

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA : **CRIMINAL NO.** _____
v. : **DATE FILED:** _____
ANTHONY J. POSTIGLIONE, Jr. : **VIOLATIONS:**
WILLIAM J. LENNON : **18 U.S.C. § 1341 (mail fraud - 18 counts)**
: **15 U.S.C. § 77q(a) (securities fraud - 1**
: **count)**
: **18 U.S.C. § 1519 (obstruction of justice - 1**
: **count)**

INDICTMENT

COUNTS ONE THROUGH EIGHTEEN

THE GRAND JURY CHARGES THAT:

At all times material to this indictment:

1. Defendant ANTHONY J. POSTIGLIONE, Jr. resided in Malvern, PA, and defendant WILLIAM J. LENNON resided in Media, PA.
2. Defendants ANTHONY J. POSTIGLIONE and WILLIAM J. LENNON were stockbrokers and financial consultants who co-founded a hedge fund which commenced business in or about October 2001. The hedge fund was called the Fountainhead Fund LP ("Fund").
3. Defendants ANTHONY J. POSTIGLIONE and WILLIAM J. LENNON also created Fountainhead Asset Management, LLC ("FAM") to act as the General Partner of the Fund. Defendants POSTIGLIONE and LENNON served as the Managing Partners, and were the only members, of FAM. FAM had sole responsibility for the management of the Fund's business and investments.

4. Defendants ANTHONY J. POSTIGLIONE and WILLIAM J. LENNON operated FAM out of an office in Philadelphia, PA, and an office in defendant LENNON's home, before moving to an office at 100 East Lancaster Ave, Suite 303, Wayne, Pennsylvania, all within the Eastern District of Pennsylvania.

5. Beginning in or about September 2001, defendants ANTHONY J. POSTIGLIONE and WILLIAM J. LENNON raised approximately \$5.19 million from 17 investors. The investors included prior clients of both defendants POSTIGLIONE and LENNON and family members of defendant POSTIGLIONE. Defendants POSTIGLIONE and LENNON also personally invested in the Fund, approximately \$380,000 and \$18,000 respectively.

6. Under its agreement with the Fund, FAM was entitled to an annual management fee equal to one percent of the assets under management and twenty percent of the Fund's profits.

7. From in or about October 2001 to on or about July 30, 2004, when defendants ANTHONY J. POSTIGLIONE and WILLIAM J. LENNON ceased operating the Fund, the Fountainhead Fund returned losses every quarter, except one. From inception, the Fund returned net losses each year. Thus, FAM was entitled only to an annual management fee equal to one percent of the Fund assets. Without authority and without disclosure to Fund investors, defendants POSTIGLIONE and LENNON took weekly cash withdrawals from Fund assets and paid personal expenses from Fund assets, in amounts which greatly exceeded one percent of the Fund's assets.

8. Rather than report quarterly losses to investors, defendants ANTHONY J. POSTIGLIONE and WILLIAM J. LENNON created and sent to Fund investors false and

misleading quarterly account statements and newsletters, which falsely stated that the Fund was making money.

9. From in or about October 2001 to on or about July 30, 2004, Fountainhead Fund investors never received an accurate quarterly statement from defendants ANTHONY J. POSTIGLIONE and WILLIAM J. LENNON. During the course of the scheme, Fountainhead Fund investors lost approximately \$1.98 million.

THE SCHEME

10. Between in or about September 2001 and on or about July 30, 2004, defendants

ANTHONY J. POSTIGLIONE, Jr. and WILLIAM J. LENNON

devised and intended to devise a scheme to defraud investors of the Fountainhead Fund, and to obtain money and property from them by means of false and fraudulent pretenses, representations, and promises.

MANNER AND MEANS

It was part of the scheme that:

11. Defendants ANTHONY J. POSTIGLIONE, Jr. and WILLIAM J. LENNON obtained money from investors of the Fountainhead Fund by making oral representations that were false and misleading, including that the Fund was a conservative investment, that the Fund's goal was preservation of capital, and that assets invested in the Fund were protected by insurance.

