

STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION

IN THE MATTER OF DETERMINING ) S-02-249-03-TO01  
Whether there has been a violation of the )  
Securities Act of Washington by: ) SUMMARY ORDER TO CEASE AND  
 ) DESIST AND NOTICE OF INTENT TO  
 ) IMPOSE A FINE  
Herbert Sweeting; Aspen Fiduciary )  
Fund; Winners & Co.; Focas'l )  
Enterprize Trust; )

Respondents

THE STATE OF WASHINGTON TO: Herbert Sweeting; Aspen Fiduciary Fund;  
Winners & Co.; Focas'l Enterprize Trust

**STATEMENT OF CHARGES**

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondents, Herbert Sweeting; Aspen Fiduciary Fund; Winners & Co.; and Focas'l Enterprize Trust have each violated the Securities Act of Washington and that their violations justify the entry of an order of the Securities Administrator under RCW 21.20.390 against each to cease and desist from such violations. The Securities Administrator finds that delay in ordering the Respondents to cease and desist from such violations would be hazardous to the investors and to the public and that a Summary Order to Cease and Desist should be entered immediately. The Securities Administrator finds as follows:

SUMMARY ORDER TO CEASE AND DESIST AND 1  
NOTICE OF INTENT TO IMPOSE A FINE

DEPARTMENT OF FINANCIAL INSTITUTIONS  
Securities Division  
PO Box 9033  
Olympia, WA 98507-9033  
360-902-8760



1 **NATURE OF THE OFFERINGS**

2 **Focas'l Enterprize Trust**

3 V.

4 Beginning in January 1998 and continuing through 2000, Sweeting offered a series of  
5 investments to a number of investors. In January 1998, Sweeting persuaded an elderly Seattle  
6 widow, Y. M., to cash out her savings accounts and certificates of deposit and to invest the  
7 proceeds of those accounts, totaling over \$200,000, in Focas'l Enterprize Trust. Sweeting said  
8 that he would invest the money for her. Sweeting deposited the money to his personal trading  
9 account at a local branch office of a broker-dealer. The account was in the name of Focas'l  
10 Enterprize Trust. At the time, the amount of equity Sweeting had in the account was minimal.  
11 Sweeting did not put his own money into the account after Y. M.'s money was deposited into the  
12 account. Sweeting caused purchases and sales of stocks and options to be made in the account  
13 and in an account at another broker-dealer to which Sweeting later caused the funds and  
14 securities in the first account to be transferred. This trading was done on margin. It continued  
15 for more than two years, until the funds in the account were exhausted and the second broker-  
16 dealer caused the account to be closed and the debit balance in the account written off. In  
17 addition to using Y. M.'s money to trade in securities, Sweeting caused more than \$80,000 of Y.  
18 M.'s money to be withdrawn from the Focas'l Enterprize Trust brokerage account for his own  
19 benefit or for the benefit of other entities he controlled, including Aspen Fiduciary Fund,  
20 Winners & Company, Gold Medal Company, and Court Investments. Sweeting used \$18,300 of  
21 Y. M. 's money to speculate in the foreign exchange market. Sweeting's speculations in foreign  
22 exchange were unrelated to Y. M. or any other investor. Sweeting also used her money to repay a  
23 loan to his mother and to finance an espresso stand for his son.  
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1 **Alliance Leasing**

