



ORIGINAL

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Arizona Corporation

BEFORE THE ARIZONA CORPORATION COMMISSION

SEP 14 2000

2000 SEP 14 P 4:40

- CARL J. KUNASEK
Chairman
- JIM IRVIN
Commissioner
- WILLIAM A. MUNDELL
Commissioner

DOCKETED BY

AZ CORP COMMISSION
DOCUMENT CONTROL

In the matter of)

DOCKET NO. S-03280A-98-0000

JOSEPH MICHAEL GUESS, SR.)
 2911 E. Calavar Road)
 Phoenix, Arizona 85032)

**MOTION TO ADMIT INTO
EVIDENCE THREE POST-
HEARING EXHIBITS**

PROGRESSIVE FINANCIAL MANAGEMENT)
 2911 E. Calavar Road)
 Phoenix, Arizona 85032)

JAMES DOUGLAS SHERRIFFS)
 5544 East Helena Drive,)
 Scottsdale, Arizona 85254)

RICHARD GORDON DAVIS)
 4330 North 30TH Street)
 Phoenix, Arizona 85016)

RGD)
 4330 North 30TH Street)
 Phoenix, Arizona 85016)

RGD ENTERPRISES, INC.)
 4330 North 30TH Street)
 Phoenix, Arizona 85016)

IRA JOE PATTERSON)
 4330 North 30th Street)
 Phoenix, Arizona 85016)

RANDALL WAYNE SMITH, JR.)
 1905 Springlake Court)
 Birmingham, Alabama 35215)

BALLY OVERSEAS TRADING INC.)
 1905 Springlake Court)
 Birmingham, Alabama 35215,)

Respondents.

26

1 The Securities Division ("Division") of the Arizona Corporation Commission
2 ("Commission") hereby moves to admit into evidence in the above-captioned proceeding proposed
3 exhibits S-138a, S-138b and S-138c, which are attached hereto and respectively marked as original
4 exhibits. Pursuant to A.A.C. R14-3-109(Q), the grounds for this motion are as follows:

5
6 **I.
BACKGROUND**

7 At the last hearing session in this matter held on August 31, 2000, the Hearing Officer
8 admitted into evidence Exhibit R-1 offered by Respondent Davis through his counsel. *Hearing*
9 *Transcript ("H.T."), Vol. IV*. This exhibit is a copy of a newspaper article from *The Birmingham*
10 *News* dated August 25, 2000, reporting a guilty plea in U. S. District Court the day before by
11 Randall Wayne Smith of Birmingham, Alabama to one count of wire fraud in connection with his
12 operation of an investment Ponzi scheme from October 1996 to April 1997. *Exh. R-1*. The
13 Division has since obtained certified copies from the Clerk of the U.S. District Court for the
14 Northern District of Alabama of the following three case documents in *United States of America v.*
15 *Randall Wayne Smith*, Docket CR-00-S-0296-S: the court "Criminal Docket" in this case as of
16 September 7, 2000; the "Plea Agreement and Conditions" executed and filed with the court on
17 August 10, 2000; and the "Information" filed with the court by the United States Attorney on
18 August 10, 2000. The certified copies of these three documents have been respectively marked by
19 the Division as Exhibit S-138a, S-138b and S-139c.

20 If the information contained in proposed Exhibits S-138a, S-138b and S-139c, such as the
21 defendant's name, address, business entity names, bank accounts and *modus operandi*, is
22 compared with uncontested evidence already admitted in this administrative proceeding before the
23 Commission, it is readily apparent that defendant Smith in the federal case is the same individual
24 named as a Respondent in this Commission proceeding. *See Hearing Exhibits ("Exhs.") S-89, S-*
25 *90, S-91, S-112b, S-112c, S-113, S-114, S-115, S-116, S-117, S-122, S-123, S-124; H. T., Vol. IV*
26 *(testimony of expert witness Mark J. Klamrzynski)*. Moreover, the time period encompassed by