12. Defendants ANTHONY J. POSTIGLIONE, Jr. and WILLIAM J.

LENNON discouraged investors from withdrawing their money and obtained additional funds from investors by mailing false quarterly statements to them, mailing newsletters to them containing false statements about fund performance, and mailing false K-1 statements, all of which stated that the Fund was making money when, as defendants POSTIGLIONE and LENNON well knew, the Fund was losing money.

13. Defendants ANTHONY J. POSTIGLIONE, Jr. and WILLIAM J.

LENNON obtained money from prospective new investors of the Fountainhead Fund by making oral representations that were false and misleading, including that the Fund was making profits since inception when, as defendants POSTIGLIONE and LENNON well knew, the Fund was losing money.

FALSE QUARTERLY STATEMENTS, NEWSLETTERS AND K-1s TO INVESTORS

14. In or about September 2001, defendants ANTHONY J. POSTIGLIONE

and WILLIAM J. LENNON met with some original investors of the Fund and misstated the risks associated with the investment. Defendant POSTIGLIONE told some investors that the fund was a conservative investment, and that preservation of capital was the primary goal. Defendant POSTIGLIONE also stated that the funds were insured and protected.

15. In or about December 2001, defendants ANTHONY J. POSTIGLIONE

and WILLIAM J. LENNON sent false statements to some of the original Fund investors, falsely showing that their investments in the Fountainhead Fund were making money. In fact, as defendants POSTIGLIONE and LENNON knew, the Fund had lost money. In addition, the statements falsely stated that the investors' accounts were insured.

16. From approximately April 2002 through January 2004, defendants

ANTHONY J. POSTIGLIONE and WILLIAM J. LENNON prepared and sent to each investor a quarterly account statement which stated false and inflated Fund returns for the quarter, for the year or since the Fund's inception. In or about April 2004, defendants POSTIGLIONE and LENNON prepared and sent to each investor a quarterly account statement which overstated the amount of the loss for the quarter.

17. Beginning in or about April 2002, defendants ANTHONY J. POSTIGLIONE and WILLIAM J. LENNON prepared, signed and sent a newsletter to Fund investors, which, among other things, contained the Fund's false and inflated performance information.

18. Although the Fund operated in the last quarter of 2001, defendants ANTHONY J. POSTIGLIONE and WILLIAM J. LENNON did not file Fountainhead's year-end tax return and K-1 statements. In or about 2002 and 2003, defendants POSTIGLIONE and LENNON caused Fountainhead's year-end tax return and K-1 statements to be filed based upon false performance figures. As a result, Fund investors received K-1s for tax years 2002 and 2003 which inaccurately represented the amount of their actual investment.

19. From in or about November 2001 through on or about July 30, 2004, defendants ANTHONY J. POSTIGLIONE and WILLIAM J. LENNON made oral and written misrepresentations to investors that their initial investments were growing steadily. In reliance on defendant POSTIGLIONE's and LENNON's misrepresentations, investors kept their money in the Fountainhead Fund. In addition, many investors contributed additional funds in reliance on defendant POSTIGLIONE's and LENNON's misrepresentations.

CHANGE IN FUND MANAGEMENT

20. On or about October 9, 2003, defendants ANTHONY J. POSTIGLIONE and WILLIAM J. LENNON entered into an agreement that divided the customer accounts, giving defendant LENNON control of the accounts of 3 investors and defendant POSTIGLIONE control of the accounts of the remaining 14 investors. Defendant POSTIGLIONE became 100% owner of FAM and the sole general partner of the Fund.

21. For the quarter ending December 31, 2003, after the management changes had occurred, defendants ANTHONY J. POSTIGLIONE and WILLIAM J. LENNON sent a quarterly statement and a jointly signed newsletter to at least three of the Fund investors. Other investors received a quarterly statement with a newsletter signed only by defendant POSTIGLIONE. None of the documents informed Fund investors of any change in management, or that some Fund money had been segregated and placed into a different account.

