

REC'D 04 JUN 03 09:08 AM DC-DRP

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)	
	)	NO. CR 04- 238 BK
Plaintiff,)	
)	
v.)	
	)	<u>INFORMATION</u>
ANDREW ALAN WIEDERHORN)	
	)	[18 U.S.C. § 1954]
	)	[26 U.S.C. § 7206(1)]
Defendant.)	

THE UNITED STATES ATTORNEY CHARGES:

Count 1

Payment of Gratuities

A. Introduction

At relevant times

1. From 1989 through January 1999, ANDREW ALAN WIEDERHORN (WIEDERHORN) was a principal owner of, and controlled, Wilshire Credit Corporation (WCC). From December 1996 through August 1999, WIEDERHORN was the Chief Executive Officer of Wilshire Financial Services Group Inc. (WFSG), and an officer and/or director of its subsidiaries and affiliated companies.

2. From 1968 through September 2000, Capital Consultants, Inc. (CCI) was a registered investment adviser that provided investment management services to clients (investors), including employee retirement benefit and welfare benefit plans (Plans), subject to Title 1 of the Employee Retirement Income Security Act of 1974 (ERISA). CCI solicited, accepted, and exercised control over these investors' funds.

3. Jeffrey Grayson (Grayson) controlled CCI and had a fiduciary duty to the Plans to avoid any action or interest that would conflict with his duty to them. Grayson had the duty to consider and to take actions and make decisions concerning questions and matters relating to the management and investment of Plan funds. He was ultimately responsible for the identification of investment opportunities, the allocation and investment of Plan funds, the negotiation of terms of investments, and the disclosure of information about investments to Plans and other investors. He is a person covered by the terms of 18 U.S.C. § 1954.

4. Among other investments, CCI invested Plan and other investor funds in loans to a company called The Hand That Feeds You! (THTFY).

5. At Grayson's request, WIEDERHORN authorized the purchase of these loans from CCI by a Wilshire company, subject to certain conditions, including Grayson's agreement to guarantee repayment of the loans by a predetermined time with interest.

On or about October 15, 1998, in the State and District of Oregon, **WIEDERHORN**, because of actions, decisions, and other duties of Grayson, related to questions and matters concerning the Plans, as set forth in paragraphs three through five, including the release to WCC and WFSG of approximately \$25,300,000.00, directly and indirectly gave Grayson a thing of value, to wit: the return and release of Grayson's personal guarantee to repay or repurchase the

THTFY loans, on which approximately \$3,400,000.00 remained unpaid; all in violation of Title 18, United States Code, Section 1954.

Count 2

Filing a False Tax Return

On or about October, 1999, in the State and District of Oregon, Andrew Alan Wiederhorn did knowingly and willfully file a United States Joint Income Tax Return for the calendar year 1998, which he did not believe to be true and correct as to every material matter, to wit: The return substantially overstated capital losses reported on Schedule D, as an offset to income; all in violation of Title 26, United States Code, Section 7206(1).

DATED this 2 day of June, 2004

BARON C. SHELDAHL
First Assistant United States Attorney
Acting United States Attorney

LANCE CALDWELL, OSB #77404
Assistant United States Attorney

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	NO. CR
)	
v.	)	STIPULATION REGARDING
	)	FACTUAL BASIS FOR
ANDREW ALAN WIEDERHORN,	)	GUILTY PLEA
	)	TO COUNT 1 [VIOLATION
Defendant.	)	OF 18 U.S.C. 1954]
)	

The United States of America, by and through Assistant United States Attorneys Lance Caldwell and Neil Evans, and Andrew Wiederhorn, personally and by and through his attorneys, Ransom Blackman LLP and Marc D. Blackman and Jones Day LLP and Brian O'Neill, hereby stipulate to the following:

1. From 1989 through January 1999, ANDREW ALAN WIEDERHORN (WIEDERHORN) was a principal shareholder of, and controlled, Wilshire Credit Corporation (WCC). From December 1996 through August 1999,

WIEDERHORN was the Chief Executive Officer of Wilshire Financial Services Group Inc. (WFSG) and an officer and/or director of its subsidiaries and affiliates.

