004, on at least 32 days the Brown Trading Account traded in the same securities and received a better price than the Advisers' clients.

22. Cimilluca stopped processing the Advisers' client trades in June 2003, when his father was hired to assume that role. However, Cimilluca shares an office with his father and occasionally enters client trades when his father is out of the office.

23. Ken Brown makes all business and compliance decisions for the Advisers and is responsible for their failure to adopt or implement procedures designed to detect and prevent improper trading.

C. Failure to Disclose Conflicts of Interest

24. Brown & Co.'s and 21st Century's Forms ADV failed to promptly disclose the conflicts of interest that arose from trading in the Brown Trading Account and Cimilluca's financial interest in the account. Item 9 of Part II of the Form ADV requires an investment adviser to disclose any participation or interest in client transactions and whether an investment adviser "buys or sells for itself securities that it also recommends to clients." The investment adviser must also disclose on Schedule F to the Form ADV what restrictions, internal procedures, or disclosures are used for conflicts of interest in those transactions. The instructions to the Form ADV specify that a registrant must, in addition to the annual amendment, update its Form ADV *promptly* if information provided in Part II becomes materially inaccurate.

25. 21st Century's Form ADV, Part II, dated June 18, 2002, and Brown & Co.'s Form ADV, Part II, dated August 23, 2002, both signed by Ken Brown, indicate "the firm or its affiliates may take positions in the same securities it recommends to its clients, [but] under no circumstance will the firm place its own interest ahead of our clients, nor will the firm take a position which could be detrimental to our clients [sic] position."

26. The Advisers' Forms ADV became materially inaccurate in September 2002, when Cimilluca began day-trading the Brown Trading Account and allocating better prices to the Brown Trading Account than to the Advisers' client accounts.

27. The Advisers did not update their Forms ADV to disclose the conflict of interest until June 2003, in violation of the Form ADV instructions requiring prompt disclosure of all material inaccuracies.

D. Lack of Internal Controls and Books and Records Violations

1. The Advisers Misstated the Value of Assets Under Management

28. The Advisers failed to provide books and records to substantiate the amount of assets they claimed they had under management. The documents provided by the Advisers to the Commission were produced in a state of disarray and did not support the amount of assets that the Advisers claimed they had under management as the date of the Forms ADV. Based upon the disorganized documents provided by the Advisers, set forth below are examples of the approximate amounts by which the Advisers misstated the value of assets under management:

ADV Date	Assets per ADV	Approximate Amount of Assets Actually Under Management - Per Documents Provided by the Advisers
21st Century:		
4/28/04	\$126,300,000	\$ 65,000,000
3/30/04	\$126,300,000	\$ 65,000,000
7/23/03	\$36,000,000	\$ 88,000,000
4/8/03	\$36,000,000	\$ 88,000,000
12/20/02	\$108,526,000	\$ 89,000,000
5/14/02	\$108,526,000	\$104,000,000
K.W. Brown:		
7/22/03	\$65,269,414	\$ 48,000,000
12/20/02	\$30,825,000	\$ 35,000,000

Accordingly, based upon the Advisers own books and records, they routinely misstated their assets under management in the Forms ADV filed with the Commission between at least May 2002 through at least April 2004.

29. Ken and Wendy Brown prepared, reviewed and/or signed all the Advisers Forms ADV filed with the Commission between May 2002 and March 2004.

30. The Advisers lacked proper internal controls and failed to keep accurate books and records. For example, in response to requests the Commission's staff made, the Advisers could not produce basic information relating to their supervisory structure, employee duties and responsibilities, operations, client accounts, portfolio management, fees and assets under management.

