

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff

v.

Case No. CA 02-154 ML

DENNIS S. HERULA,
MARY LEE CAPALBO (AKA MARY
LEE CAPALBO HERULA), MARTIN
D. FIFE, FAROUK A. KHAN, SEAVIEW
DEVELOPMENT AND HOLDINGS, LTD.,
MICHAEL A. CLARKE,
ROBERT M. WACHTEL, JOHAN C. HERTZOG,
and, CHARLES W. SULLIVAN,

Defendants,

-and-

DAVID L. ULLOM,

Relief Defendant.

RECEIVED
MAY 29 2003
U.S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

[PROPOSED] JUDGMENT AGAINST DEFENDANT JOHAN C. HERTZOG

Defendant Johan C. Hertzog ("Hertzog"), having failed to plead or otherwise defend in this action and its default having been entered, and Plaintiff Securities and Exchange Commission ("Commission"), having filed a Complaint on April 1, 2002, and an Amended Complaint on April 3, 2002, both alleging that Hertzog violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77q(a)], and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

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Now, upon application of plaintiff and affidavits demonstrating that defendant owes plaintiff the sum of \$19,800,000, plus prejudgment interest in the amount of \$4,863,372.72; that defendant is not an infant or incompetent person or in the military service of the United States, it is hereby ORDERED, ADJUDGED AND DECREED:

I.

that Defendant JOHAN C. HERTZOG, his agents, servants, employees, attorneys, successors and assigns and all persons in active concert or participation with him who receive actual notice of this JUDGMENT AGAINST DEFENDANT JOHAN C. HERTZOG by personal service or otherwise, be and hereby is permanently restrained and enjoined from violating or aiding and abetting violations of Section 17(a) of the Securities Act [15 U.S.C. 77q(a)] by, directly or indirectly, through the use of any means or instrumentalities of interstate commerce, or the mails, or of any facility of any national securities exchange,

- (a) employing any device, scheme or artifice to defraud;
- (b) obtaining any money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser,

in the offer or sale of any security.

II.

that Defendant JOHAN C. HERTZOG, his agents, servants, employees, attorneys, successors and assigns and all persons in active concert or participation with him who receive actual notice of this JUDGMENT AGAINST JOHAN C. HERTZOG by personal service or otherwise, be and hereby is permanently restrained and enjoined from violating or aiding and abetting violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by directly or indirectly using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- (1) to employ any device, scheme or artifice to defraud;
- (2) to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

III.

that Defendant JOHAN C. HERTZOG shall be jointly and severally liable with other defendants in this action for disgorgement of the ill-gotten gains he received in connection with the violations described in the Complaint and Amended Complaint as follows:

- A. Defendant JOHAN C. HERTZOG shall be liable for disgorgement of \$19,800,000 plus prejudgment interest thereon in the amount of \$4,863,372.72, for a total of \$24,663,372.72.
- B. The disgorgement payment shall be made within 30 days of the entry of judgment. The payment shall be made by money order, certified check or cashier's check made payable to Clerk, United States District Court and shall be mailed to the Clerk of the Court with a cover letter identifying the name of this action and the docket number. A copy of the letter shall be mailed to Luke T. Cadigan, Securities and Exchange Commission, 73 Tremont St., Boston, MA 02108.

IV.

With respect to the Commission's request for the imposition of civil monetary penalties pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act, a penalty in the amount of \$ 100,000 shall be imposed against Defendant JOHAN C. HERTZOG. Defendant JOHAN C. HERTZOG shall make this payment within 30 days of the entry of judgment. The payment shall be made by money order, certified check or cashier's check made payable to the United States Securities and Exchange Commission. The payment shall be transmitted to the Comptroller, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 0-3, Washington, D.C. 20549 with a cover letter identifying the name and docket number of this action. A copy of the letter shall be mailed to Luke T. Cadigan, Securities and Exchange Commission, 73 Tremont St., Boston, MA 02108.

V.

This COURT shall retain jurisdiction over Defendant JOHAN C. HERTZOG as a party to this matter for all purposes, including the implementation and enforcement of this JUDGMENT AGAINST DEFENDANT JOHAN C. HERTZOG.

VI.

There being no just reason for delay, the Clerk of the Court is directed to enter this JUDGMENT AGAINST DEFENDANT JOHAN C. HERTZOG forthwith.

DONE AND ORDERED at Providence, Rhode Island, this 20th day of June,

2003.

Dwight M. Bini
UNITED STATES DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

This certifies that on May 21, 2003, I caused copies of the Proposed Judgment Against Defendant Johan C. Hertzog to be served on defendants and/or counsel for defendants, and for relief defendant David L. Ullom, all by first class mail at the addresses indicated below:

Counsel for Defendant Capalbo

Kevin J. Bristow, Esq.
1309 Turks Head Building
Providence, RI 02903

Counsel for Defendants Fife and Khan

Donald S. Zakarin, Esq.
Pryor Cashman et al.
410 Park Avenue
New York NY 10022

Counsel for Relief Defendant Ullom

Paul V. Curcio, Esq.
Adler, Pollock & Sheehan, P.C.
2300 Financial Plaza
Providence RI 02903-2443

Johan C. Hertzog
300 South Pointe Drive, #506
Miami Beach, FL 33139

Counsel for Defendant Sullivan

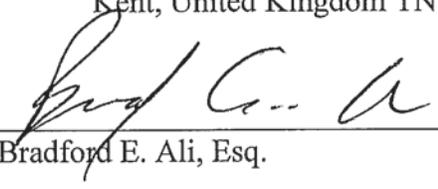
Richard W. MacAdams, Esq.
MacAdams & Wieck, inc.
101 Dyer Street, #400
Providence, RI 02903

Matthew F. Medeiros, Esq.
Little, Bulman et al.
72 Pine Street
Providence RI 02903

Counsel for Defendant Herula

George Buehler
Geragos & Geragos
350 S. Grand Avenue, 39th Floor
Los Angeles, CA 90071

Michael A. Clarke
Old Orchard Ismays Road
Ightham Seven Oaks
Kent, United Kingdom TN15-9BE



Bradford E. Ali, Esq.