UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 21, 2004

ADMINISTRATIVE PROCEEDING
File No. 3-11672

In the Matter of **BRANDT, KELLY & SIMMONS, LLC and KENNETH G. BRANDT,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(e), 203(f), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AS TO BRANDT, KELLY & SIMMONS, LLC AND KENNETH G. BRANDT**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), against Brandt, Kelly & Simmons, LLC ("BKS") and Kenneth G. Brandt ("Brandt") (collectively "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

Nature of Proceeding

1. This proceeding stems from the failure of BKS, a registered investment adviser, and Brandt, its Managing Partner and then-80 percent owner, to disclose to their clients a material conflict of interest. Unbeknownst to its clients, BKS received $7,500 in cash from TD Waterhouse Investor Services, Inc. ("TDW"), the broker-dealer to whom BKS directed client trades.

2. The $7,500 in cash, which was transferred by TDW directly into BKS's general account at TDW, was intended for BKS's clients, as fee reimbursements. Instead of passing on the $7,500 in fee reimbursements to its clients, BKS used the money to pay for its own operating expenses, including rent, overhead, and payroll, breaching BKS's and Brandt's fiduciary duty to their clients by misappropriating $7,500 in client assets.

3. By failing to inform its advisory clients and failing to disclose as required in its Form ADV that it received an economic benefit from TDW which TDW intended to be for the direct benefit of BKS's clients, and by instead taking the $7,500 for itself, BKS and Brandt willfully

violated Sections 206(1), 206(2), and 207 of the Advisers Act and Brandt willfully aided and abetted and caused BKS's violations of Sections 206(1), 206(2), and 207 of the Advisers Act.

Respondents

4. Respondent BKS is an investment adviser which has been registered with the Commission since 2001, S.E.C. file number 801-60022. BKS, which manages approximately $125 million in client assets, is located in Southfield, Michigan.

5. Respondent Brandt is the Managing Partner and was the 80 percent owner of BKS at the time of the relevant conduct. He made the majority of the business and investment decisions for BKS and led the discussions between BKS and TD Waterhouse Investor Services, Inc. Brandt, 59, is a resident of Farmington Hills, Michigan. He was one of two principals of BKS, and he rendered investment advice for compensation.

Facts

6. BKS is a discretionary investment manager. Client assets are primarily invested in stocks and mutual funds through TDW, a national broker-dealer registered with the Commission.

7. In late 2000, BKS began negotiating with TDW to move the adviser's clients' accounts from another broker-dealer to TDW. Brandt, the senior partner at BKS, led the negotiations from BKS's side. Brandt told TDW that BKS's clients would be charged account termination fees of $50-$75 for closing each account, which would be an added cost of the transition to TDW. To offset those client charges, the parties agreed that TDW would make a $7,500 payment to BKS.

8. In October 2000, TDW and BKS signed a letter agreement which explicitly stated that BKS would use the money given by TDW to reimburse BKS's advisory clients for the account termination fees.

9. In May 2001, under the terms of the agreement, TDW transferred a payment of $7,500 to BKS's general operating account at TDW. However, BKS did not use the money received from TDW to reimburse its clients. BKS instead misappropriated the money and applied it to the advisory firm's own operating expenses, including rent, overhead, and payroll.

10. The firm did not inform its clients about the availability of the TDW money, and Brandt admitted that the TDW money was not used for its intended purpose, *i.e.*, to reimburse BKS's clients for account termination fees that they incurred as a result of the move to TDW.

11. In Forms ADV signed and filed with the Commission on February 9, 2001, September 11, 2002, and April 17, 2003, BKS, through Brandt, omitted to state material facts required to be stated on Part II, Item 13A of the Form ADV. Specifically, BKS did not disclose that it had an arrangement whereby it had received $7,500 in cash from a non-client in connection with giving advice to clients, as required in Part II, Item 13A. Nor do the BKS Forms ADV disclose the

fact that TDW provided BKS with money to reimburse its clients, money which BKS instead used to pay its own operating costs.

Violations

1. As a result of the conduct described above, BKS willfully violated Sections 206(1) and 206(2) of the Advisers Act, which incorporate common law principles of fiduciary duties by prohibiting any investment adviser from employing any device, scheme or artifice to defraud any client or prospective client or from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. SEC v. Capital Gains, 375 U.S. 180 (1963). As a result of the conduct described above, BKS also willfully violated Section 207 of the Advisers Act, which makes it unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission.

2. As a result of the conduct described above, Brandt willfully aided and abetted and caused BKS's violations of Sections 206(1) and 206(2) of the Advisers Act. As a result of the conduct described above, Brandt also willfully aided and abetted and caused BKS's violations of Section 207 of the Advisers Act. In addition, as one of two principals of BKS, and as someone who rendered investment advice for compensation, Brandt can be deemed to be an "investment adviser" in his own right. In the Matter of John J. Kenny et al., Advisers Act Release No. 2128 (May 14, 2003); In the Matter of Russell W. Stein, et al., Advisers Act Release No. 2114 (March 14, 2003). Accordingly, Brandt willfully violated Sections 206(1), 206(2), and 207 of the Advisers Act.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Sections 203(e) and 203(f) of the Advisers Act including, but not limited to, civil penalties pursuant to Section 203(i) of the Advisers Act;

C. Whether, pursuant to Section 203(k) of the Advisers Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 206(1), 206(2), and 207 of the Advisers Act and whether Respondents should be ordered to pay disgorgement pursuant to Section 203(k)(5) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 200 of the Commission's Rules of Practice, 17 C.F.R. § 201.200.

IT IS FURTHER ORDERED that Respondents shall file Answers to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission’s Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jonathan G. Katz
Secretary