CLAIMS FOR RELIEF

COUNT I – FRAUD

Violations of Section 17(a) of the Securities Act (Against Defendants Brown & Co., 21st Century and Ken Brown)

31. The Commission repeats and realleges Paragraphs 1 through 30 of this Complaint as if fully set forth herein.

32. Beginning no later than September 2002 through at least March 2004, Brown & Co., 21st Century and Ken Brown, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts and/or omitted 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/or (c) engaged in acts, practices and courses of business which have operated, and may continue to operate as a fraud upon the purchasers of such securities.

33. By reason of the foregoing, Brown & Co, 21st Century and Ken Brown, directly and indirectly, have violated and, unless enjoined, may continue to violate Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

COUNT II – FRAUD

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder (Against Defendants Brown & Co., 21st Century and Ken Brown as Primary Violators and Defendants Cimilluca and Brown Investments as Aiders and Abettors)

34. The Commission repeats and realleges paragraphs 1 through 30 of this Complaint.

35. Beginning no later than September 2002 through at least March 2004, Brown & Co., 21st Century and Ken Brown directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts and/or omitted 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/or (c) engaged in acts, practices and courses of business which have operated, and may continue to operate as a fraud upon the purchasers of such securities.

36. From September 2002 until at least March 2004, Brown Investments and Cimilluca, aided and abetted Brown & Co., 21st Century and Ken Brown's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by knowingly providing substantial assistance and taking part in the improper activity.

37. By reason of the foregoing, Brown & Co., 21st Century, and Ken Brown, directly and indirectly, aided and abetted by Cimilluca and Brown Investments, have violated and, unless enjoined, may continue to violate Section 10(b) of the Securities Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder.

COUNT III – FRAUD BY INVESTMENT ADVISER

Violations of Sections 206(1) and 206(2) of the Advisers Act (Against Defendants Brown & Co and 21st Century as Primary Violators and Defendants Ken Brown, Cimilluca and Brown Investments as Aiders and Abettors)

38. The Commission repeats and realleges paragraphs 1 through 30 of this Complaint.

39. Beginning no later than September 2002 through at least March 2004, Brown & Co. and 21st Century, by use of the mails, and the means and instrumentality of interstate commerce, directly or indirectly, knowingly, willfully or recklessly: (a) employed devices, schemes or artifices to defraud their clients or prospective clients; and (b) engaged in transactions, practices and courses of business which have operated as a fraud or deceit upon their clients or prospective clients.

40. Beginning no later than September 2002 through at least March 2004, Ken Brown, Cimilluca and Brown Investments, aided and abetted the Advisers violations of Sections 206(1) and 206(2) of the Advisers Act by knowingly providing substantial assistance and taking part in the improper activity.

41. By reason of the foregoing, Brown & Co. and 21st Century, directly and indirectly, aided and abetted by Ken Brown, Cimilluca and Brown Investments, have violated and, unless enjoined, may continue to violate Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1),(2).

COUNT IV – FALSE REPORTS

Violations of Section 207 of the Advisers Act (Against Defendants Brown & Co., 21st Century, Ken Brown and Wendy Brown)

42. The Commission repeats and realleges paragraphs 1 through 30 of this Complaint.

43. Beginning no later than May 2002 to the present, Brown & Co., 21st Century, Ken Brown and Wendy Brown, by use of the mails, and the means and instrumentality of interstate commerce, directly and indirectly, willfully made untrue statements of material fact in, and omitted to state material facts required to be stated in, reports filed with Commission.

44. By reason of the foregoing, Brown & Co., 21st Century, Ken Brown and Wendy Brown, directly and indirectly, have violated and, unless enjoined, may continue to violate Section 207 of the Advisers Act, 15 U.S.C. § 80b-7.

COUNT V – BOOKS AND RECORDS

Violations of Section 204 of the Advisers Act and Rules 204-1(a)(2) and 204-2(a)(8) Promulgated Thereunder (Against Defendants Brown & Co. and 21st Century as Primary Violators and Defendants Ken Brown and Wendy Brown as Aiders and Abettors)

45. The Commission repeats and realleges paragraphs 1 through 30 of this Complaint.

46. From March 2003 to the present, Brown & Co. and 21st Century, by use of the mails, and the means and instrumentality of interstate commerce, directly and indirectly, failed to: (a) update their Forms ADV when the information contained therein became materially inaccurate; and (b) make and keep true, accurate and current, a list or other record of all accounts in which Brown & Co. or 21st Century is vested with any discretionary power with respect to the client's funds, securities or transactions.