1 Smith's fraudulent investment scheme cited in the federal "Plea Agreement and Conditions" and
2 the federal "Information," proposed Exhibits S-138a and S-138c respectively, overlaps in part the
3 time period of Respondent Smith's violative securities offers and sales in Arizona shown by
4 uncontested evidence admitted in this Commission proceeding. *Exhs. S-3e, S-3i, S-3j, S-89, S-90,*
5 *S-112b, S-112c, S-133; H. T. Vol. IV (testimony of expert witness Mark J. Klamrzynski).*

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II. ARGUMENT

8 The fact of Smith's federal guilty plea shown on proposed Exhibits S-138a and S-138b,
9 together with the information about him and his fraudulent investment scheme contained in
10 proposed Exhibits S-138a, S-138b and S-138c, are evidence relevant to facts that are of
11 consequence to the determination of this matter before the Commission. The Notice of
12 Opportunity for Hearing Regarding Proposed Order for Relief ("Notice") that was issued to
13 commence this matter on April 6, 2000, alleged facts involving Respondents Smith and Bally
14 Overseas Trading Inc. in connection with the fraudulent offer and sale of unregistered securities in
15 violation of the Securities Act of Arizona. *Notice, pp. 3-6, 8-10.* The Notice requested affirmative
16 actions for relief against these and the other respondents. *Notice, p. 12.* Insofar as the Division was
17 not aware of the Smith guilty plea until August 31, 2000, and did not obtain the three proposed
18 exhibits until after the last hearing session, it is reasonable and appropriate for these proposed
19 exhibits to be now admitted into evidence in order to supplement the hearing record. Furthermore,
20 A.A.C. R14-3-109(G) permits the Hearing Officer to consent to the introduction of further
21 evidence even after a party "has rested his case."

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III. CONCLUSION

24 For the foregoing reasons, the Division now moves to admit proposed Exhibits S-138a, S-
25 138b and S-138c into evidence in this matter. The Division further requests the Hearing Officer to
26 issue a procedural order ruling on this motion as soon as may be before September 29, 2000, in

1 order to permit citation to these proposed exhibits in post-hearing memoranda if they be admitted.

2
3 RESPECTFULLY SUBMITTED this 14th day of September, 2000.

4
5 JANET NAPOLITANO
6 Attorney General
7 Consumer Protection & Advocacy Section

8 BY 
9 MARK C. KNOPS
10 Special Assistant Attorney General
11 MOIRA McCARTHY
12 Assistant Attorney General
13 Attorneys for the Securities Division
14 Arizona Corporation Commission
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26

1 ORIGINAL AND TEN (10) COPIES of the foregoing
2 filed this 14~~th~~ day of September, 2000, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, AZ 85007

7 COPY of the foregoing mailed this
8 14~~th~~ day of September, 2000 to:

9 Joseph Michael Guess, Sr.
10 2911 E. Calavar Rd.
11 Phoenix, AZ 85032
12 RESPONDENT PRO SE

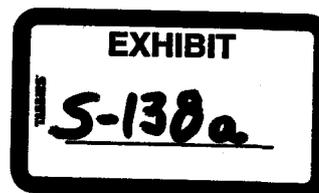
13 Peter Strojnik, Esq.
14 P. O. Box 34563
15 Phoenix, AZ 85067
16 ATTORNEY FOR JAMES DOUGLAS SHERRIFFS

17 Dale L. States, Esq.
18 6724 N. 43rd Ave.
19 Glendale, AZ 85301
20 ATTORNEY FOR RICHARD G. DAVIS

21 Ira Joe Patterson
22 4330 No. 30th St.
23 Phoenix, AZ 85016
24 RESPONDENT PRO SE

25 By: Karen Houle
26

U.S. District Court
USDC for the Northern District of Alabama (Southern)



