

# **Bond Case Briefs**

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## **SEC Charges Brogdon With Misleading Investors, Obtains Freeze on Assets.**

WASHINGTON - The Securities and Exchange Commission has obtained an emergency freeze on the assets of an Atlanta-based businessman and filed a lawsuit charging him and his associates with fraud for misusing investor proceeds that were supposed to finance the purchase and renovation of senior living facilities.

The SEC filed its complaint with the United States District Court for the District of New Jersey and is requesting a jury trial. It is also requesting that Brogdon return his ill-gotten gains with interest and penalties and be barred from serving as an officer or director of a public company. The SEC also wants the court to impose a receivership on the entities that Brogdon owns or controls.

At the same time, the Financial Industry Regulatory Authority filed a complaint against Cantone Research Inc. in Tinton Falls, N.J. its majority owner and wife in connection with Brogan's transactions.

The SEC found that since 1992, Christopher Brogdon raised more than \$190 million for his nursing home and retirement community projects through 54 conduit municipal bond transactions and private placements. In total, the SEC alleged Brogdon committed fraud through at least 43 entities he owns or controls.

The offering documents given to investors for these projects said that the money to be raised would be used for purchasing, constructing, or renovating specific projects. The investors were supposed to receive interest from the revenues generated by the projects in which they believed they were investing. Instead, Brogdon, as early as 2000, commingled the investor funds and used the money for personal expenses and other business ventures, including restaurants and commercial real estate holdings, the SEC said.

Brogdon also consistently failed to file required financial statements and drew down on debt service reserve funds to make interest payments to his investors, without disclosing his actions or replenishing the funds. As a result, there were multiple times when interest or principal payments were due and he relied on third-party lenders to make his payments, according to the commission.

"As alleged, Brogdon deceived investors about the true nature of these investment opportunities," said Sanjay Wadhwa, senior associate director of the SEC's New York Regional Office. "Brogdon falsely promised investors they were investing in specific senior living projects when in reality they also were funding his personal expenses and other businesses, including some that are struggling financially."

Brogdon has been in the nursing home, assisted living, and retirement home community business for more than 25 years. He owns seven other real estate and restaurant business ventures throughout Georgia and the surrounding states and has been associated with retirement and healthcare companies since the early 1990s.

He was censured, fined, and barred from the securities industry by NASD, the predecessor to the Financial Industry Regulatory Authority, in 1986 when he was found to have effected transactions in securities while failing to maintain adequate net capital. NASD additionally found he had withdrawn cash and securities investments from the firm's accounts while the firm was deficient in net capital.

The SEC's complaint also names Brogdon's wife Connie Brogdon, who had a majority equity interest in many of the entities Brogdon uses to own, operate, or lease his facilities. His son Tygh Brogdon is named in the complaint as well because of his role as president of Brentwood Healthcare, which managed at least six facilities cited in the SEC's complaint. In addition to his family, the complaint also names several other business entities associated with Brogdon as defendants.

In total, Brogdon was found to have raised at least \$168 million through municipal revenue bonds issued in conduit deals, or certificates of participation in the bonds. He also raised at least \$22 million through private placement offerings, usually comprised of equity and debt. The SEC found that Brogdon continues to control the borrower entities in each of the offerings they cited.

The SEC cited several examples of Brogdon's misappropriation of offering proceeds. In the spring of 2013 he raised money through two offerings for a retirement housing development referred to as the "Arcadia Project" in Conyers, Georgia. The offerings included COPs in the Development Authority of Clayton County, Ga.'s revenue bonds and in the Savannah Economic Development Authority's subordinated mortgage healthcare facility revenue bonds, as well as Cherokee Financial's COPs in a 10% promissory note issued by Arcadia Partners.

The confidential disclosure memorandum given to investors, said that \$1.4 million of the proceeds would be used to construct the Arcadia Project and that the private placement investors would be paid interest and principal from the revenues of the project. Instead \$177,936 of the proceeds were used to make quarterly interest payments back to the investors in the Cherokee Financial private placement and \$644,158 of the proceeds financed undisclosed expenses and payments, including some associated with his restaurants and his wife's personal account.

In another example, Brogdon raised \$2.15 million through COPs in the Development Authority of Clayton County, Ga.'s first mortgage revenue bonds. Instead of using \$425,000 of the proceeds as working capital for the facility that served as the source of payment of debt service on the bonds, Brogdon used the money to pay loans on an unrelated nursing home and commercial property owned by his Brogdon Family Company LLC. He also used the money to pay an employee's salary at one of the companies he co-founded and transferred \$74,000 to his wife's personal account.

His misconduct continued through at least Oct. 8 of this year, according to the SEC. As recently as September 2015, he used commingled funds from unrelated facilities to satisfy debt service obligations on three outstanding bond offerings and as recently as November he used a personal line of credit to make debt service payments on two bond offerings that did not include that source of funding in their official statements.

"Unless the defendant is permanently restrained and enjoined, [he] will again engage in the acts, practices, transaction and courses of business set forth in this complaint," the SEC said.

The commission found Brogdon violated Section 17(a) of the Securities Act of 1933, which prohibits fraud and misrepresentations in the offer or sale of securities, and Section 10(b) of the Securities Exchange Act of 1934 as well as Rule 10b-5 in that section, which refer to manipulative and deceptive devices. He also violated Sections 20(e) of the Exchange Act, on liability of controlling persons, and Section 15(b) of the Securities Act, on registration of municipal dealers, according to the commission.

Meanwhile, FINRA charged Cantone Research majority owner Anthony Cantone, and his wife Christine, with making fraudulent misrepresentations and omissions of material facts in connection with the sales and extensions of more than \$8 million of COPs in certain promissory notes that were executed on behalf of one of several entities controlled by Brogdon.

According to FINRA, four of five of the promissory notes have defaulted, resulting in about \$6 million of losses to investors, while CRI and Cantone received commissions and other payments of more than \$1 million from the offerings.

FINRA said CRI and Cantone failed to disclose to investors, among other things, that Brogdon had twice been barred from the securities industry, once for “egregious misconduct” involving unauthorized transactions and later for a separate “scheme” involving financial misconduct.

They also did not disclose that Brogdon had been indicted for racketeering, theft, and Medicaid fraud, that he had been found liable for breaching a stock repurchase guarantee agreement, and that several entities he controlled had filed for bankruptcy.

THE BOND BUYER

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