

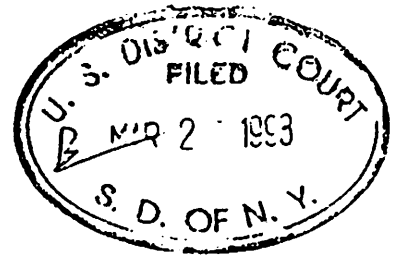
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

NICHI CAPITAL, LTD.,
OLAWANDE A. AGUNLOYE, WISE CHOICE
DISCOUNT BROKERAGE, INC., RALPH
ANTEBY and BRIAN WALFISH,

Defendants,

-and-

STRATEGIC RISK MANAGEMENT,

Relief Defendant.
-----X

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COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendants Nichi Capital, Ltd. ("Nichi"), Olawande A. Agunloye ("Agunloye"), Wise Choice Discount Brokerage, Inc. ("Wise Choice"), Ralph Anteby ("Anteby"), and Brian Walfish ("Walfish"), (collectively, the "Defendants"), and relief defendant Strategic Risk Management ("Strategic"), alleges as follows:

PRELIMINARY STATEMENT

1. Since at least October 1997, the Defendants have been fraudulently offering and selling unregistered shares of Nichi securities to the investing public. To date, the Defendants have raised at least \$1.2 million from investors.

2. Defendants, and others working with them, induced investors to purchase Nichi securities by falsely claiming both orally and in writing that: (a) Nichi would be conducting an initial public offering ("IPO") in the near future; (b) investors who purchased Nichi stock in a purported private placement would be able to sell their Nichi stock following the IPO for a substantial profit; (c) investors could purchase shares of the upcoming IPO by placing funds in escrow with Nichi, which funds would be returned if the IPO did not raise a specified amount of cash; and (d) money raised in the IPO would be used to run Nichi's business.

3. The Defendants, directly or indirectly, have engaged, are engaging, and are about to engage in violations of Sections 5(a) and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a), 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rules 10b-5 and 10b-9 thereunder, 17 C.F.R. §§ 240.10b-5, 240.10b-9.

4. Unless they are temporarily restrained and preliminarily and permanently enjoined, the Defendants will continue to engage in the transactions, acts, practices and courses of business alleged herein, and in transactions, acts, practices, and courses of business of a similar type and object.

JURISDICTION

5. The Commission brings this action under Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), seeking to temporarily restrain, and preliminarily and permanently enjoin the Defendants from engaging in the wrongful conduct alleged in this Complaint. The Commission also seeks a final judgment ordering the Defendants to disgorge their ill-gotten gains and to pay prejudgment interest thereon, and ordering them to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). The Commission also seeks other equitable relief during the pendency of this action, including a freeze of assets of defendants Nichi, Agunloye and Wise Choice, an accounting from defendants Nichi, Agunloye, and Wise Choice, and an order permitting expedited discovery and prohibiting the destruction of documents. Additionally, the Commission seeks an order freezing, during the pendency of this action, that portion of relief defendant Strategic's assets commensurate with the funds the relief defendant obtained from the proceeds of the Defendants' fraud on public investors, and requiring the relief defendant to account for all such funds. The Commission also seeks a final judgment ordering the relief defendant Strategic to disgorge an amount equal to those funds, plus prejudgment interest.

6. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Sections 21(e) and 27 of the Exchange Act, 15 U.S.C. §§ 77u(e) and 78aa.

7. Defendants, directly and indirectly, singly and in concert, have made use of

the means and instrumentalities of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails in connection with the transactions, acts, practices and courses of business alleged in this Complaint. These actions include, among other things, using the interstate telephone lines to offer and sell Nichi stock to investors. The transactions, acts, practices and courses of business occurred within the Southern District of New York.

THE DEFENDANTS

8. **Nichi Capital, Ltd.** is a self-described "development stage company" incorporated in New York seeking to raise money to finance its establishment as an Internet-based financial services provider. In April 1996, Nichi acquired Wise Choice. As of October 2, 1997, defendant Agunloye owned 92% of the issued and outstanding shares of Nichi.

9. **Agunloye**, is 25 years old and resides in Queens, New York. Agunloye is the founder, principal, controlling shareholder, and the president and chairman of the board of Nichi; he is also a principal of defendant Wise Choice.

10. **Wise Choice**, a New York corporation, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b). Agunloye is a principal of Wise Choice.

