

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

**97-6600**

SECURITIES AND EXCHANGE COMMISSION, )

Plaintiff, )

v. )

PHOENIX CONTINENTAL CORPORATION, )  
MICHAEL T. HONEY AND ROBERT JOHNSTON )

Defendants, )

CASE NO.

**CIV - DAVIS**

**MAGISTRATE  
BANDSTRA**

COMPLAINT FOR  
INJUNCTIVE AND  
OTHER RELIEF

FILED BY  
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INTRODUCTION

The Commission brings this action to restrain and enjoin the defendants Phoenix Continental Corporation ("Phoenix"), Michael T. Honey ("Honey"), and Robert Johnston ("Johnston") (collectively referred to as "Defendants") from continuing to violate the federal securities laws in connection with the ongoing, fraudulent offer and sale of unregistered promissory notes (the "Notes"). Phoenix continues to offer and sell the Notes to the general public through Honey, Johnston, and a number of independent sales agents. Defendants have raised approximately \$11.3 million from 130 investors. Unless immediately restrained and enjoined, Defendants will continue to defraud the public.

DEFENDANTS

1. Phoenix Continental Corporation has been a Florida corporation since May 1994, with principal offices located in Pembroke Pines, Florida.

*1*  
*mc*

2. Michael T. Honey is the founder and president of Phoenix. He resides in Boca Raton, Florida.

3. Robert Johnston is a vice-president of Phoenix, and a principal of Fiduciary Planning Inc. ("Fiduciary"). He actively markets Phoenix's promissory notes to investors. The Commission has brought two civil injunctive actions against Johnston and Fiduciary, and has suspended and barred him from the securities industry in connection with two unregistered securities offerings. He resides in Bloomfield Hills, Michigan.

#### **JURISDICTION AND VENUE**

4. 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.

5. Certain of the acts and transactions constituting violations of the Securities Act and the Exchange Act have occurred within the Southern District of Florida. Defendant Phoenix's principal offices are located within the Southern District of Florida. Defendant Honey resides in the Southern District of Florida. Defendants have engaged in many of the acts and practices complained of herein within the Southern District of Florida.

6. 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 FACTS**

7. Phoenix is engaged in the business of refurbishing, leasing, selling and financing the sale of small to medium sized used aircraft to corporations and individuals. Under its financing program, Phoenix raises capital from investors which it claims will be lent to borrowers for the purchase of aircraft. Phoenix says that it typically charges the borrowers/airplane buyers an interest rate of 18% per year, with the principal repayment due either on a monthly basis or at the end of the loan term. According to the company, the loan amounts represent a favorable loan-to-value ratio, and are determined by the market value of the aircraft financed. The company asserts that these aircraft range in value from under \$14,500 to \$1.2 million, and are titled to Phoenix during the duration of the loans' terms.

### **PHOENIX'S OFFERING**

8. Since at least December 1994, Phoenix has been offering and selling securities to the general public in the form of promissory notes. Phoenix offers the investment without regard to whether investors are sophisticated. Although Phoenix requires a minimum investment of \$25,000, in some instances notes are issued in smaller denominations. Phoenix has raised over \$11.3 million from at least 130 investors.

9. The notes are offered and sold to the general public through Honey, Johnston, and a number of independent sales agents. Some of the investors had previously been clients of Johnston and the sales agents. Other investors are indoctrinated through sales seminars presented by Honey and Johnston, and through advertisements in newspapers such as the Detroit Free Press. Still others hear about Phoenix through word-of-mouth, and receive sales presentations after directly contacting the company. The sales agents are paid a commission for each note sold and for each note rolled over for another term. The company does not require that the sales agents have securities licenses.

10. Under the terms of the Notes, the company promises to pay investors an annual fixed rate of return of 12%, payable on a monthly basis during the terms of the notes. The principal amounts of the investments are payable at the end of their terms, which range from 6 to 9 months.

11. Investors in the Phoenix offering are told that their investments are secured in one of two ways. The first method, which Phoenix has utilized since June 1996, involves liens against Phoenix's aircraft held by the Wilmington Trust Company ("Wilmington"), as trustee, for a trust created for the benefit of investors. Under the terms of the agreement creating the trust, Phoenix conveyed to Wilmington security interests in 40 of Phoenix's aircraft to be held in trust. Each Phoenix investor, together with the dollar amount of his or her investment, is added to the trust agreement as a beneficiary of the

trust. Wilmington serves as trustee for the Phoenix investors in the program. Approximately \$9 million in investor notes are purportedly secured through Wilmington.

12. The remaining \$2.3 million in investor promissory notes (i.e. those not subject to the Wilmington Trust arrangement) are purportedly secured by first liens on specific aircraft filed and recorded with the FAA on behalf of each of these investors. Investors in this program are purportedly provided with a photograph and a complete portfolio containing all documents pertaining to the respective aircraft funded. There are only approximately eight (8) investors purportedly secured through this program.

13. Honey runs Phoenix's daily operations. He frequently communicates with investors and potential investors verbally and in writing. Further, Honey travels around the country promoting Phoenix's investment opportunities, and he hosts and speaks at investor sales seminars. He also provides tours of Phoenix's facilities.