CRIMINAL DOCKET FOR CASE #: 00-CR-296-ALL

USA v. Smith
Dkt# in other court: None

Filed: 08/10/00

Case Assigned to: Judge C Lynwood Smith, Jr
Case Referred to: Magistrate-Judge Paul W Greene

RANDALL WAYNE SMITH (1)
defendant

David C Johnson
327-5773 fax
[COR ret]
Christopher B Parkerson
327-5773 fax
[COR ret]
DAVID CROMWELL JOHNSON &
ASSOCIATES
2101 4th Avenue, South, Suite
200
Birmingham, AL 35233
327-5700

Pending Counts:

Disposition

18:1343 FRAUD BY WIRE, RADIO,
OR TELEVISION
(1)

Offense Level (opening): 4

Terminated Counts:

NONE

Complaints:

NONE

U. S. Attorneys:

G Douglas Jones
244-2181 fax
[COR]
Adolph J Dean, Jr
244-2182 fax
[COR]

Proceedings include all events.

2:00cr296-ALL USA v. Smith

US ATTORNEY'S OFFICE
Robert S Vance Federal Bldg,
Suite 200
1800 5th Avenue North
Birmingham, AL 35203
244-2001

US Marshal
731-0447 fax
[COR]
UNITED STATES MARSHAL'S OFFICE
Hugo Black Courthouse, Room 240
1729 5th Avenue, North
Birmingham, AL 35203
731-1712

US Probation
278-2125 fax
[COR]
UNITED STATES PROBATION OFFICE
Hugo Black Courthouse, Room
201
1729 5th Avenue, North
Birmingham, AL 35203
278-2100

Proceedings include all events.

2:00cr296-ALL USA v. Smith

8/10/00 1 INFORMATION (referred to Magistrate-Judge Paul W. Greene)
filed by USA Randall Wayne Smith (1) count(s) 1 (yb)
[Entry date 08/10/00]

8/10/00 -- Address: 1905 Springlake Court, B'ham, AL 35215. 08/25/00
new address: 3325 Willis Drive, Bham, AL 35243 (yb)
[Entry date 08/10/00] [Edit date 08/25/00]

8/10/00 -- Docket Modification (Utility) LU (yb) [Entry date 08/10/00]

8/10/00 2 PLEA Agreement as to Randall Wayne Smith filed (yb)
[Entry date 08/10/00]

8/10/00 -- NOTICE OF ARRAIGNMENT ; set for 9:30 8/17/00 for Randall
Wayne Smith issued cm (yb) [Entry date 08/10/00]

8/10/00 3 NOTICE of hearing ; change of plea hearing (consent) set
for 2:45 8/24/00 for Randall Wayne Smith issued cm (lc)
[Entry date 08/10/00]

8/16/00 5 WAIVER of indictment by defendant Randall Wayne Smith filed
(kc) [Entry date 08/17/00]

8/16/00 6 APPEARANCE for defendant Randall Wayne Smith by Attorney
David C. Johnson and Christopher B Parkerson filed (kc)
[Entry date 08/17/00]

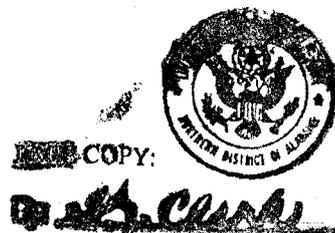
8/17/00 -- COURTROOM NOTES (before Magistrate-Judge Paul W. Greene) :
first appearance of Randall Wayne Smith w/retained
Attorney Christopher Parkerson present;ARRAIGNMENT of dft
Randall Wayne Smith ; dft served w/info and waiver, waived
reading, and not guilty plea entered; \$500.00 unsecured
bond signed and executed w/ack of conditions of release;
CrtRptr Penny Enoch (cvos) [Entry date 08/17/00]

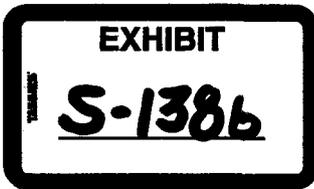
8/17/00 4 BOND Filed (\$500.00 unsecured) by Randall Wayne Smith
w/ack setting conditions of release attached (cvos)
[Entry date 08/17/00]

