

IN THE GRAND COURT OF THE CAYMAN ISLANDS

428
CAUSE NO. OF 2005

IN THE MATTER OF THE COMPANIES LAW (2004 Revision)

AND

IN THE MATTER OF A.V.E. NORTH AMERICA LIMITED (in Voluntary Liquidation)



PETITION



TO: HER MAJESTY'S GRAND COURT OF THE CAYMAN ISLANDS

The Humble Petition of A.V.E. North America Ltd (in Voluntary Liquidation) of PO Box 2499GT, George Town, Grand Cayman, Cayman Islands, British West Indies.

SHOWETH as follows: -

1. **A.V.E. NORTH AMERICA LIMITED** ("the Company") was incorporated on 5th September 2002 under the Companies Law as an exempted company.
2. The registered office of the Company is situated at PO Box 2499, George Town, Grand Cayman, Cayman Islands, British West Indies.
3. The Company passed a Special Resolution on the 13th day of September 2005 thereby placing itself into Voluntary Liquidation. Mr. Christopher Dorrien Johnson and Mr. Russell Smith were appointed the Joint Voluntary Liquidators on that date. The Petitioner seeks an Order of this Honourable Court that the Company is to continue in Voluntary Liquidation subject to the Supervision of this Court pursuant to Section 150 of the Companies Law (2004 Revision).

4. The Company forms part of a group of companies which were operated and controlled by Robert John Middlemiss (“Middlemiss”), of Unit 1, Laguna Del Mar, George Town, Grand Cayman, an Australian national residing in Grand Cayman. Through the various corporate vehicles that he set up, Middlemiss had orchestrated an investment scheme, namely, an international program for selling wine futures contracts to individuals who would in turn be purportedly entitled to resell the product or would be purportedly entitled to offer to sell the contracted wine to the Company.

5. Middlemiss operated or caused to be operated this unlicensed investment scheme, selling investment contracts for the purchase of wine futures to the public, from the Cayman Islands between 2003 and mid-September, 2004, in contravention of the Securities Investment Business Law (2004 Revision) (the “Law”), thereby breaching the provisions of Section 5(1) of the Law. The Law imposes criminal liability on whoever carries on securities business without a licence to do so with a maximum fine of CI\$100,000 and 1 years’ imprisonment, and in the case of a continuing offence, as is the case here, a daily fine of CI\$10,000 during which the offence continues. Quite apart from the criminal liability that the Company has, these securities contracts are prohibited by Statute and as the object of these prohibitions on the sale of unlicensed securities is consumer protection then the contracts will be illegal. This proposition derives from the so called ‘English money lender cases’, an example of which is *Victorian Daylesford Synicate Limited v. Dott* [1905] 2 Ch. 624, quoted with approval in the leading case of *Ontario (Securities Commission) v. British Canadian Commodity Options Ltd.* 22 O.R (2d) 278.

6. These Cayman Islands companies included the Company, Paradigm Holdings Ltd (In Official Liquidation)(“PHL”), Architects of Wine Ltd (in Voluntary Liquidation)(“AOW”), AVE International Ltd (In Voluntary Liquidation)(“AVE”),

Paradigm Wine International Ltd. (in Voluntary Liquidation)(“PWIL”), Paradigm Logistics Ltd (in Voluntary Liquidation)(“PLL”), Worldwide Wine Ltd (in Voluntary Liquidation) (“WWL”), and Ultimate Wine Ltd (in Voluntary Liquidation)(“UWL”).

7. Sums invested by the investors in the above scheme to any of the above companies were routinely transferred between the accounts of two or more of the said companies kept by Caledonian Bank and First Caribbean Bank in Grand Cayman. Funds paid by the investors were kept circulating between the said accounts. The Company’s role in this scheme is unclear at this time although from the sparse records that the Liquidators have recovered to date it appears that this Company was incorporated to sell wines to hotels and restaurants in the United States of America. From the banking records some US\$664,000 was sent out to investors as part of the ‘buy-back’ arrangement with them. This enterprise has all the hallmarks of a ‘Ponzi’ scheme that pays the investors who make a nuisance of themselves, whilst the masterminds behind the scheme know that it will implode in time, leaving them with the funds, and the investors with nothing. On 1st April 2003, AVE NA entered into a two year contract with Domaine Select Wine Estates LLC for the latter to import wines into the USA, and arrange the wholesale distribution of wine in the State of New York. The Liquidators have discovered that wine is held in a warehouse in New Jersey, USA, by the Company. The Liquidators would seek this Court’s direction as to the seizure, and sale of the said wine in this liquidation.

