

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

FILED  
FEB 22 06  
U.S. BANKRUPTCY COURT  
MIAMI, FL

In re:

E.S. Bankest, L.C.

CASE NO.: 04-17602-BKC-AJC

Debtor.

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LEWIS B. FREEMAN, Responsible Officer for the  
Reorganized Debtor E.S. Bankest, L.C., a Florida  
limited liability corporation,

ADV. CASE NO.

06-1220  
AJC

Plaintiff(s),

vs

BDO SEIDMAN, LLP, BDO INTERNATIONAL  
B.V., SANDOR LENNER and KEITH ELLENBERG,

Defendant(s).  
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**ADVERSARY COMPLAINT FOR DAMAGES**

Lewis B. Freeman ("Freeman"), in his capacity as Responsible Officer for the Reorganized Debtor E.S. Bankest, L.C. ("Bankest"), hereby sues defendants BDO Seidman, LLP and BDO International B.V. (together, "BDO"), Sandor Lenner and Keith Ellenberg (together with BDO, "Defendants"), and states, on knowledge as to himself and his actions and information and belief as to all other matters, as follows:

**INTRODUCTION**

1. BDO audited Bankest from 1998 to 2002, each time promising to "detect fraud" or errors that would materially affect the financial statements. Each year, BDO gave clean, unqualified audit opinions detecting no such fraud or errors.

2. In August 2003, a court-appointed receiver discovered in five minutes what BDO somehow failed to discover in five years --- that over \$1 billion of the

accounts receivable that BDO had certified did not exist. As this financial fraud unraveled, the reason for BDO's blind eye was revealed --- BDO was a strategic partner of Stratasys Group LLC ("Stratasys"), the very company whose accounts receivable it was supposed to verify as Bankest's auditor! These conflicts blatantly violated professional auditing standards and destroyed the independence required of BDO to conduct the Bankest audit. As a result, BDO was precluded from acting as Bankest's auditors.

3. BDO's conflicts were no accident. BDO's Enron-era business plan was to leverage its traditional accounting business into more lucrative "consulting" services. BDO thus aggressively pursued "strategic partnerships" with businesses providing non-accounting services and shared in its strategic partner's profits. BDO paid its individual auditors for each "strategic partnership" they generated with businesses affiliated with BDO's audit clients.

4. BDO's Enron-era business plan created an insurmountable conflict. BDO incentivized Sandor Lenner, the BDO auditor in charge of Bankest's audits, to leverage BDO's relationship with Bankest into a strategic partnership with Bankest affiliate and client Stratasys. By virtue of BDO's strategic partnership with Stratasys, BDO was on both sides of the fence during its audit of Bankest. With one hand, Lenner directed BDO's audit verification of Bankest's chief asset, account receivables pledged by various clients, including over \$30 million in fake account receivables pledged to Bankest by Stratasys. With the other hand, Mr. Lenner acted as the Alliance Partner in charge of BDO's strategic partnership *with Stratasys*, purportedly helping Stratasys generate the very account receivables BDO and Lenner were supposed to verify as Bankest's auditors. Mr. Lenner and BDO knew or should have known that Stratasys

was nowhere close to generating millions of dollars in receivables and that the over \$30 million in Stratasys account receivables it verified were fake. Mr. Lenner developed the relationship with Stratasys, regularly visited Stratasys and its CEO, Dominick Parlapiano (also the CFO of Bankest), had access to Stratasys' financial records --- records that proved Stratasys struggled to generate any revenue, let alone over \$30 million! --- and even knew that Stratasys was a start-up that had trouble paying its "partnership fees" to BDO.

5. BDO's commitment to make money off of Bankest notwithstanding professional audit standards extended beyond its Stratasys conflict. BDO's five audits of Bankest were grossly negligent even without regard to the Stratasys conflict. In BDO's first audit, BDO's audit manager stopped the audit because the parent of Bankest refused to provide access to records necessary to conduct the Bankest audit. Undeterred, Mr. Lenner and his concurring partner, Keith Ellenberg, overrode the decision and restarted the audit.

6. Over the next five years, BDO, Mr. Lenner, and Mr. Keith Ellenberg provided five separate audit opinions declaring that Bankest's audited financial statements contained no material misstatements and that no material fraud existed. They were grossly negligent in doing so. BDO ignored Generally Accepted Auditing Standards (GAAS) and violated basic professional standards in each audit.

7. In reliance on BDO's grossly negligent audits, Bankest took on debts exceeding \$170 million it could not pay. BDO's conflicts and gross negligence caused Bankest to lose at least \$170 million and artificially to prolong its existence as its insolvency deepened. This action seeks to recover the losses proximately caused by BDO for the legitimate creditors of Bankest.