47. From March 2003 to the present, Ken Brown and Wendy Brown aided and abetted Brown & Co. and 21st Century violations of Section 204 and Rules 204-1(a)(2) and 204-2(a)(8) by knowingly providing substantial assistance and taking part in the improper activity.

48. By reason of the foregoing, Brown & Co. and 21st Century, aided and abetted by Ken Brown and Wendy Brown, have violated, and unless enjoined will continue to violate

Section 204 of the Advisers Act, 15 U.S.C. § 80b-4, and Rules 204-1(a)(2) and 204-2(a)(8) thereunder, 17 C.F.R. §§ 275.204-1(a)(2) and 275.204-2(a)(8).

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

A. Permanent Injunctive Relief

1. Brown & Co. and 21st Century

Issue a permanent injunction, restraining and enjoining Brown & Co. and 21st Century, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating: (i) Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); (ii) 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; (iii) Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2); (iv) Section 207 of the Advisers Act, 15 U.S.C. § 80b-7; and Section 204 of the Advisers Act, 15 U.S.C. § 80b-4, and Rules 204-1(a)(2) and 204-2(a)(8) thereunder, 17 C.F.R. §§ 275.204-1(a)(2) and 275.204-2(a)(8).

2. Ken Brown

Issue a permanent injunction, restraining and enjoining Ken Brown, his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with him, and each of them, from: (i) violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); (ii) 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; (iii) aiding and abetting any violation of Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2); (iv) violating Section 207 of the Advisers Act, 15 U.S.C. § 80b-7; and aiding and abetting any violation of Section 204 of the Advisers Act,

15 U.S.C. § 80b-4, and Rules 204-1(a)(2) and 204-2(a)(8) thereunder, 17 C.F.R. §§ 275.204-1(a)(2) and 275.204-2(a)(8).

3. Wendy Brown

Issue a permanent injunction, restraining and enjoining Wendy Brown, her officers, agents, servants, employees, attorneys, and all persons in active concert or participation with her, and each of them, from: (i) violating Section 207 of the Advisers Act, 15 U.S.C. § 80b-7; and (ii) aiding and abetting any violation of Section 204 of the Advisers Act, 15 U.S.C. § 80b-4, and Rules 204-1(a)(2) and 204-2(a)(8) thereunder, 17 C.F.R. §§ 275.204-1(a)(2) and 275.204-2(a)(8).

4. Cimilluca and Brown Investments

Issue a permanent injunction, restraining and enjoining Cimilluca, and Brown Investments, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from aiding and abetting any violation of: (i) 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 (ii) Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

B. Appointment of a Special Monitor

Pursuant to the Court's equitable authority, it should issue an Order appointing a Special Monitor to review the Advisers' procedures with respect to trading by accounts that are affiliated with the Advisers or any of their associated persons; the Advisers record creation and retention policies; the Advisers overall compliance procedures; and providing the Special Monitor with the authority to recommend policy and procedure changes, which the Advisers would be obligated to implement unless otherwise ordered by the Court.

C. Accounting and Disgorgement

Issue an Order requiring Defendants Brown & Co., 21st Century, Brown Investments, Ken Brown, Wendy Brown and Cimilluca to disgorge all ill-gotten profits they have received as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest, and provide an accounting of those proceeds to the Court.

D. Penalties

Issue an Order requiring Defendants Brown & Co., 21st Century, Brown Investments, Ken Brown, Wendy Brown and Cimilluca to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9.

E. Further Relief

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

F. 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,

April 27, 2005

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