

BEFORE THE
DIVISION OF SECURITIES
DEPARTMENT OF FINANCIAL INSTITUTIONS
STATE OF WISCONSIN

In the Matter of
AMERICAS FIDELITY CAPITAL
MANAGEMENT, LTD., and
DAVID A. MORGENSTERN,

STATEMENT OF STAFF
ALLEGATIONS AND
PETITION FOR ORDER
OF PROHIBITION AND
REVOCATION

Respondents.

S-00175(EX)

WHEREAS the staff of the Enforcement Unit of the Division of Securities of the Department of Financial Institutions, State of Wisconsin, has conducted an investigation in the above-captioned matter pursuant to sections 15.02(4) and 551.56, Wis. Stats., and as a result thereof alleges as follows:

1. Americas Fidelity Capital Management, Ltd. (“Americas Fidelity”) is, upon information and belief, a foreign corporation, with an address at all times material hereto at Camp David, West Bay St. PO CB-11011 Cable Beach, Nassau, Bahamas, with representative offices at 4901 NW 17th Way, Suite 405, Ft. Lauderdale, FL 33309.
2. David A. Morgenstern (DOB 10/28/48) (Morgenstern”) is an adult male individual who, at all times material hereto had a business address at that of Americas Fidelity and was an owner, officer and a controlling person of Americas Fidelity.
3. 5 Star Global, L.L.C. (“5 Star”) is a Wisconsin limited liability company with an address at all times material hereto at 2810 Crossroads Dr, Ste 4800, Madison, WI 53718.
4. Gary L. Augustine (DOB 11/26/46) (“Augustine”) is an adult male individual with a last known residence address of 222 Hanley Road #30, Hudson, WI 54016, and who at all times material hereto was an owner, operator, and controlling person of 5 Star.
5. Ronald M. “Ron” Turner (DOB 8/27/42) (“Turner”) is an adult male individual with a last known residence address of 6680 Token Way, DeForest, WI 53532, and who, at all times material hereto, was an owner, operator, and controlling person of 5 Star.
6. Upon information and belief, during at least later 1998 and early 1999, Augustine, Turner and their agents, all on behalf of Americas Fidelity and Morgenstern, offered and sold investments of approximately \$3,320,000 in 5 Star to at least 26 persons in Wisconsin.
7. According to a document entitled “Asset Management Agreement” provided by Americas Fidelity and signed by Turner on behalf of 5 Star, the money raised by 5 Star was sent to Americas Fidelity for an asset management fund, which was to result in the persons in

Wisconsin who invested obtaining at the end of the approximately one-year term of the investment a minimum return of 10 times the capital originally invested.

8. The Americas Fidelity investments were investments in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor.
9. The Americas Fidelity investments above are investment contract securities as that term is defined by DFI-Sec 1.06 (a), Wis. Adm. Code and are therefore securities pursuant to sec. 551.02(13)(a), Wis. Stats.,
10. The Americas Fidelity securities have never been registered under Ch. 551, Wis. Stats., for their offer and sale in Wisconsin.
11. Americas Fidelity and Morgenstern have violated sec. 551.21(1), Wis. Stats., by offering and selling unregistered securities to persons in Wisconsin.
12. In connection with the offers and sales of the securities to persons in Wisconsin, as described in Paragraphs six and seven above, Morgenstern, on behalf of Americas Fidelity, employed agents as that term is defined by sec. 551.02(2), Wis. Stats., to offer and sell the securities of Americas Fidelity.
13. At no time have those agents been licensed as securities agents pursuant to Ch. 551, Wis. Stats.
14. Americas Fidelity and Morgenstern have violated sec. 551.31(2), Wis. Stats., by employing unlicensed agents to represent them in Wisconsin.
15. Upon information and belief, the United States Securities & Exchange Commission (“the SEC”) filed civil fraud charges on or about September 25, 1998, in the United States District Court, Southern District of Florida, Civil Action Number 98-7044-CIV, which state, among other things, that during the period of 1996, Morgenstern, two affiliated individuals, and a Florida “financial services” firm named Amquest International, Ltd. (“Amquest”) engaged in a securities offering fraud, resulting in losses to investors of approximately \$4.1 million; and that Morgenstern and the same two other individuals misappropriated the bulk of the Amquest offering proceeds, and also misappropriated approximately \$700,000 in proceeds from a related offering of stock issued by Sleepsource International, Ltd.
16. Upon information and belief, during the offers and sales of the securities as described in Paragraph six and seven above, Americas Fidelity and Morgenstern failed to inform those investors of the investigation and action taken by the SEC against Morgenstern, the other individuals and Amquest.
17. By engaging in the conduct as described in Paragraph 14 above, Americas Fidelity and Morgenstern, in connection with the offers and sales of securities to persons in Wisconsin as set forth in Paragraphs 4 and 5 above, omitted 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, in violation of sec. 551.41(2), Wis. Stats.

18. The Wisconsin Department of Financial Institutions, Division of Securities, issued an administrative order against 5 Star, et al, on March 7, 2000.
19. The Enforcement Unit sent to Morgenstern by mail an inquiry letter about his securities-related activities, dated February 18, 1999, at the last known business address of Americas Fidelity in the Bahamas, to which Morgenstern did not respond.

THEREFORE the Staff of the Enforcement Unit petitions the Administrator of the Division of Securities of the Department of Financial Institutions, or her designee, for the issuance of the attached Order of Prohibition and Revocation pursuant to Ch. 551, Wis. Stats.

Mark E. Dorman 8-3-00
 Mark E. Dorman Date
 Examiner
 Enforcement Unit

David A. Cohen 8/3/00
 David A. Cohen Date
 Supervising Attorney
 Enforcement Unit