2 VI.

3 In March 1998, Sweeting became a subagent for Midas Touch, Inc. of Florida for the sale  
4 of interests in an equipment leasing investment program, Alliance Leasing. Alliance Leasing  
5 was based in San Diego, California. Sweeting was to receive a commission of 10% on any sales  
6 of Alliance Leasing investments he made. Sweeting caused Y. M. to apply to purchase an  
7 investment of \$100,000 with Alliance Leasing. He received, through Focas'1 Enterprize Trust, a  
8 commission of \$10,000 from Midas Touch for doing so. Sweeting later persuaded Y. M. to cash  
9 in annuity policies and purchase additional investments in Alliance Leasing with the proceeds for  
10 a total of almost \$128,000. Checks from the insurance company representing the proceeds of the  
11 annuities were sent to Alliance Leasing but were returned because Alliance Leasing had been put  
12 into receivership by the Securities and Exchange Commission. Sweeting persuaded three other  
13 persons, all residents of the Seattle area, to invest with Alliance Leasing. The investments of two  
14 of the three other persons were returned to those persons because Alliance Leasing was by then  
15 in receivership. Investors whose investments were accepted have now received 57% of their  
16 principal back from the Alliance Leasing receiver. Y. M. has received less than this amount  
17 because Sweeting filed a sworn statement with the receiver stating that he had returned his  
18 \$10,000 commission to Y. M. The receiver therefore made prorata payments to her based on a  
19 principal amount of \$90,000 rather than the true amount of \$100,000. Sweeting now admits that  
20 he did not return the \$10,000 to Y. M.  
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1 **Phoenix Telecom LLC payphone investment**

2 VII.

3 When, in December 1998, the elderly Seattle widow, Y. M., received her money back  
4 from her additional investments in Alliance Leasing, Sweeting persuaded her to invest \$84,000  
5 in a payphone investment offered by Phoenix Telecom LLC. Sweeting learned of the investment  
6 when he received a mailing about it. The \$84,000 represented 14 pay telephones at \$6,000 each.  
7 The telephones were to be leased to Phoenix Telecom LLC, which would remit payments of  
8 fixed amounts to the investor at regular intervals, and which granted the investor an option to sell  
9 the telephones back at the investor's cost. Sweeting signed the investment documents, as an  
10 associate (sales agent), as Managing Director of Focas'1 Enterprize Trust, which was to receive,  
11 and did receive, a finder's fee of between \$4,000 and \$6,000 for placing Y. M. in the investment.  
12 Y. M. received payments representing income from her investment in Phoenix Telecom LLC for  
13 about a year and a half. Thereafter, she received no payments as Phoenix Telecom LLC became  
14 part of a bankruptcy reorganization under Chapter 11 of the Bankruptcy Code.  
15

16 **Investments through Gold Medal Co., Inc./Winners & Co.:**  
17 **Earned Freedom Investments, Inc. and Signature Employer Resources LLC**

18 VIII.

19 From April 1999 through July 2000, Sweeting solicited Y. M. to make additional  
20 investments with him through two entities he controlled, Gold Medal Co., Inc. and Winners &  
21 Co. In April 1999, Sweeting had Y. M. write a check to Gold Medal Co. for \$25,000. Sweeting  
22 used Y. M.'s funds to invest \$25,000 in the name of Winners & Co. with Earned Freedom  
23 Investments, a firm controlled by a John McGinn of Bellevue, Washington. McGinn was  
24 supposed to trade in options on behalf of investors in Earned Freedom Investments. In May  
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1 1999, Sweeting made a second investment with Earned Freedom Investments, this time of  
2 \$10,000. The funds for this investment came mostly or wholly from Y. M. The investment was  
3 purchased through the checking account of Gold Medal Co. As with the first investment, this  
4 investment was in the name of Winners & Co. rather than in the name of Y. M. or her trust.  
5 Earned Freedom Investments eventually returned at least \$8,362.83 to Gold Medal Co. but the  
6 money was not returned to Y. M. or used for her benefit.

7  
8 In May 2000, Sweeting had Y. M. write a check for \$30,000. He had her leave the payee  
9 on the check blank. Sweeting then wrote in Winners & Co. as the payee. Sweeting endorsed the  
10 check over to Signature Employer Resources, LLC, a Delaware limited liability company, which  
11 was closely held by Harry Mayo of Edmonds, Washington. Signature Employer Resources, LLC  
12 is a third party administrator of employee benefit plans. In return for the \$30,000, Winners &  
13 Co. received membership interests in Signature Employer Resources, LLC. Y.M. was not aware  
14 that her money had been invested with Earned Freedom Investments, Inc. or with Signature  
15 Employer Resources, LLC or that the investments made with her money were in the name of  
16 Winners & Co.