11. **Anteby** is 25 years old and resides in Brooklyn, New York. Since February 1996, Anteby has been employed as a registered representative of Wise Choice.

12. **Walfish** is 24 years old and resides in Brooklyn, New York. Since May 1997, Walfish has been employed as a registered representative of Wise Choice.

THE RELIEF DEFENDANT

13. **Strategic**, a Delaware corporation, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b). Strategic's offices are located in New York, New York. Agunloye acquired a 40% interest in Strategic through International Equity Markets, Inc., an entity wholly owned by him, using \$304,000 raised from Nichi investors.

FRAUDULENT OFFERING OF UNREGISTERED STOCK

14. Since at least October 1997, the Defendants have been offering and selling Nichi stock to investors. The Defendants offered and sold to certain investors Nichi stock in a purported private placement; and offered and sold to other investors Nichi stock in a purported IPO.

15. Defendants Nichi, Agunloye, Wise Choice, Anteby and Walfish made the following representations in offering and selling Nichi stock in the purported private placement:

- a. Nichi had filed a registration statement for approval by the Commission, which would soon become effective, after which Nichi would then sell its shares to the public in an IPO.
- b. Investors who purchased "private" shares of Nichi stock could sell their shares in the public market after the IPO at a substantial profit.

16. These statements in paragraph 15 are false and misleading because while Nichi had filed a registration statement with the Commission, that registration statement was not likely to soon become effective. Moreover, defendants Nichi, Agunloye, Wise Choice and Anteby had no basis in fact to represent that investors who had purchased "private" shares of Nichi stock could sell their shares in the public market after the IPO at a substantial profit.

17. The Defendants made the following representations in offering and selling Nichi stock in the purported IPO:

- a. Investors could purchase shares in the upcoming IPO by depositing funds in escrow with Nichi. If, after 180 days from the start of the IPO, less than \$3,000,000 was raised from investors, all money in the escrow account would be returned to the investors.
- b. Depending on the amount of money raised in the IPO, the investor funds would be used for one or more of the following: (i) maintenance and service for and associated with an anticipated EDGAR contract with the Commission; (ii) equipment; (iii) staff; (iv) working capital; (v) marketing expenses; (vi) debt service; (vii) liability insurance; and (viii) consultants.

18. The statements in paragraph 17 are false and misleading because:

- a. Nichi filed its Form SB-2 registration statement for the IPO on April 2, 1997. In November 1997, the staff of the Commission's Division of Corporation Finance sent an extensive comment letter on Nichi's registration statement to Nichi. To date, Nichi has not responded to the comment letter. Absent an adequate response from Nichi, the registration statement will not become effective.
- b. No escrow account for the IPO investor funds was ever established. The money raised from all of Nichi's investors since October 1997 were commingled with other funds in Wise Choice's operating account and Nichi's operating account.
- c. Approximately \$304,000 of the money raised from Nichi investors was used by Agunloye to acquire an interest in relief defendant Strategic.

19. Since October 1997, at least 13 investors have purchased \$200,000 worth of Nichi common stock based on the above misrepresentations.

FIRST CLAIM FOR RELIEF

**Violations of Section 17(a) of the
Securities Act, 15 U.S.C. § 77q(a), and
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**

(Against All Defendants)

(Violations of General Antifraud Provisions)

20. The Commission realleges and incorporates paragraphs 1 through 19 by reference as if fully set forth herein.

21. The Defendants directly and indirectly, singly and in concert, by use of the means or instruments of transportation or communication in, or the instrumentalities of interstate commerce, or of the mails, in the offer or sale and in connection with the purchase or sale of Nichi securities, knowingly or recklessly, have: (a) employed, are employing, and are about to employ devices, schemes and artifices to defraud; (b) obtained, are obtaining, and are about to obtain, money by means of, and otherwise made, are making, and are about to make, untrue statements of material fact, and omitted, are omitting, and are about to omit, 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 (c) engaged, are engaging, and are about to engage, in acts, practices and courses of business which operated as a fraud or deceit upon other persons, including purchasers of Nichi stock.

22. As part of and in furtherance of this violative conduct, the Defendants obtained at least \$200,000 in investor funds by, knowingly or recklessly, making the misrepresentations and omissions set forth in paragraphs 15 and 17 above.

