

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION

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SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

JAMES A. KNAUER as the Court Appointed)
Receiver for HEARTLAND)
FINANCIAL SERVICES, INC., and JMS)
INVESTMENT GROUP, LLC,)

Plaintiff,)

v.)

JONATHON ROBERTS FINANCIAL)
GROUP, INC.,)
ALLIANCE CAPITAL MANAGEMENT)
CORP.,)
ANDOVER SECURITIES INC.,)
FSC SECURITIES, CORPORATION, and)
FFP SECURITIES, INC.,)

Defendants.)

CAUSE NO.

IP01 - 1168 C T/G

Jury Trial Requested

COMPLAINT

Plaintiff, James A. Knauer, as the Court-Appointed Receiver for Heartland Financial Services, Inc., and JMS Investment Group, LLC, by counsel, alleges the following:

PROCEDURAL HISTORY AND PARTIES

1. On August 10, 2000, the United States Securities and Exchange Commission filed a complaint in United States District Court in the Southern District of Indiana requesting, among other things, that the Court appoint a receiver for Heartland Financial Services, Inc., and JMS Investment Group, LLC.
2. Plaintiff, James A. Knauer (the "Receiver"), is the receiver for Heartland Financial Services, Inc. ("Heartland"), and JMS Investment Group, LLC ("JMS")

appointed by the United States District Court for the Southern District of Indiana on August 21, 2000.

3. The Receiver is an Indiana resident.

4. Heartland is an Indiana corporation with its principal place of business in Indianapolis, Indiana.

5. JMS is an Indiana limited liability company with its principal place of business in Indianapolis, Indiana.

6. Defendant, Jonathon Roberts Financial Group, Inc. ("Jonathon Roberts"), is a Florida corporation with its principal place of business at 13902 N. Dale Mabry Highway, Suite 103, Tampa, Florida 33618.

7. On information and belief, defendant, Alliance Capital Management Corp. ("Alliance"), was or is a Florida corporation with its principal place of business in Tampa, Florida.

8. Jonathon Roberts is the successor in interest to Alliance and is responsible for all debts and liabilities of Alliance.

9. On information and belief Andover Securities Inc. ("Andover"), is or was a Kansas corporation with its principal place of business in Kansas.

10. On information and belief Andover is a predecessor to Andover Brokerage, L.L.C. and Andover Brokerage Corporation (collectively "Andover Brokerage") and Andover Brokerage is liable for all debts and liabilities of Andover.

11. Andover Brokerage is a New York limited liability company with its principal place of business at 400 Rella Boulevard, Montebello, New York 10901.

12. FSC Securities Corporation ("FSC") is a Delaware corporation with its principal place of business at 2300 Windy Ridge Parkway, Suite 1100, Atlanta, Georgia 30339.

13. FFP Securities, Inc. ("FFP") is a Missouri corporation with its principal place of business at 15455 Conway Road, St. Louis, Missouri 63017-2022.

JURISDICTION AND VENUE

14. The acts, practices and course of business constituting the securities violations alleged herein occurred in material part within the Southern District of Indiana.

15. Defendants, and the non-parties whose actions give rise to this action, directly and indirectly used the means and instrumentalities of interstate commerce and the mails in connection with the acts, practices, and course of business alleged herein, within this jurisdiction and elsewhere.

16. The amount in controversy exceeds \$75,000.

17. This Court has jurisdiction over this action pursuant to Sections 20, 21(e) and 27 of the Securities and Exchange Act of 1934, as amended (the "Exchange Act") [15 U.S.C. §§ 78t, 78u(e) and 78aa] and pursuant to 28 U.S.C. §1331, because they arise under the laws of the United States, and the Court has jurisdiction over all other claims herein pursuant to the Court's supplemental jurisdiction defined by 28 U.S.C. § 1367. This Court also has jurisdiction over all claims herein pursuant to the Court's diversity jurisdiction defined by 28 U.S.C. § 1332.

18. Venue is proper in this jurisdiction pursuant to Section 27 of the Exchange Act and pursuant to 28 U.S.C. § 754, and 28 U.S.C. § 1391.

ALLEGATIONS COMMON TO ALL COUNTS

19. Defendants Alliance, Andover, Andover Brokerage, FSC, FFP, and/or Jonathon Roberts were at relevant times broker dealers registered under Section 15 of the Exchange Act [15 U.S.C. § 78o] and with the National Association of Securities Dealers.