8. As the group of companies, of which the Company forms a part, were completely controlled by Middlemiss, they were devised and utilized by Middlemiss to facilitate and carry out the selling of unlicensed futures contracts (“unlicensed securities”) described herein and they were used solely for that purpose. It appears that these companies were merely different corporate entities set up by Middlemiss to accomplish the same unlawful enterprise; namely to enable Middlemiss to induce unwitting investors to invest in the wine purchasing scheme, thereby allowing the sale of unlicensed securities (without interference

by any regulatory body which could ensure that no misrepresentation or fraudulent activity was transpiring in the sale of these securities) to the public. The group companies had no purpose or activity other than the carrying out of the selling of unlicensed securities. There was no legitimate part to them.

9. The Company, and the group of companies that it forms a part of, are one factual entity. As a result of the fact that the group of companies purported to have, as their major asset, the amounts owed in installment payments from investors in the wine futures contracts, and the fact that as a consequence of Section 5(7) of the Law, as well as by operation of law, the investors can seek rescission and damages for misrepresentation, the group of companies is hopelessly insolvent.
10. It is, moreover, in the interests of all investors of the said scheme carried out in the Cayman Islands that the Joint Voluntary Liquidators be permitted to continue to liquidate the Company subject to the Court's supervision.
11. The estimated liabilities of the group companies and of each one of them towards the victims of the above scheme, including the petitioner, may well exceed US\$25 million.

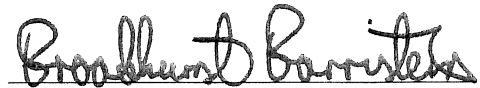
THE PETITIONER THEREFORE HUMBLY PRAYS as follows:

- (1) That the Company should continue in Voluntarily Liquidation subject to the Court's Supervision pursuant to the provisions of the Companies law (2004 Revision);
- (2) Christopher Dorrien Johnson and Russell Smith of Chris Johnson Associates Ltd, Cayman Islands, Chartered Accountants, be permitted to continue on as Joint Voluntary Liquidators of the Company and that they be authorized to do any acts or things considered by them to be necessary or desirable in their capacity as Joint Voluntary Liquidators;

- (3) That the Joint Voluntary Liquidators be at liberty to employ attorneys, counsel and professional advisors whether in the Cayman Islands or elsewhere as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit;
- (4) That the Joint Voluntary Liquidators and their staff be entitled to receive remuneration for their services by reference to the time properly given by them and their staff in attending to matters arising in the winding up and that the hourly rates and the amount of such remuneration be determined in accordance with Rules 4.127 to R. 131 of the Insolvency Rules 1986, or as the Court may direct.
- (5) Such further and/or other relief as this Honourable Court deems appropriate.

AND YOUR PETITIONER will ever pray etc.

DATED this th day of September 2005.



**FOR AND ON BEHALF OF
A.V.E. NORTH AMERICA LIMITED (in Voluntary Liquidation)**

NOTE: This Petition is intended to be served on the Company and the Registrar of Companies

ENDORSEMENT

This Petition, having been presented to the Grand Court of the Cayman Islands on the th day of September 2005 will be heard at the Grand Court of the Cayman Islands on:

DATE: 9th November 2005

TIME: 10:00 a.m

(or as soon thereafter as the Petition can be heard).

This PETITION is filed by Broadhurst Barristers, attorneys-at-law for the Petitioner, whose address for service is 40 Linwood Street, P.O. Box 2503, George Town, Grand Cayman, Cayman Islands, B.W.I. (ref: 2K4-121)