22. In or about late January 2004, defendants ANTHONY J. POSTIGLIONE and WILLIAM J. LENNON met with one of defendant LENNON's investors, known to the grand jury as E.P., who was considering withdrawing his investment. In this meeting, defendant POSTIGLIONE falsely reassured E.P. that the Fund had changed its investment strategy to continue to produce gains. Neither defendant POSTIGLIONE nor defendant LENNON disclosed to E.P. that defendant LENNON was no longer a General Partner of the Fund, that E.P.'s money was no longer being jointly managed by defendants POSTIGLIONE and LENNON, or that E.P.'s money had actually been withdrawn from the total Fund pool. In reliance on these misrepresentations and omissions, E.P. decided not to withdraw his investment.

23. On or about the dates set forth below, in the Eastern District of Pennsylvania and elsewhere, defendants

**ANTHONY J. POSTIGLIONE and
WILLIAM J. LENNON,**

for the purpose of executing this scheme and attempting to do so, knowingly caused to be delivered by the United States Postal Service, and knowingly caused to be delivered by Federal Express, a commercial interstate carrier, according to directions thereon, from the FAM offices in the Eastern District of Pennsylvania, to the persons described below, the documents listed below, each mailing constituting a separate count:

COUNT	DATE (on or about)	DESCRIPTION
1.	April 2002 Via Federal Express	to D.B. and K.B in Media, PA, including Fountainhead Fund Market Commentary and account statements for D.B. and K.B. with false performance data.
2.	April 2002 Via United States Postal Service	to E.P. in Willingboro, NJ, including Fountainhead Fund Market Commentary and account statements for E.P. with false performance data.
3.	July 2002 Via United States Postal Service	to D.B. and K.B in Media, PA, including Fountainhead Fund Market Commentary and account statements for D.B. and K.B. with false performance data.
4.	July 2002 Via United States Postal Service	to E.P. in Willingboro, NJ, including Fountainhead Fund Market Commentary and account statements for E.P. with false performance data.
5.	October 2002 Via United States Postal Service	to D.B. and K.B in Media, PA, including Fountainhead Fund Market Commentary and account statements for D.B. and K.B. with false performance data.

COUNT	DATE (on or about)	DESCRIPTION
6.	October 2002 Via United States Postal Service	to E.P. in Willingboro, NJ, including Fountainhead Fund Market Commentary and account statements for E.P. with false performance data.
7.	January 2003 Via United States Postal Service	to D.B. and K.B in Media, PA, including Fountainhead Fund Market Commentary and account statements for D.B. and K.B. with false performance data.
8.	January 2003 Via United States Postal Service	to E.P. in Willingboro, NJ, including Fountainhead Fund Market Commentary and account statements for E.P. with false performance data.
9.	April 2003 Via United States Postal Service	to D.B. and K.B in Media, PA, including Fountainhead Fund Market Commentary and account statements for D.B. and K.B. with false performance data.
10.	April 2003 Via United States Postal Service	to E.P. in Willingboro, NJ, including Fountainhead Fund Market Commentary and account statements for E.P. with false performance data.
11.	July 2003 Via United States Postal Service	to D.B. and K.B in Media, PA, including Fountainhead Fund Market Commentary and account statements for D.B. and K.B. with false performance data.
12.	July 2003 Via United States Postal Service	to E.P. in Willingboro, NJ, including Fountainhead Fund Market Commentary and account statements for E.P. with false performance data.
13.	October 2003 Via United States Postal Service	to D.B. and K.B in Media, PA, including Fountainhead Fund Market Commentary and account statements for D.B. and K.B. with false performance data.
14.	October 2003 Via United States Postal Service	to E.P. in Willingboro, NJ, including Fountainhead Fund Market Commentary and account statements for E.P. with false performance data.