8/24/00 -- COURTROOM NOTES (before Judge C L Smith Jr): guilty plea
entered by Randall Wayne Smith, change of plea hearing
(consent) held on 8/24/00; sentencing hearing set for 9:30
11/21/00 for Randall Wayne Smith in Birmingham; bond
continued; CrtRptr Penny Enoch (lc) [Entry date 08/24/00]
[Edit date 08/24/00]

8/24/00 7 CERTIFICATION by dft Randall Wayne Smith of guilty plea
advice of rights filed (lc) [Entry date 08/24/00]

8/24/00 -- Docket Modification (Utility) ; sentencing hearing set
for 9:30 11/21/00 for Randall Wayne Smith (lc)
[Entry date 08/24/00]





FILED

YB

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

00 AUG 10 AM 9:48

SOUTHERN DIVISION

U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA)
)
v.)
)
RANDALL WAYNE SMITH)

CR-00-S-0296-S

PLEA AGREEMENT AND CONDITIONS

The United States of America, the defendant and defendant's attorney each hereby acknowledges the following to be the plea agreement between the defendant and the United States and the conditions and understandings that apply to the agreement:

I. PLEA AGREEMENT: The United States and the defendant hereby AGREE to the following:

- (a) Plea: The defendant will plead guilty to Count One of the Information in the above-styled cause.
- (b) Recommendation: Pursuant to Rule 11(e)(1)(B), Fed.R.Crim.P., and upon the Court's acceptance of the aforesaid pleas and entry of judgment on the same, the United States will recommend that: Upon the defendant's entry of a plea of guilty to Counts One of the Information, the government will recommend to the court that the defendant be sentenced based upon his cooperation and continued cooperation to the low end of the guidelines range as determined by the Court. In the event the defendant provides substantial assistance to the government as defined in U.S.S.G. section 5K1.1, the government will make a motion for downward departure of 50 percent from the low end of the sentencing guidelines range as determined by the Court. The defendant reserves the right to contest the value of any fraud amounts either alleged in the Information or considered by the United States Probation Office for relevant conduct as defined in U.S.S.G. section 1B1.3. The defendant agrees to pay restitution to the victim investors in the amount of not more than \$2.5 million dollars. The government recommends that no fines, costs of supervision or confinement, be imposed against the defendant.

2
RWS

- (c) Factual Basis: The following is a true and correct summary of the factual basis of the offense(s) charged in Count One of the Information:

That an investigation by the Federal Bureau of Investigation (FBI) has revealed that Randall Wayne Smith, has been involved in various investment securities and wire fraud schemes throughout the United States and Canada in violation of federal law since at least 1996.

That, specifically, an investigation by the FBI, has revealed that the defendant operated a Ponzi scheme that operated in the following manner:

From on or about October 1, 1996 and continuing to on or about April 30, 1997 within the Northern District of Alabama and elsewhere, the defendant, Randall Wayne Smith operated his businesses Oasis Cellular and Bally Overseas Trading, Inc., from his residence at 1905 Springlake Court, Birmingham, Alabama, 35215.

The defendant Randall W. Smith solicited and accepted by wire, mail, and other means, funds from "aggregators" and individual investors whom he promised to give his best efforts to obtain returns up to twenty times on their initial investment over a 275 day trading period. The defendant Randall W. Smith as described in the "asset enhancement agreements" he produced, advised the investors that their funds would be pooled and placed in various high yield trading programs. The "asset enhancement agreements" specifically defines the terms, conditions, agreements and income distribution to the investors.

