

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

FILED

MAR 12 1997

Clerk, U.S. District Court
District of Columbia

SECURITIES AND EXCHANGE COMMISSION,
450 Fifth Street, N.W.
Washington, D.C. 20549,

Plaintiff,

v.

MERLE S. FINKEL,

Defendant.

CASE NUMBER 1:97CV00505
JUDGE: Emmet G. Sullivan
DECK TYPE: Civil General
DATE STAMP: 03/12/97

COMPLAINT

Plaintiff Securities and Exchange Commission alleges:

SUMMARY

1. On at least 13 occasions defendant Merle S. Finkel, a certified public accountant, practicing as M.S. Finkel & Co., issued materially false or inaccurate audit reports on the financial statements of three publicly traded companies: (1) Systems of Excellence, Inc. ("SOE"); (2) Twenty First Century Health, Inc. ("TFCH"); and (3) Combined Companies International Corp. ("CCIC"). In each case, Finkel's audit reports falsely state that he conducted audits of the financial statements of these companies in accordance with Generally Accepted Auditing Standards ("GAAS") and represent that the financial statements were fairly presented in conformity with Generally Accepted Accounting Principles ("GAAP"). In fact, Finkel did not perform the audits in accordance with GAAS. For two of the companies,

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defendant Finkel knew that the financial statements he certified were materially false and misleading. Finkel also knew that his false audit reports would be included by his clients in periodic reports and an amended registration statement on Form 10, and incorporated by reference in 18 registration statements on Form S-8, all of which were filed with the Commission.

2. By knowingly or recklessly engaging in this conduct, defendant Finkel violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §77q(a)], and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)], and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5], and aided and abetted violations of Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20 and 13a-1 thereunder [17 C.F.R. §§ 240.12b-20 and 240.13a-1].

3. Defendant Finkel will, unless restrained and enjoined, continue to engage in the acts, practices, and courses of business alleged herein, and in acts, practices, and courses of business of similar object and purpose.

JURISDICTION

4. This Court has jurisdiction of this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)], and Section 27 of the Exchange Act [15 U.S.C. §78aa], and 28 U.S.C. § 1331.

5. The Commission brings this action pursuant to authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], and Sections 20(f) and 21(d)(1) of the Exchange Act [15 U.S.C. §§ 78t(f) and 78u(d)(1)].

6. Defendant Finkel, directly or indirectly, has made use of the means and

instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange in connection with the acts, practices, and courses of business alleged herein.

DEFENDANT

7. **Merle S. Finkel**, age 66, is a certified public accountant licensed to practice by the state of Pennsylvania since about 1959. Without performing audits in accordance with GAAS, Finkel rendered unqualified audit reports on the financial statements of three companies: (a) Systems of Excellence, Inc.; (b) Twenty First Century Health Inc.; and (c) Combined Companies International Corp. Finkel has practiced under the name M.S. Finkel & Co. Finkel recently withdrew all of the audit reports he issued for these three companies. On March 12, 1997, Finkel plead guilty to a one-count criminal information charging him with conspiracy to commit securities fraud and bank fraud in the action entitled *United States v. Merle S. Finkel*, Cr-S-97-45-PMP (D.C. Nev.)

OTHER ENTITIES

8. **Systems of Excellence, Inc.**, which was incorporated in Florida in 1989, maintained its offices in Coral Gables, Florida and McLean, Virginia. It purportedly is engaged in manufacturing and distributing video teleconferencing equipment. SOE's stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act. Before the Commission suspended trading in SOE's stock on October 7, 1996 (which suspension has since expired), its stock was quoted on the NASDAQ Bulletin Board. On November 7, 1996, the Commission filed a Complaint and Applications for a Temporary Restraining Order, Preliminary Injunction and other emergency relief in this Court against, among others, SOE, alleging that SOE had violated the antifraud, registration, and periodic filing provisions of the federal securities laws.

9. **Twenty First Century Health, Inc.**, located in Las Vegas, Nevada, was incorporated in Utah in 1981 as Big Valley Energy, Inc. It purportedly completed an intrastate offering of its securities in Utah. Thereafter it changed its name to Biotronic Energy Engineering, Inc., then to The Sonoran Group, then to Zorro International, Inc., then to Health & Wealth, Inc., and finally became Twenty First Century Health in 1995. It presently holds itself out as a new products development company in the field of health-related hygienic, home diagnostic, nutritional supplement and medical technology products. TFCH's stock is not registered with the Commission pursuant to the Exchange Act, and accordingly the company does not make periodic filings with the Commission. Before the Commission suspended trading in TFCH's stock on February 10, 1997 and again on February 27, 1997 (the latter suspension still being in effect), its stock was quoted on the OTC Bulletin Board.