14. Johnston is directly responsible for making sales of the promissory notes to investors in several states. He has raised more investor proceeds from the sale of the notes than any other Phoenix sales agent. He markets the notes to investors through personal sales solicitations, and through written correspondence. Johnston also co-hosts investor sales seminars with Honey.

### **PHOENIX'S OFFERING DOCUMENTS**

15. Phoenix, Honey, Johnston, and the independent sales agents provide prospective investors in the Phoenix program with offering materials (pamphlets, fliers, letters, and sample promissory notes), frequently delivered through the U.S. mails,

which introduce Phoenix and describe the investment and the company. The forms of the offering materials sometimes vary, depending upon the sales representative.

16. The offering materials tell investors that their funds are secured by first liens against Phoenix aircraft held by Wilmington, as trustee, for the benefit of investors. In the offering materials, potential customers are told that "[j]ust like a bank, your investment is collateralized and you are insured." Investors are also told that their investment earns "among the highest secured interest rates available today," and that there is a "complete collateralization of invested funds."

17. In a letter from Honey, dated June 24, 1996 and included in the offering materials, investors are introduced to Wilmington and are told that their funds will be secured through Wilmington. In the letter, Honey states that "our decision to appoint [Wilmington] as Security Interest Trustee is both for your added protection and increased security." He concludes the letter by stating that "as [Phoenix] continues to grow, we will continue to implement other refinements and safeguards keeping your loan as fully secured/collateralized and as safe as is possible." Some of the offering materials include a similar letter to investors from Johnston.

18. In this and other letters included in the offering materials, Phoenix describes the features of the Wilmington program. Among other things, investors are told that "[Phoenix] certificates (sic) the value of the aircraft either by published industry book values or independent certified aircraft appraisals, and Wilmington Trust tallies

aircraft values versus the total security interest claims of the trust beneficiaries (lenders)."

19. The offering materials provided to some potential investors also include a newsletter dated January 1, 1997, which represents that "[Phoenix] is a fifty million dollar plus aircraft finance company." In the newsletter, investors are told that Phoenix has a "fleet of more that 150 airplanes titled to Wilmington," and that their "aggregate collateral value is equal to 150% of all outstanding [Phoenix] notes and interest."

20. The purported safety and security of the investment is verbally reinforced to investors by Phoenix's sales agents. As in the offering materials, investors are verbally told that their funds are fully secured by a pool of aircraft held in trust for the benefit of investors.

#### **OVERVALUATION OF PHOENIX'S AIRCRAFT**

21. Since June 1996, Phoenix has represented to investors and potential investors that their funds are secured by liens held by Wilmington against Phoenix's aircraft. Of the \$11.3 million raised from investors, \$9 million (representing 125 investors) are purportedly secured through the Wilmington trust program. Phoenix asserts that the total value of the planes held in trust is \$15.7 million.

22. Phoenix's representations to investors and potential investors that their investment is fully secured is false and misleading because the company has clearly overvalued its collateral. In reality, the aggregate collateral value of all assets (i.e. aircraft) securing investor funds through Wilmington is actually no more than \$5.5

million, approximately 60% of the \$9 million of promissory notes purportedly secured through Wilmington. Although Phoenix purports that the total value of the planes held in trust is \$15.7 million, certified aircraft appraisals and other aircraft price information prove that these aircraft have a total value of no more than \$5.5 million.

23. The shortfall between Phoenix's \$15.7 million dollar representation and the planes' actual \$5.5 million dollar value can be accounted for primarily by the company's valuation of one 1976 and nine 1981 Britten-Norman BN2A III Trislander aircraft at \$1.2 million each. These aircraft are in fact unassembled "kits" which the manufacturer values at \$75,000 each, and which would require substantial expenditure on parts and labor before they could be certified airworthy. Further, two identical Trislander "kits" recently sold for only \$45,000 each.

24. Phoenix failed to disclose to investors that the ten Trislanders are currently unassembled "kits" with a total value of about \$750,000. Further, even if the 1981 Trislanders were fully assembled—which they are not—their actual appraised value would be only approximately \$300,000 per plane, or \$3.1 million total—a mere 25% of the value assigned to them by Phoenix.

#### **OTHER MISREPRESENTATIONS AND OMISSIONS**

25. In addition to misrepresenting the value of the aircraft securing the Notes, the Phoenix offering materials, which are distributed to investors and prospective investors, misrepresent and omit other material facts regarding the size of Phoenix's fleet of planes, its financial position, and Johnston's history of securities violations.



26. Specifically, the following false and misleading representations are made in the offering materials:

- (a) First, in the newsletter disseminated by Phoenix, investors and potential investors are told that Phoenix owns over 150 airplanes. This statement is blatantly false. Phoenix currently owns approximately 60 aircraft, and while the company has bought and sold several planes since its inception, it has never at any time owned 150 airplanes.
- (b) Second, the assertion by Phoenix in the same newsletter that it "is a fifty million dollar plus aircraft finance company" has no basis in fact. In reality, Phoenix's financial statements show that the company had revenues of under \$2.5 million for the nine months ending September 1996. Further, the company's March 31, 1997 balance sheet shows total assets of approximately \$20.6 million.
- (c) Finally, the offering materials fail to disclose that in February 1994, Johnston was permanently enjoined by a federal court in an action filed by the Commission in connection with the fraudulent unregistered offering of securities, and that he has been permanently barred from the securities industry.