2. From 1968 through September 2000, Capital Consultants, Inc. (CCI) was a registered investment adviser that provided investment management services to clients (investors), including employee retirement benefit and welfare benefit plans (Plans), subject to Title 1 of the Employee Retirement Income Security Act of 1974 (ERISA). CCI solicited, accepted, and exercised control over these investors' funds.

3. Jeffrey Grayson (Grayson) controlled CCI and had a fiduciary duty to the Plans to avoid any action or interest that would conflict with his duty to them. Grayson had the duty to consider and to take actions and make decisions concerning questions and matters relating to the management and investment of Plan funds. He was ultimately responsible for the identification of investment opportunities, the allocation and investment of Plan funds, the negotiation of terms of investments, and the disclosure of information about investments to Plans and other investors. Grayson was a fiduciary to Plans.

4. Between February 1995 and October 1998, under Grayson's direction, CCI made numerous loans of its investors' funds, including Plan funds, to WCC. The terms of these loans required that a certain percentage of each loan (typically 15%) be retained by the borrower in a cash collateral account.

5. Beginning in December 1995 and continuing through January 1998 WIEDERHORN facilitated Grayson's receipt of a line of credit loan from an entity known as CF Credit including net borrowings totaling approximately \$4,200,000.00. CF Credit sold these loans to Wilshire Funding Corporation (WFC), a subsidiary of WFSG, in March 1998.

6. In December 1997, Grayson contacted WIEDERHORN and proposed that one or more Wilshire companies purchase two loans that CCI had made to a company called The Hand that Feeds You (THTFY). The loans by CCI were loans of investor funds. One loan had been made on behalf of numerous investors, including Plans, and a second loan had been made by one of CCI's wealthy individual clients. THTFY was in default on both of these loans.

7. At Grayson's request, WIEDERHORN authorized the purchase of these loans from CCI by a Wilshire company, subject to certain conditions, including Grayson's and CCI's agreement to guarantee repayment of the loans by a predetermined time with interest.

8. In January and February 1998, WFC advanced funds for the purchase of these two loans from CCI for the outstanding balance of the loans of approximately \$3,800,000.00. WFC immediately transferred the loans to WCC. Grayson and CCI signed the requested guaranties.

9. In the Summer of 1998, at Grayson's request, and with knowledge and approval of counsel for all parties, Wiederhorn caused WCC to release CCI from its guaranties of payment of the loans, leaving Grayson as the sole guarantor.

10. Beginning in September 1998 and continuing through and after October 15, 1998, WFSG and its subsidiaries and affiliated companies suffered financial difficulties that placed them and WCC in need of cash. During the course of negotiations with WFSG's various lenders and creditors, WIEDERHORN requested and CCI agreed to loan WCC an additional \$6,000,000 and further agreed to release for the benefit of WCC and WFSG and its subsidiaries and affiliated companies \$19,300,000 of the funds held in the cash collateral account described above. \$14,500,000.00 of the cash collateral was paid to First Bank of Beverly Hills, a subsidiary of WFSG. \$500,000.00 (approximately) of the cash collateral was released to WCC to pay general obligations and help keep the Wilshire companies in business, and approximately \$4,300,000.00 was paid on a margin account so that WIEDERHORN'S stock in WFSG could be pledged to CCI to secure repayment of these advances. WFSG and its affiliates provided additional guaranties and collateral for these advances.

11. On or before October 15, 1998, Grayson and CCI demanded, as a condition of these loans and cash collateral releases, that the guaranties given by Grayson to repay the THTFY loans be returned and released.

12. On October 15, 1998, with WIEDERHORN'S consent (in his capacity as an officer of both WFSG and WCC) and with the knowledge of WCC's and WFSG's counsel, WFSG and WCC agreed to this condition.

13. WIEDERHORN's consent to the return and release of Grayson's guaranties to repay the THTFY loans directly and indirectly gave Grayson a thing of value because of actions, decisions, and other duties of Grayson related to questions and matters concerning the Plans; in violation of 18, United States Code, Section 1954.