23. The misrepresentations and omissions set forth in paragraph 15 and 17 were material.

24. By reason of the foregoing, Defendants violated and, unless restrained and enjoined, will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a),

and 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.

SECOND CLAIM FOR RELIEF

**Violations of Section 10(b) of the
Exchange Act, 15 U.S.C. §78j(b), and
Rule 10b-9 Thereunder, 17 C.F.R. § 240.10b-9**

(Against All Defendants)

(Violations of Antifraud Provisions
in Connection With A Stock Offering)

25. The Commission realleges and incorporates paragraphs 1 through 19 by reference as if fully set forth herein.

26. The Defendants directly and indirectly, singly or in concert, in connection with the offer or sale of Nichi stock made, are making, and are about to make, representations to the effect that Nichi stock is being offered or sold on a basis whereby all or part of the consideration paid for it would be refunded to the purchaser if all or some of it was not sold, when Nichi stock was not part of an offering or distribution being made on the condition that all or a specified part of the consideration paid for it would be promptly refunded to the purchaser unless (A) a specified number of units of it were sold at a specified price within a specified time, and (B) the total amount due to the seller was received by him by a specified date.

27. As part of and in furtherance of this violative conduct, the Defendants obtained and diverted at least \$200,000 in investor funds despite representations to the contrary in the IPO prospectus.

28. By reason of the foregoing, the Defendants violated, and, unless restrained and

enjoined, will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-9 thereunder, 17 C.F.R. § 240.10b-9.

THIRD CLAIM FOR RELIEF

**Violations of Section 5(a) of
the Securities Act, 15 U.S.C. §77e(a)**

(Against the Defendants)

(Offer and Sale of Unregistered Stock)

29. The Commission realleges and incorporates paragraphs 1 through 19 by reference as if fully set forth herein.

30. The Defendants, directly and indirectly, made, are making, and are about to make, use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell Nichi stock through the use of a prospectus when there was no registration statement in effect as to Nichi stock.

31. By reason of the foregoing, the Defendants violated Sections 5(a) of the Securities Act, 15 U.S.C. §§77e(a), and unless enjoined and restrained, will continue to engage in such acts, practices and courses of business.

FOURTH CLAIM FOR RELIEF

Unjust Enrichment

(Against Strategic)

32. The Commission realleges and incorporates paragraphs 1 through 19 by reference as if fully set forth herein.

33. Strategic received \$304,000 of Nichi investor funds. These funds are the proceeds of the unlawful activities of the Defendants alleged herein.

34. Strategic provided inadequate consideration to Nichi in return for the funds it received.

35. Strategic obtained the funds under circumstances in which it is not just, equitable or conscionable for it to retain the funds. As a consequence of the foregoing, Strategic has been unjustly enriched and holds the funds it received in constructive trust for defrauded public investors.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Commission respectfully requests that this Court issue:

I.

An Order temporarily and preliminarily, and a Final Judgment permanently, restraining and enjoining the Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Sections 5(a) and 17(a) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77q(a), and Section 10(b) the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5 and 10b-9 thereunder, 17 C.F.R. §§ 240.10b-5, 240.10b-9.

II.

An Order directing that the assets of Nichi, Agunloye and Wise Choice be frozen, and further directing that \$304,000 of the assets of Strategic be frozen pending further order of this Court.

III.

An Order directing Nichi, Agunloye, Wise Capital and Strategic to file with this

Court and serve upon plaintiff Commission, within five business days, or within such extension of time as the Commission agrees in writing, a verified written accounting, signed by them under penalty of perjury.

IV.

An Order enjoining and restraining Defendants, and any person or entity acting at their direction or on their behalf from destroying, altering, concealing, or otherwise interfering with the access of the plaintiff Commission to relevant documents, books and records.

V.

An Order permitting expedited discovery.

VI.

A Final Judgment requiring the Defendants to account for and disgorge their unjust enrichment from the fraudulent conduct alleged in this Complaint, and to pay prejudgment interest thereon.

VII.

A Final Judgment imposing against the Defendants civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), for the violations alleged herein.

VIII.

A Final Judgment requiring relief defendant Strategic to account for and disgorge an amount equal to the funds and benefits it obtained as a result of the violations alleged herein, plus prejudgment interest.

IX.

An Order or Final Judgment granting such other and further relief as the Court deems appropriate.

Dated: March 26, 1998
New York, New York

Respectfully Submitted,

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