27. Phoenix, Honey, and Johnston knowingly and/or with severe recklessness distributed the false and misleading offering materials to investors and prospective investors.

**UNREGISTERED DISTRIBUTION OF PHOENIX NOTES**

28. Since at least December 1994, Phoenix, directly and indirectly, has been offering and selling securities in the form of promissory notes to the public. Phoenix has raised over \$11.3 million from at least 130 investors.

29. The Notes are securities as defined by Section 2(1) of the Securities Act, 15 U.S.C. § 77b(1) and Section 3(a)(10) of the Exchange Act, 15 U.S.C. § 78c(a)(10). No registration statement was filed or in effect pursuant to the Securities Act in connection with these offers and sales. No exemption from registration was available for the Notes or for the distributions of the Notes by Phoenix.

30. There is a substantial likelihood that the defendants will continue to violate the federal securities laws unless they are enjoined from doing so.

**COUNT I**

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

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

32. No registration statement was filed or in effect with the Commission pursuant to the Securities Act and no exemption from registration exists with respect to the securities and transactions described herein.

33. Since approximately December 1994 through the present, Defendants Phoenix, Honey, and Johnston (as described in paragraphs 28 and 29), directly and

indirectly, have, and unless enjoined, will continue to: (i) make 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) carry securities or cause such securities, as described herein, 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; and (iii) make 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.

34. By reason of the foregoing, Phoenix, Honey, and Johnston, directly and indirectly, 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**

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

35. The Commission repeats and realleges paragraphs 1 through 34 of the Complaint.

36. Since approximately June 1996 through the present, Defendants Phoenix, Honey, and Johnston (as described in paragraphs 7 through 30), directly and indirectly, by use of the means or instruments of transportation or communication in interstate

commerce and by use of the mails, in the offer or sale of securities, as described herein, have been, knowingly, willfully or recklessly employing devices, schemes or artifices to defraud.

37. By reason of the foregoing, Defendants Phoenix, Honey, and Johnston, directly and indirectly, 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**

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

38. The Commission repeats and realleges paragraphs 1 through 37 of its Complaint.

39. Since approximately June 1996 through the present, Defendants Phoenix, Honey, and Johnston (as described in paragraphs 7 through 30), 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 the securities, as described herein, have been, knowingly, willfully or recklessly: (i) employing devices, schemes or artifices to defraud; (ii) making untrue statements of material facts and omitting 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 (iii) engaging 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.

40. By reason of the foregoing, Defendants Phoenix, Honey, and Johnston, directly or indirectly, 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 IV**

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

41. The Commission repeats and realleges paragraphs 1 through 40 of its Complaint.

42. Since approximately June 1996 through the present, Defendants Phoenix, Honey, and Johnston (as described in paragraphs 7 through 30), directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities, as described herein, have been: (i) obtaining 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 (ii) engaging 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.

43. By reason of the foregoing, Defendants Phoenix, Honey, and Johnston, directly and indirectly, 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).

**RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests that the Court:

**I.**

**Declaratory Relief**

Declare, determine and find that Defendants Phoenix, Honey, and Johnston committed the violations of the federal securities laws alleged herein.

**II.**

**Temporary Restraining Order,  
Preliminary and Permanent Injunctive Relief**

Issue a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction, restraining and enjoining Defendants Phoenix, Honey, and Johnston, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating: (1) Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c); (2) Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a); (3) 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 (4) 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).

III.

**Disgorgement**

Issue an Order requiring Defendants Phoenix, Honey, and Johnston, 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 Honey and Johnston to pay civil fines and/or 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 Phoenix, Honey, and Johnston.

VI.

**Appointment of Receiver**

Issue an order appointing a Receiver of the assets of Phoenix to marshal and safeguard all of said assets, and any other duties the Court deems appropriate, and to prepare a report to the Court and the Commission detailing the activities of Phoenix and the whereabouts of investor funds.

VII.

**Records Preservation and Expedited Discovery**

Issue an Order requiring Defendants Phoenix, Honey, and Johnston, to preserve any records related to the subject matter of this lawsuit that are in their custody, possession or subject to their control, and to respond to discovery on an expedited basis, including an inspection of aircraft owned or operated by defendant.

VIII.

**Further Relief**

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



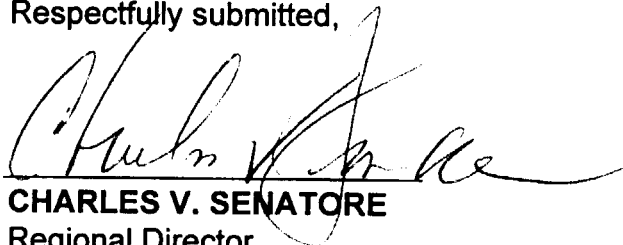
**IX.**

**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,

By:



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