COUNT	DATE (on or about)	DESCRIPTION
15.	January 2004 Via United States Postal Service	to D.B. and K.B in Media, PA, including account statements for D.B. and K.B. with false performance data.
16.	January 2004 Via United States Postal Service	to E.P. in Willingboro, NJ, including Fountainhead Fund Market Commentary and account statements for E.P. with false performance data.
17.	April 2004 Via United States Postal Service	to D.B. and K.B in Media, PA, including Fountainhead Fund Market Commentary and account statements for D.B. and K.B. with false performance data.
18.	April 2004 Via United States Postal Service	to E.P. in Willingboro, NJ, including Fountainhead Fund Market Commentary and account statements for E.P. with false performance data.

All in violation of Title 18, United States Code, Section 1341.

COUNT NINETEEN

THE GRAND JURY FURTHER CHARGES THAT:

1. The allegations of paragraphs 1 through 9 and 11 through 22 of Count One of this indictment are realleged here.

2. From in or about December 2001, to on or about July 30, 2004, in the Eastern District of Pennsylvania and elsewhere, defendants

**ANTHONY J. POSTIGLIONE, Jr. and
WILLIAM J. LENNON**

knowingly and willfully, by the use of the means and instrumentalities of transportation and communications in interstate commerce and by use of the mails, in the offer and sale of securities, namely, the limited partnership in the Fountainhead Fund, directly and indirectly, used a device, scheme and artifice to defraud, to obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and courses of business which operated as a fraud and deceit upon the purchasers, that is, the limited partners and investors in the Fountainhead Fund.

In violation of Title 15, United States Code, Section 77q(a).

COUNT TWENTY

THE GRAND JURY FURTHER CHARGES THAT:

1. The allegations of paragraphs 1 through 9 and 11 through 22 of Count One of this indictment are realleged here.

2. On or about July 19, 2004, special agents of the FBI began conducting a criminal investigation into the activities of defendant ANTHONY J. POSTIGLIONE and defendant WILLIAM J. LENNON and their management of the Fountainhead Fund. On or about August 9, 2004, a related grand jury investigation began.

3. In conducting the federal investigation, the government sought to obtain all pertinent documents and records relating to FAM and the Fountainhead Fund.

4. On or about July 30, 2004, FBI agents seized documents and records from the FAM office at 100 East Lancaster Ave, Suite 303, Wayne, Pennsylvania pursuant to a search warrant. Defendant ANTHONY J. POSTIGLIONE was present for the search and seizure.

5. On or about August 9, 2004, the grand jury issued a subpoena requesting, among other things, documents and records relating to FAM and the Fountainhead Fund.

6. On or about August 27, 2004, in response to the grand jury subpoena, defendant ANTHONY J. POSTIGLIONE caused to be produced, among other documents, a letter dated January 29, 2004 (“the January 29, 2004 letter”) which purported to be a letter from defendant POSTIGLIONE to defendant WILLIAM J. LENNON, and falsely stated the events of the January 2004 meeting with investor E.P. Specifically, the January 29, 2004 letter falsely stated that defendant POSTIGLIONE and defendant LENNON told investor E.P. that E.P. was no longer invested in Fountainhead Fund and that defendant LENNON alone was managing E.P.’s assets.

Attached to the January 29, 2004 letter was a FedEx receipt purporting to show that the letter was sent by FedEx to defendant LENNON. The January 29, 2004 letter was never received by defendant LENNON.

7. In or about August 2004, in the Eastern District of Pennsylvania and elsewhere, defendant

ANTHONY J. POSTIGLIONE, Jr.

knowingly falsified a document, that is, the January 29, 2004 letter, with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of the Federal Bureau of Investigation, which is an agency of the United States.

In violation of Title 18, United States Code, Section 1519.

A TRUE BILL:

GRAND JURY FOREPERSON

PATRICK L. MEEHAN
UNITED STATES ATTORNEY