The defendant Randall W. Smith accepted investments via wire transfers, personal checks and cashiers' checks made out to Randall W. Smith, Bally Overseas Trading, Inc., and Oasis Cellular. The investment funds were either deposited directly into the account of Randall W. Smith d.b.a. Oasis Cellular at Regions Bank, N.A. (Account Number 03-0084-3547) or they would be wired from Regions Bank the account of Client Management Services (Account Number 0211234116). Client Management Services is a company owned by Milton Vaughn, the defendant's accountant. Some of the investment funds (\$745,000.00) were wired to the defendant's personal bank account (Account Number 0417003165969) at SunTrust Bank in Ft. Lauderdale, Florida. The defendant Randall W. Smith used part of this money to pay for personal expenditures. These expenditures included but are not limited to payments made to the defendant's American Express credit card account, University of Alabama Blazer tickets and lease payments.

The defendant received money from two "aggregators" and approximately fifteen small investors who resided in the states of Pennsylvania, Alabama, Florida,

An "aggregator" is an individual that has accumulated sums of money from individuals and groups. The defendant received in excess of 1.5 million dollars during the course of this scheme to defraud investors. The majority of the investors did receive the promised return on their investment and some lost their initial investment due to the defendant's failure to legitimately invest funds as noted on the contracts.

- (d) Assessment: The defendant will bring to the sentencing a money order or cashiers check in an amount equal to \$100.00 for each count, for a total of \$100.00, payable to the "Clerk, United States District Court" to pay the special assessment required by Title 18, United States Code, Section 3013. Immediately upon sentencing the defendant will pay the assessment to the clerk of the court.

II. CONDITIONS AND UNDERSTANDINGS: The following conditions and understandings apply to the above stated plea agreement:

POSSIBLE SENTENCES AND THE GUIDELINES

(1) Maximum Possible Sentences: The defendant is aware of the maximum possible punishment under the single count of the Information. The defendant is aware that a sentence could include imprisonment, supervised release terms following imprisonment, fines, assessments, **restitutions** and other costs and losses.

(2) Special Assessment Fees: The law requires that Special Assessment fees be imposed.

(3) Restitution: The Court may consider ordering **restitution**.

(4) Guidelines: Congress has created Sentencing Guidelines which set a sentencing range in this case. These Guidelines take into consideration, among other things, the nature and consequences of the offense, the defendant's role in the offense, other conduct of the defendant and/or coconspirator relevant to the offense, whether the

defendant has accepted responsibility, whether the defendant has obstructed justice, and the defendant's criminal record. The Guidelines may require or suggest a variety of punitive measures other than or in addition to simple incarceration.

The defendant and the defendant's attorney are aware of the Sentencing Guidelines and have studied their application to this case. The defendant is aware that the Guidelines can be complicated. The defendant is further aware that the Court ultimately calculates the Guidelines range applicable to this case and is not bound by the defendant's or the United States Attorney's calculations.

The Court may even decide that the recommended sentence is not within the Guidelines range and may not follow the recommendation for that reason. Also, the Court may, for just cause, impose a sentence above or below the guidelines range, even the maximum possible sentences under the law.

The defendant does expressly waive the right to appeal his conviction and sentence in accordance with 11th Circuit case law.

(5) Non-binding: It is the Court's duty to impose sentence. The Court is not a party to the above plea agreement. Any sentence recommendation by the United States does not bind the Court, and the Court may impose a more severe or less severe sentence than that recommended.

(6) Sentencing Information: The United States may make any facts or evidence it deems relevant to sentencing known to the Court.

WITHDRAWAL OF GUILTY PLEA NOT ALLOWED

If the Court decides not to give the recommended sentence, or decides that the recommended sentence is not within the guidelines range, the defendant may not withdraw the plea of guilty.

FAMILIARITY WITH CHARGE

The defendant has read and understands the Information, and has discussed the charges and possible defenses with counsel. The defendant is fully aware of the elements of Count One of the Information.

ACKNOWLEDGMENT OF GUILT

The defendant is pleading guilty to the charges described above because the defendant is in fact guilty. Should the defendant move the court to accept the plea of guilty under **the provisions of North Carolina v. Afford**, 400 U.S. 25 (1970), or tender a plea of nolo contendere, the plea agreement described above will be null and void and the *United States* will not be bound by any agreement, understanding, provision, or stipulation, express or implied in this document.