14. The United States Sentencing Guideline applicable to this violation is U.S.S.G. §2E5.1 of the guidelines in effect on October 15, 1998. The Base Offense Level for this violation is 6; in addition, pursuant to U.S.S.G. §2E5.1(b)(2), this Base Offense Level is subject to an increase corresponding to the value of the prohibited payment or the value of the improper benefit to the payer.

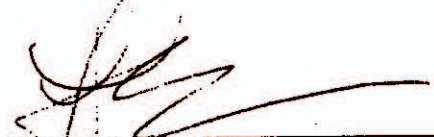
15. The parties agree that the value of the improper benefit applicable to WIEDERHORN is between \$20,000,000.00 and \$40,000,000.00. The parties agree that the value of the prohibited payment to Grayson (the personal guaranties released to him) is approximately \$3,400,000, the value of the balance due on the loans he had personally guaranteed. They further agree that the improper benefit to the payer is the total of funds made available to the Wilshire entities coincident

with the release of the Grayson guaranties: \$25,300,000 (\$19,300,000 released from a cash collateral account, and \$6,000,000 in additional loan funds).

AGREED TO this 1 day of June, 2004.

FOR THE UNITED STATES:

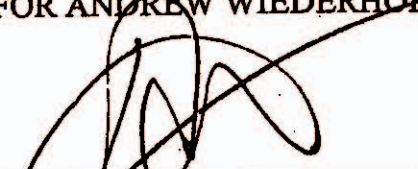
BARON C. SHELDAHL
First Assistant United States Attorney




LANCE CALDWELL
Assistant United States Attorney
for the District of Oregon

NEIL EVANS
Assistant United States Attorney
for the District of Oregon

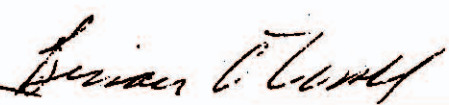
FOR ANDREW WIEDERHORN:



ANDREW A. WIEDERHORN



MARC BLACKMAN
Of Attorneys for Andrew Wiederhorn



BRIAN O'NEILL
Of Attorneys for Andrew Wiederhorn

Entered on the Docket of
16-21-04
DONALD M. CINNAMOND
K. Wright

UNITED STATES DISTRICT COURT
District of Oregon

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

v.

Andrew Alan Wiederhorn

Case Number: Cr. 04-238-BR

Mark Blackman and Brian O'Neill
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) 1 and 2 of the Information
- pleaded nolo contendere to count(s) ___ which was accepted by the court.
- was found guilty on count(s) ___ after a plea of not guilty.

Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC § 1954	Payment of Grannies	1989 through January 1999	1
26 USC § 7206(1)	Filing False Tax Return	October 1999	2

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) ___ and is discharged as to such count(s).
Count(s) ___ (is)(are) dismissed on the motion of the United States.
- Defendant shall pay a special assessment in the amount of \$ \$200.00 for Count(s) 1 and 2 payable immediately to the Clerk, U.S. District Court.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and the United States Attorney of any material change in the defendant's economic circumstances.

Certified to be a true and correct copy of original.
Dated June 3, 2004
Donald M. Cinnamon, Clerk
By K. Wright Deputy

Date of Imposition of Sentence: June 3, 2004

Anna J. Brown
Signature of Judicial Officer

Anna J. Brown
U.S. District Court Judge
Name & Title of Judicial Officer

Date: June 3, 2004

FILED JUN 03 16:21 USDC BRP

10

Defendant: Andrew Alan Wiederhorn
Case Number: 04-238-BR

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 18 Months

The court makes the following recommendations to the Bureau of Prisons: That the defendant should be placed in a camp as near to Oregon as possible because he has significant ties to the community.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

_____ at _____ on _____

_____ as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons,

before 2 p.m. on August 2, 2004.

_____ as notified by the United States Marshal and/or Pretrial Services.

The Bureau of Prisons will determine the amount of prior custody that may be credited towards the service of sentence as authorized by Title 18 U.S.C. 3585(b) and the policies of the Bureau of Prisons.

RETURN

I have executed this judgment as follows:

Defendant delivered on: _____ to _____ at _____

_____, with a certified copy of this judgment.

United States Marshal

By _____
Deputy Marshal