20. Kenneth R. Payne ("Payne") was licensed as a securities registered representative with Defendants for time periods as follows:

- (a) Andover - Dec. 12 1991 to January 1, 1996
- (b) FSC - January 1, 1996 to February 14, 1997
- (c) FFP - February 26, 1997 to October 1, 1998
- (d) Jonathon Roberts - March 15, 1999 to August 10, 2000.
- (e) Alliance - March 1999 to unknown date

21. Daniel G. Danker ("Danker") was licensed as a securities registered representative with Defendants for time periods as follows:

- (a) Andover - October 28, 1991 to January 1, 1996
- (b) FSC - January 1, 1996 to February 14, 1997
- (c) FFP - February 26, 1997 to October 1, 1998
- (d) Jonathon Roberts - March 12, 1999 to March 27, 2000
- (e) Alliance - March 1999 to unknown date

22. During the time periods as set forth above, Payne and Danker were employees and agents of Alliance, Andover, FSC, FFP, and Jonathon Roberts (the "Broker Dealers").

23. During the time periods as set forth above in which Payne and Danker were acting as licensed securities dealers and employees and agents of the Broker Dealers the Broker Dealers had the ability to directly and indirectly control the actions of Payne and Danker in connection with the offering of, and sale of, securities and other business activities in connection with the offering of, and sale of, securities.

24. Commencing in 1994, and continuing through August, 2001, Payne, Danker and others, directly and indirectly, through Heartland, JMS and other related and affiliated companies (collectively the "Heartland Companies") and otherwise, engaged in a massive, fraudulent "Ponzi" scheme whereby, having held themselves out as licensed securities registered representatives, they induced investors to pay to them millions of dollars through the fraudulent sale of securities (the "Ponzi Scheme").

25. The Ponzi scheme is more fully set forth in the Complaint filed against Payne, Danker and others in United States Securities and Exchange Commission v. Payne, et al, Case No. IP00-1265-C-T/G (a copy of which is attached hereto as Exhibit 1) (the "SEC's Complaint") and in the Complaint filed against Payne, Danker and others in Knauer, et al. v. Payne, et al., Case No. IP00-1629-C-T/G (a copy of which is attached hereto as Exhibit 2) (the "Receiver's RICO Complaint")

26. The 95 rhetorical paragraphs of the SEC's Complaint are incorporated herein by reference as subparagraphs to this paragraph 26 as if fully set forth, except that since the filing of this complaint Plaintiff has determined that the fraudulent scheme of Payne, Danker and others extended at least as far back as 1994, and involved in excess of 60 million dollars.

27. Rhetorical paragraphs 41 through 206 of the Receiver's RICO Complaint are incorporated herein by reference as subparagraphs to this paragraph 27 as if fully set forth.

28. The acts and practices of Payne and Danker as set forth above and in the SEC's Complaint and in the Receiver's RICO Complaint constituted fraud and deceit in connection with the purchase or sale of securities in violation of Section 10b of the Exchange Act and Rule 10b-5 thereunder.

29. Based on acts and practices described above and in the SEC's Complaint and in the Receiver's RICO Complaint Danker has been convicted of wire fraud and money laundering, and has been sentenced to 71 months of prison.

30. Based upon acts and practices described above and in the SEC's Complaint and in the Receiver's RICO Complaint Payne has been indicted, and his criminal trial is scheduled for January 2002.

COUNT I

Controlling person liability under Exchange Act Section 20 and the Indiana Code

31. At all times while Payne and Danker were carrying on their fraudulent and deceptive scheme set forth above and in the designated portions of the SEC's Complaint and the Receiver's RICO Complaint, Payne and Danker held themselves out to those from whom they were fraudulently soliciting funds as experts in investments and as licensed securities brokers acting with the knowledge, consent, authority and backing of the brokerage firm with whom they were licensed.

32. Payne and Danker's conduct included prominently posting signs on their premises indicating that their brokerage firm was a member of the National Association

of Securities Dealers ("NASD") and the Securities Investor Protection Corporation ("SIPC"), and oral and written references to their employing broker/dealers.

33. Payne and Danker would not have been able to successfully carry out their fraudulent Ponzi Scheme without their status as a licensed agent of the Broker Dealers.

34. Numerous investors in securities sold by Payne and/or Danker were lulled into a false sense of security by Payne and Danker's association with one or more of the Broker Dealers and by Payne and Danker's ability to advertise NASD membership and SIPC protection.