### 17 **Philippine Treasury Recovery Project**

#### 18 **IX.**

19  
20 Sweeting arranged for Y. M. to cash in another annuity in the spring of 2000. At the end  
21 of May, 2000, Y. M. received more than \$140,000 in proceeds from the liquidation of that  
22 annuity. The same day Y. M. received the money, Sweeting persuaded her to invest \$70,000 in a  
23 gold treasure recovery project in the Philippines by writing two checks for \$35,000 each.

24 Sweeting filled in the payee on the check, making them payable to Josie Theaker, a Seattle  
25 resident. In July 2000, Sweeting had Y. M. write another check, this time for \$25,000, which

1 Sweeting also filled in to make payable to Josie Theaker, so that Y. M.'s total investment with  
2 Theaker was \$95,000. Based on this investment of \$95,000, Winners & Co. became a limited  
3 partner in the gold treasure recovery project. The document evidencing this purchase does not  
4 name the limited partnership in which Winners & Co. became a limited partner. The project was  
5 supposed be completed in three to six months, with profits being distributed pro rata among the  
6 participants. In the late summer of 2001, Sweeting requested that the name of Y. M.'s trust be  
7 put on the agreement between Winners & Co. and Josie Theaker. The project has still not been  
8 completed and no proceeds have been distributed.  
9

## 10 **MISREPRESENTATIONS AND OMISSIONS**

### 11 **X.**

12  
13 Sweeting misled Y. M. by causing her to believe that the moneys he invested for her  
14 would be safe income-producing investments that would be more beneficial than maintaining the  
15 annuities, certificates of deposit, and savings account in which she had previously kept her  
16 savings. Instead, the investments Sweeting made on Y. M.'s behalf all involved a much higher  
17 degree of risk than her previous investments. Y. M., who had had substantial savings to  
18 supplement her social security income, has had to return to work part-time and lives from social  
19 security check to social security check. Sweeting omitted to tell Y. M. that he would invest her  
20 funds in the names of entities he controlled rather than in her own name or the name of her trust.  
21 He also failed to advise Y. M. that he lacked an accounting system to adequately account for the  
22 money she had invested through him, and that he would use some of her money for his own  
23 personal purposes. He failed to advise her that because he was not registered as a securities  
24 salesperson or broker-dealer in the state of Washington the use of her funds and the investments  
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1 recommended to her would not be regulated as they would have been had she invested through a  
2 registered broker-dealer or the registered salesperson of a registered broker-dealer.

3 XI.

4 Neither Focas'l Enterprize Trust, nor Aspen Fiduciary Fund, Winners & Co., nor  
5 Alliance Leasing, nor Phoenix Telecom, LLC is currently registered to sell its securities in the  
6 state of Washington and none has previously been so registered.  
7

1 XII.

2 Herbert Sweeting is not currently registered as a securities salesperson or broker-dealer in  
3 the state of Washington and has not previously been so registered.

4 XIII.

5 Neither Focas'1 Enterprize Trust, nor Aspen Fiduciary Fund, nor Winners & Co. is  
6 currently registered as a broker-dealer in the state of Washington and none has previously been  
7 so registered.

8 XIV.

9 The Securities Administrator finds that the continued offering of securities as described  
10 in Tentative Findings of Fact paragraphs V through IX in the manner described in Tentative  
11 Findings of Fact paragraphs V through X, presents a threat to the investing public.

12 Based upon the Tentative Findings of Fact, the following Conclusions of Law are made:

13 CONCLUSIONS OF LAW

14 I.

15 The offer or sale of investments described above constitutes the offer or sale of a security  
16 as defined in RCW 21.20.005(10) and (12).

17 II.

18 The offer or sale of said securities is in violation of RCW 21.20.140 because no  
19 registration is on file with the Securities Administrator.

20 III.

21 Herbert Sweeting has violated RCW 21.20.040 by offering or selling said securities while  
22 not registered as a securities salesperson or broker-dealer in the state of Washington.