10. **Combined Companies International Corp.**, is located in Las Vegas, Nevada. Through its predecessor it was incorporated in Nevada in 1971, and remained largely inactive until September 1993 when it merged with a medical supply disposal company. CCIC has at various times described itself as engaged in manufacturing and distributing medical and infection control products, recycling tires and manufacturing and distributing video games. CCIC's stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act. Its stock is traded over-the-counter and quoted on the NASDAQ.

**FINKEL'S ISSUANCE OF FALSE AUDIT REPORTS, AND HIS ROLE IN THE
ISSUANCE OF MATERIALLY FALSE AND MISLEADING PERIODIC REPORTS
AND REGISTRATION STATEMENTS**

11. Finkel was engaged as the independent auditor for SOE, TFCH and CCIC at the direction of a Las Vegas stock promoter who controls TFCH and CCIC (the "Promoter"). At

the Promoter's instance or direction, Finkel rendered unqualified audit reports on SOE's, TFCH's and CCIC's financial statements without performing audits in accordance with GAAS for any of these companies.

Finkel's Role in the SOE Fraud

12. From at least March 1995 through September 24, 1996, SOE engaged in a massive unregistered distribution of its shares. The stock it distributed purportedly was issued to consultants in exchange for services rendered to SOE, and purportedly had been registered pursuant to Registration Statements on Form S-8. In fact no such services were provided and no Registration Statements were filed with the Commission.

13. In the course of its audit of SOE's financial statements for the fiscal year ended February 29, 1996, SOE's then independent auditor, Weinberg, Pershes & Co. ("WPC"), discovered that the purported registration statements had not been filed. In addition, WPC was unable to obtain evidence that services had been rendered in exchange for the stock that had been issued, and obtained other information that suggested irregularities in the issuance of the stock by SOE and other matters.

14. As a result of those discoveries, on September 18, 1996, WPC informed SOE that it would be necessary to expand the scope of the audit to, among other things, "perform extensive amount of testing on the common stock issued by the Company". On September 20, 1996, WPC issued a letter to SOE pursuant to Section 10A of the Exchange Act alerting it that illegal acts by the Company may have occurred in contravention of state and federal law.

15. On or before September 19, 1996, Huttoe sought the Promoter's assistance in resolving the issues raised by SOE's auditors. Huttoe at the Promoter's direction decided that

SOE would file its then delinquent annual report on Form 10-KSB and first quarterly report on Form 10-Q, and thereafter file registration statements that would cover the shares previously distributed by SOE. The Promoter arranged for Finkel to issue an audit report on SOE's financial statements, which was to be included in SOE's annual report on Form 10-KSB.

16. On September 21, 1996, Finkel was retained as SOE's independent auditor. Finkel was present at SOE's offices in McLean, Virginia during the weekend of September 21 and 22, and on September 23, and issued an unqualified audit report on SOE's financial statements for the fiscal years ended February 28, 1995 and February 29, 1996. The audit report was dated September 21.

17. Finkel's audit report, issued under the name M.S. Finkel & Co., stated:

We conducted my [sic] audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

18. Finkel's audit report concluded that, on the basis of that examination "[i]n our opinion, the financial statements ... present fairly, in all material respects, the financial position of Systems of Excellence, Inc. at February 29, 1996 and February 28, 1995, and the results of its operations and cash flows for the years then ended in conformity with generally accepted accounting principles."

19. Finkel's audit report was materially false or inaccurate. Finkel did not perform an audit in accordance with GAAS. Finkel relied solely on documents and statements prepared

or provided to him by Huttoe or SOE's internal accountant. He did not obtain any confirmations from banks concerning SOE's cash balances, did not review the workpapers generated by WPC, and made minimal effort to determine whether the purported consultants who had received SOE stock had provided any services to SOE. Had he done so, Finkel would have discovered a massive unregistered distribution of SOE's stock, and that SOE stock was distributed to persons who had performed no services for the company that would qualify the stock for S-8 registration.