35. Each defendant was able to directly or indirectly control Payne and Danker during the time period Payne or Danker was an employee and/or agent of that Broker Dealer and during the time period Payne and Danker maintained their securities licenses with each such Defendant as set forth in paragraphs 20-21 above.

36. Each Broker Dealer had a duty to monitor the conduct of Payne and Danker and to conduct appropriate oversight over Payne and Danker during the time period in which Payne and Danker maintained their securities licenses with each such Defendant but failed to do so.

37. Each Broker Dealer failed to exercise reasonable care to monitor and oversee Payne and Danker during the time period in which Payne and Danker maintained their securities licenses with each such Defendant.

38. Each Defendant was a controlling person within the meaning of the Securities and Exchange Act and Indiana Code § 23-2-1-19(d), and is therefore liable for the associated wrongful conduct of Payne and Danker pursuant to Section 20 of the Exchange Act and pursuant to the Indiana Securities Act, Indiana Code § 23-2-1-1 et seq.

COUNT II
Sale of Unregistered Securities

39. For his Second Count, Plaintiff realleges and incorporates as if fully set forth the allegations contained in the foregoing paragraphs 1-38 of this Complaint and further states as follows.

40. The securities sold by Payne and Danker were sold without registration under the Securities Act and without registration thereunder, in violation of Sections 5(a) and 5(b) of the Securities Act and the Indiana Securities Act.

41. Each defendant was a controlling person of Payne and Danker for those time periods during which Payne and Danker maintained their securities licenses with each of such Defendants as set forth in paragraphs 20-21 above, and is thereby liable for the sale of unregistered, non exempt securities by Payne and Danker during such time periods pursuant to Section 15 of the Securities Act and the Indiana Securities Act.

COUNT III
Breach of Fiduciary Duty and Fraud

42. For his Third Count, Plaintiff realleges and incorporates as if fully set forth the allegations contained in the foregoing paragraphs 1-41 of this Complaint and further states as follows

43. Those investors who were induced by the fraud and deceit of Payne and Danker reasonably believed that as licensed and registered securities representatives Payne and Danker were acting with the knowledge, consent and approval of the brokerage firms with which they were licensed from time to time, that the investments offered by Payne and Danker were approved by said firms, that said firms had authorized

Payne and Danker to sell such investments to the investors, and that the offer and sale of such investments was within the apparent authority of Payne and Danker.

44. Those investors who were induced by the fraud and deceit of Payne and Danker as more fully described above did not know that Payne and Danker were offering investments that were not approved or authorized by the brokerage firms with whom Payne and Danker were licensed.

45. The offer and sale of securities by Payne and Danker constituted conduct that is usual and customary by licensed securities brokers, and which licensed securities brokers are authorized to conduct (i.e., the offer and sale of securities).

46. At no time did any Defendant notify any of the persons to whom Payne and Danker fraudulently sold securities that Payne and/or Danker were not authorized to offer and sell such securities, nor did any Defendant disassociate itself from such securities transaction.

47. Payne and Danker were agents and employees of the Broker Dealers at all relevant times as set forth above.

48. Payne and Danker were clothed with apparent authority as an agent of the Broker Dealers at all relevant times as set forth above.

49. Payne, Danker and the Broker Dealers owed a fiduciary duty to each of the investors and to Heartland and JMS to act honestly and openly and in good faith in the conduct of their affairs and in handling investor funds.

50. Payne, Danker and the Broker Dealers breached their fiduciary duty to investors and to Heartland and JMS when, among other things, Payne and/or Danker commingled funds invested to purchase various securities, converted funds in bank

accounts and other invested funds to their own use and benefit, fraudulently misrepresented the value of securities and how investor funds would be invested or used and when the Broker Dealers failed to exercise adequate and reasonable oversight over the conduct of Payne and Danker.

51. Each Defendant is directly liable to each investor and to Heartland and JMS for breach of fiduciary duty and fraud.

52. Each Defendant is liable for the fraudulent and wrongful conduct of Payne and Danker for the time periods during which Payne and Danker were registered with them as registered representatives under the doctrine of *respondeat superior*.

COUNT IV **Civil Action By Crime Victim**

53. For his Fourth Count, Plaintiff realleges and incorporates as if fully set forth the allegations contained in the foregoing paragraphs 1-52 of this Complaint and further states as follows.

54. Ind. Code § 34-24-3-1 permits a plaintiff in a civil case to recover specified damages, including treble damages, attorneys fees, and certain costs, for a violation of certain statutes including Ind. Code § 35-43 et seq.