1 IV.

2 Focas'l Enterprize Trust, Aspen Fiduciary Fund, and Winners & Co. have each violated  
3 RCW 21.20.040 by offering or selling said securities while not registered as a broker-dealer in  
4 the state of Washington.

5 V.

6 The offer or sale of said securities was made in violation of RCW 21.20.010 because  
7 Sweeting misled investor Y. M. as to the safety of the investments he offered to her, the use to  
8 which her investment funds would be put, the ownership of some of the investments he  
9 purchased on her behalf, and his accountability for her funds.

10 VI.

11 The Securities Administrator concludes that an emergency exists, that the continued  
12 violations of RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140, constitute a threat to the  
13 investing public, and that summary orders to cease and desist from those violations are in the  
14 public interest and necessary for the protection of the investing public.

15 **SUMMARY ORDER**

16 Based on the foregoing,

17 NOW, THEREFORE, IT IS HEREBY SUMMARILY ORDERED, that Herbert  
18 Sweeting; Aspen Fiduciary Fund; Winners & Co.; Focas'l Enterprize Trust; their agents and  
19 employees each cease and desist from offering or selling securities in any manner in violation of  
20 RCW 21.20.140, the section of the Securities Act of Washington requiring registration.

21 It is further SUMMARILY ORDERED that respondents, Herbert Sweeting; Aspen  
22 Fiduciary Fund; Winners & Co.; Focas'l Enterprize Trust, their agents, and employees each cease  
23 and desist from violation of RCW 21.20.010, the anti-fraud section of the Securities Act.

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DEPARTMENT OF FINANCIAL INSTITUTIONS  
Securities Division  
PO Box 9033  
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360-902-8760

1 It is further SUMMARILY ORDERED that Herbert Sweeting; Aspen Fiduciary Fund;  
2 Winners & Co.; and Focas'l Enterprize Trust each cease and desist from violation of RCW  
3 21.20.040, the section of the Securities Act that requires registration of securities salespersons  
4 and broker-dealers.

5 **NOTICE OF INTENT TO IMPOSE A FINE**

6 As described in the foregoing Tentative Findings of Fact and Conclusions of Law,  
7 based upon the scope of Herbert Sweeting's activities as an unregistered broker-dealer or  
8 securities salesperson, based upon Herbert Sweeting; Aspen Fiduciary Fund; Winners &  
9 Co.; and Focas'l Enterprize Trust's repeated offers and sales of unregistered securities and  
10 based upon Herbert Sweeting's material misrepresentations and omissions in connection  
11 with the offers and sales of those securities, the Securities Administrator finds that there  
12 have been knowing or reckless violations of the Securities Act that justify the imposition of  
13 a fine pursuant to RCW 21.20.395. Therefore, the Securities Administrator intends to order  
14 that Herbert Sweeting; Aspen Fiduciary Fund; Winners & Co.; and Focas'l Enterprize Trust  
15 to pay, jointly and severally, a fine of \$25,000.

16 **AUTHORITY AND PROCEDURE**

17 This Order is entered pursuant to the provisions of RCW 21.20.390 and RCW 21.20.395  
18 and is subject to the provisions of RCW 34.05. The respondents, Herbert Sweeting; Aspen  
19 Fiduciary Fund; Winners & Co.; and Focas'l Enterprize Trust may each make a written request  
20 for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND  
21 OPPORTUNITY FOR HEARING accompanying this order.  
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1 If a respondent does not request a hearing, the Securities Administrator intends to adopt  
2 the above Tentative Findings of Fact and Conclusions of Law as final and make the summary  
3 order to cease and desist permanent and impose the fine as to that respondent.

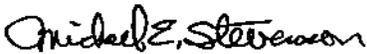
4 WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

5 Dated this 12 day of May, 2003

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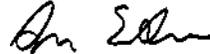
9 Deborah Bortner  
10 Securities Administrator

11 Approved by:



12 Michael E. Stevenson  
13 Chief of Enforcement

14 Presented by:



15 Suzanne Sarason  
16 Senior Financial Legal Examiner