WAIVERS

By pleading guilty the defendant waives and agrees to waive any and all motions, defenses, objections, or requests which have been made or which could have been made in this case. The defendant also waives the right to trial by a jury (or by a judge if the defendant elected to be tried by a judge alone). At any such trial the defendant would

have the right to the assistance of counsel, to confront and cross-examine the witnesses against the defendant, to present evidence on the defendant's behalf, to compel the attendance of witnesses for the defense, and to testify or refuse to testify. The United States would have the burden of proving the case against the defendant beyond a reasonable doubt. The defendant would be presumed innocent and could only be convicted if a jury of twelve people (or a judge if the defendant elects to be tried by a judge) unanimously found the defendant to be guilty beyond a reasonable doubt. The defendant would have the right to appeal a guilty verdict. All these rights and protections are hereby expressly waived.

COUNSEL

The defendant has discussed this case at length with his counsel. The defendant is satisfied with counsel's investigation of the case, exploration of possible defenses, advice and other representation.

NON-RELIANCE

Other than what is contained in this document, NO PROMISES OR REPRESENTATIONS HAVE BEEN MADE TO THE DEFENDANT BY THE PROSECUTOR, OR BY ANYONE ELSE, NOR HAVE ANY THREATS BEEN MADE OR FORCE USED, TO INDUCE THE DEFENDANT TO PLEAD GUILTY. The defendant is not relying on any representations from anyone regarding possible parole or release dates. This document represents the sole agreement and understanding between the defendant and the United States.

POST SENTENCE ACTIONS

This document in no way limits any response by the United States to post-sentencing actions, including appeals, motions to correct or review sentences, or habeas corpus petitions.

OTHER DISTRICTS AND JURISDICTIONS

This document **DOES NOT BIND any other United States Attorney** in any other district, nor does it bind state or local authorities.

FORFEITURE AND OTHER CIVIL OR ADMINISTRATIVE
PROCEEDINGS

Unless otherwise specified herein, this document in no way applies to or limits any pending or prospective **forfeiture** or other **civil** or **administrative proceedings**.

TAX PROCEEDINGS

Unless otherwise specified herein, this document in no way applies to or limits any pending or prospective proceedings, related to the defendant's **tax liabilities**, if any.

COMPETENCE

The defendant has not had any drugs, medication or alcohol within the past 48 hours except as stated hereafter, and is competent to enter the plea agreement stated above.

ACKNOWLEDGMENTS

1. I have READ this document, DISCUSSED it with my attorney, and UNDERSTAND and AGREE with all its provisions both individually and totally.

08/10/2000
DATE

Randall Wayne Smith
RANDALL WAYNE SMITH

2. We have discussed this case with the defendant in detail and have advised the defendant of the defendant's rights and all possible defenses. The defendant has conveyed to us that he understands this document and consents to all its terms. We believe the plea and disposition set forth herein are appropriate under the facts of this case. We concur in the entry of the plea as indicated above and on the terms and conditions set forth herein.

8/10/2000
DATE

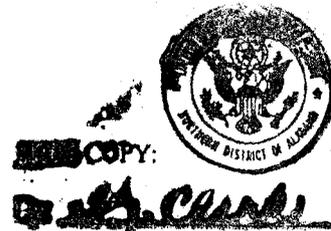
David Cromwell Johnson
DAVID CROMWELL JOHNSON
CHRISTOPHER PARKERSON
COUNSEL FOR DEFENDANT
RANDALL WAYNE SMITH

3. I have reviewed this document and agree to its provisions.

G. DOUGLAS JONES
United States Attorney

8-10-2000
DATE

Adolph J. Dean Jr.
ADOLPH J. DEAN, JR.
Assistant United States Attorney



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

FILED

2/3

00 AUG 10 AM 9:48

SOUTHERN DIVISION

U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA)

v.)