55. Indiana has enacted a statute imposing criminal liability upon corporations for offenses committed by a corporation's "agent acting within the scope of his authority." Ind. Code § 35-41-2-3(a).

56. Indiana Code § 35-41-2-3(a) combines with Ind. Code § 34-24-3-1 to create a statutory version of *respondeat superior*, pursuant to which each Broker Dealer is liable for all criminal acts of its agents, acting within the scope of their authority,

including all criminal acts of Payne and Danker for those time periods during which Payne and Danker maintained their securities licenses with each of such Defendants as set forth in paragraph 6 above.

57. Defendants have conducted or participated directly or indirectly in the commission of criminal acts in violation of Ind. Code § 35-43 et seq., which have caused pecuniary loss to Heartland, JMS and their investors including:

- (a) Theft in violation of Ind. Code § 35-43-4-2;
- (b) Fraud in violation of Ind. Code § 35-43-5-4(8) and (9);
- (c) Deception by knowingly or intentionally making false or misleading written statements with the intent to obtain property in violation of Ind. Code § 35-43-5-3(a) (2);
- (d) Deception by misapplying entrusted property in a manner that the Defendant knew was unlawful or involved substantial risk of loss or detriment to either the owner of the property or to a person for whose benefit the property was entrusted in violation of Ind. Code § 35-43-5-3(a)(3);
- (e) Deception by knowingly and intentionally misrepresenting the identity of a person or another person in violation of Ind. Code § 35-43-5-3(a)(6);
- (f) Criminal mischief by recklessly, knowingly, or intentionally damaging property of another person without the other person's consent and/or causing another to suffer pecuniary loss by deception or by expression of intention to injure another person or to damage the property or to impair the rights of another person in violation of Ind. Code § 35-43-1-2; and

- (g) Criminal conversion by knowingly or intentionally exerting unauthorized control over property of the Plaintiffs, in violation of Ind. Code § 35-43-4-3.

58. By reason of the foregoing, Heartland, JMS and their investors have suffered pecuniary loss of at least thirty million dollars and the Receiver is entitled to recover an amount not to exceed three (3) times actual damages, the costs of this action, reasonable attorney's fees, travel expenses, compensation for time, expenses to compensate agents and employees, and all reasonable costs of collection, all as provided by Ind. Code § 34-24-3-1.

COUNT V
Negligent Supervision

59. For his Fifth Count, Plaintiff realleges and incorporates as if fully set forth the allegations contained in the foregoing paragraphs 1-58 of this Complaint and further states as follows.

60. Defendants, as licensed securities broker dealers, had a duty to supervise, monitor, be aware of, and control the securities sales activities of their registered representatives and agents, Payne and Danker, including specifically the duty to ascertain what securities Payne and Danker were selling, the manner of sale, the handling of the proceeds of such sales, the documentation (including advertisements, brochures and private placement memoranda) used in connection with such sales, the suitability of such investments for the intended investors, and whether Payne and Danker were sponsoring, promoting, or engaging in any other business activity.

61. Defendants owed such duty to those persons to whom Payne and Danker

were selling securities and to Heartland and JMS.

62. Defendants, and each of them, for the time periods during which Payne and Danker were licensed with them as registered representatives, breached the aforesaid duty.


23. The breach of said duty by each Defendant was a direct and proximate cause of the losses sustained by the investors to whom Payne and Danker fraudulently sold securities and of the losses and liabilities of Heartland and JMS.

24. The losses of such persons to whom Payne and Danker fraudulently sold securities exceed thirty million dollars. Such losses were a direct and proximate result of the breach of duty by each Defendant to supervise, monitor, be aware of, and control the securities activities of their registered representatives Payne and Danker.

WHEREFORE, plaintiff prays for judgment against Defendants, and each of them, on each Count, in the amount of the actual loss of each person to whom Payne and Danker sold securities, for pre and post judgment interest, costs, attorneys fees, punitive damages and such other relief as may be just.

Respectfully submitted,

KROGER, GARDIS & REGAS, LLP

By: 
William Bock, III

Attorney No. 14777-49

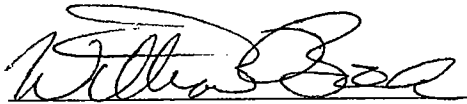
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REQUEST FOR JURY TRIAL

The Plaintiff respectfully requests that all matters contained in this Complaint be
tried by jury.

KROGER, GARDIS & REGAS, LLP

By:



William Bock, III

Attorney No. 14777-49

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