20. SOE's annual report on Form 10-KSB, incorporating Finkel's audit report, was filed with the Commission on September 23, 1996. Finkel knew that his audit report would be included in SOE's Form 10-KSB.

21. Finkel also consented to the incorporation of his audit report in 16 registration statements on Form S-8 that SOE filed with the Commission on September 24, 1996, to cover the shares previously distributed by SOE.

Finkel's "Audits" of TFCH

22. Between July 22, 1993, and October 4, 1996, at the Promoter's request, Finkel issued audit reports on at least eight sets of financial statements of TFCH. Each of those audit reports falsely stated that Finkel had conducted an audit in accordance with GAAS, and that the financial statements were fairly presented in conformity with GAAP.

23. Finkel did not perform audits in accordance with GAAS of the assertions contained in the financial statements before certifying them. To the contrary, Finkel knowingly falsified certain of these financial statements by recording material and non-existent assets at the Promoter's request. Those fictitious assets -- capitalized research and development costs and

capitalized organizational costs -- were the largest assets on TFCH's balance sheet during the period from June 30, 1993 through June 30, 1995, and were included in six of the eight financial statements "audited" by Finkel. Those nonexistent assets resulted in financial statements that overstated TFCH's assets by an amount ranging from 110% to 321% during the period from June 30, 1993 through June 30, 1995.

24. Finkel knew or was reckless in not knowing that the false audit reports certifying TFCH's false and misleading financial statements would be disseminated to brokers who would sell TFCH stock to the investing public.

Finkel's "Audits" of CCIC

25. Since February 7, 1994, Finkel has issued four audit reports containing unqualified opinions on the financial statements of CCIC and its predecessor. Each of those audit reports falsely stated that Finkel had conducted an audit in accordance with GAAS, and that the financial statements were fairly presented in conformity with GAAP.

26. Finkel did not perform any of his audits in accordance with GAAS with regard to CCIC. Since 1993, the largest asset CCIC has recorded on its balance sheet -- valued at about \$2.0 million -- has been variously characterized as "cash", a "note receivable" and, most recently, a "certificate of deposit". That asset does not exist. In the course of his "audits", Finkel obtained letters that he knew to be false that purported to confirm the existence of that asset.

27. That fictitious asset plus accrued "interest" resulted in CCIC's total assets being overstated by 615% as of December 31, 1995.

28. Finkel knew that his audit reports, falsely stating that he had conducted audits in

accordance with GAAS and that CCIC's financial statements were prepared in conformity with GAAP, would be filed with the Commission as part of CCIC's annual report and amended annual report on Form 10-K for its fiscal year ended December 31, 1994, annual report on Form 10-K for its fiscal year ended December 31, 1995, and its amended registration statement on Form 10.

29. Finkel also consented to the incorporation of his false audit reports on the false financial statements in two registration statements on Form S-8 that CCIC filed with the Commission.

CLAIM ONE

Finkel Violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]

30. Paragraphs 1 through 29 are hereby realleged and incorporated by reference.

31. By reason of the foregoing, defendant Finkel, directly or indirectly, has violated, is violating, and unless restrained will violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

CLAIM TWO

Finkel Aided and Abetted Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Rules 12b-20 and 13a-1 thereunder [17 C.F.R. §§ 240.12b-20 and 240.13a-1]

32. Paragraphs 1 through 21 and paragraphs 25 through 29 are hereby realleged and incorporated by reference.

33. By reason of the foregoing, defendant Finkel has aided and abetted violations of, and unless restrained will aid and abet violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Rules 12b-20 and 13a-1 thereunder [17 C.F.R. §§ 240.12b-20 and 240.13a-1].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Grant an injunction permanently restraining and enjoining defendant Finkel and his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice by personal service or otherwise, from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

II.

Grant an injunction permanently restraining and enjoining defendant Finkel and his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice by personal service or otherwise, from aiding and abetting violations of Section 13(a) of the Exchange Act [15 U.S.C. §§ 78m(a)], and Rule 13a-1 thereunder [17 C.F.R. §240.13a-1].

III.

Grant such other relief as this Court may deem just and proper.

Respectfully submitted,



THOMAS C. NEWKIRK (D.C. Bar No. 225748) ✓

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Washington, D.C.