RANDALL WAYNE SMITH)

CR-00-S-0296-S

EXHIBIT

S-138c

INFORMATION

The United States Attorney charges at all times material to this Information:

INTRODUCTION

1. That from on or about October 1, 1996 and continuing to on or about April 30, 1997 within the Northern District of Alabama and elsewhere, the defendant,

RANDALL WAYNE SMITH,

2. Operated his businesses Oasis Cellular and Bally Overseas Trading, Inc., from his residence at 1905 Springlake Court, Birmingham, Alabama, 35215.

3. The defendant Randall W. Smith solicited and accepted by wire, mail, and other means, funds from "aggregators" and individual investors whom he promised to give his best efforts to obtain returns of up to twenty times on their initial investment over a 275 day trading period. The defendant Randall W. Smith as described in the "asset enhancement agreements" he produced, advised the investors that their funds would be pooled and placed in various high yield trading programs. The "asset enhancement agreements" specifically defines the terms, conditions, agreements and income distribution to the investors.

4. The defendant Randall W. Smith accepted investments via wire transfers, Bally

Overseas Trading, Inc. checks and cashiers' checks made out to Randall W. Smith, Bally Overseas Trading, Inc., and Oasis Cellular. The investment funds were either deposited directly into the account of Randall W. Smith d.b.a. Oasis Cellular at Regions Bank, N.A. (Account Number 03-0084-3547) or they would be wired from Regions Bank the account of Client Management Services (Account Number 0211234116). Client Management Services is a company owned by Milton Vaughn, the defendant's accountant. Some of the investment funds (\$745,000.00) were wired to the defendant's personal bank account (Account Number 0417003165969) at SunTrust Bank in Ft. Lauderdale, Florida. The defendant Randall W. Smith used part of this money to pay for personal expenditures. These expenditures included but are not limited to payments made to the defendant's American Express credit card account, University of Alabama Blazer tickets and lease payments.

5. The defendant received money from two "aggregators" and approximately fifteen small investors who resided in the states of Pennsylvania, Alabama, Florida, South Carolina, Virginia, Georgia, Colorado, Texas, and the country of Canada. An "aggregator" is an individual that has accumulated sums of money from individuals and groups. The defendant received in excess of 1.5 million dollars during the course of this scheme to defraud investors. The majority of the investors did not receive the promised return on their investment due to the defendant's failure to legitimately invest funds as noted on the contracts. However, a substantial number of investors did recoup their initial investments plus some profits.

COUNT ONE: (18 United States Code Section 1343):

The United States Attorney charges that at all times relevant to this Information:

1. The Introduction of this Information is incorporated by reference herein as though fully set out.

2. That from on or about October 1, 1996 and continuing to on or about April 30, 1997, within the Northern District of Alabama, and elsewhere, the defendant,

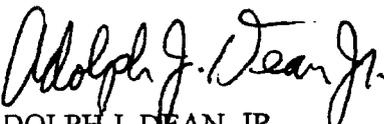
RANDALL WAYNE SMITH,

devised a scheme and artifice to defraud and obtain money and property by means of false and fraudulent representations.

3. It was part of the scheme that the defendant wire transferred investment funds on April 11, 1997 in the amount of \$745,000.00 from his Regions bank account (account number 0300843547) in Birmingham, Alabama to his personal bank account (0417003165969) at SunTrust Bank in Ft. Lauderdale, Florida. The defendant used part of these investors funds to pay personal expenditures to include but not limited to lease payments, UAB Blazer tickets and payments to the defendants personal American Express account. None of these funds were invested in the manner proposed by the defendant in the "asset enhancement agreements" between the defendant and aggregators/investors.

All in violation of Title 18 United States Code, Section 1343.

G. DOUGLAS JONES
United States Attorney


ADOLPH J. DEAN, JR.
Assistant United States Attorney

