

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE) Case No. 00-8445-CIV-MIDDLEBROOKS
COMMISSION,) (Magistrate Judge Bandstra)
)
Plaintiff,)
)
v.)
)
FIRST CAPITAL SERVICES, INC.,)
U.S. CAPITAL FUNDING, INC.,)
LARRY SCHWARTZ and)
RAPHAEL "RAY" LEVY,)
)
Defendants.)



**FINAL JUDGMENT OF PERMANENT INJUNCTION,
DISGORGEMENT AND OTHER RELIEF
AS TO DEFENDANT RAPHAEL "RAY" LEVY**

Plaintiff Securities and Exchange Commission ("Commission") having filed a Complaint for Injunctive and Other Relief on May 13, 2000; the Commission having filed a motion for summary judgment against defendant Raphael "Ray" Levy ("Levy") dated September 20, 2001; Levy having failed to respond to the Commission's summary judgment motion; the Commission having filed a request for default against Levy dated October 30, 2001; the Court having entered a default against Levy on October 30, 2001; the Commission having filed a motion for entry of a final judgment as to Levy dated October 31, 2001; and the Court having duly considered the Commission's motion for entry of a final judgment as to Levy:



I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Levy and his agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment, are permanently restrained and enjoined from violating Sections 5(a) and 5(c) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§77e(a), 77e(c)] by, directly or indirectly: (a) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell any security, through the use or medium of any prospectus or otherwise, unless a registration statement is in effect as to such security; (b) carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any security for the purpose of sale or for delivery after sale, unless a registration statement is in effect as to such security; or (c) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy, through the use or medium of any prospectus or otherwise, any security unless a registration statement has been filed as to such security, or while the registration statement as to such security is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. §77h], provided, however, that the provisions of this paragraph shall not apply to any security or transaction which is exempt from the provisions of Section 5 of the Securities Act [15 U.S.C. §77e].

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Levy and his agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment, are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] by, directly or indirectly, in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails: (a) employing any device, scheme or artifice to defraud; (b) obtaining 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 the 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 of such security.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Levy and his agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment, are permanently restrained and enjoined from violating 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] by, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange, in connection

with the purchase or sale of any security: (a) employing any device, scheme, or artifice to defraud; (b) making any untrue statement of a material fact or omitting 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 (c) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Levy and his agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment, are permanently restrained and enjoined from violating Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)] by making use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless it is registered as a broker or dealer in accordance with Section 15(b) of the Exchange Act [15 U.S.C. §78o(b)].

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Levy is liable for disgorgement of \$798,600, representing profits gained as a result of the conduct alleged in the Complaint, plus pre-judgment interest in the amount of \$99,293, for a total disgorgement amount of \$897,893. Levy shall make this payment within thirty (30) days after entry of this Final Judgment. The payment shall be made by money order, certified check or

cashier's check made payable to the Clerk, United States District Court for the Southern District of Florida. The payment shall be mailed to the Clerk of this Court at the Paul G. Rogers Federal Building, 701 Clematis St., Room 202, West Palm Beach, FL 33401, with a cover letter identifying Levy, the name and number of this action, and the name of this Court, and copies of the payment and cover letter shall be mailed to Frank C. Huntington, Securities and Exchange Commission, 73 Tremont Street, Suite 600, Boston, MA 02108. The disgorged funds and pre-judgment interest shall be held by the Registry of this Court in an interest-bearing account pending further order of the Court. Upon payment of the disgorgement obligation set forth above, Levy shall relinquish all legal and equitable right, title and interest in such payment, and no part of the funds shall be returned to him.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, with respect to the Commission's request for the imposition of a civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], a penalty in the amount of \$798,600 is hereby imposed against Levy. Levy shall make this payment within thirty (30) days after entry of this Final Judgment. The payment shall be made by money order, certified check or cashier's check made payable to the U.S. Securities and Exchange Commission. The payment shall be mailed to the Comptroller, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 1-3, Washington, DC 20549, with a cover letter identifying Levy, the name and number of this action, and the name of

this Court, and copies of the payment and cover letter shall be mailed to Frank C. Huntington, Securities and Exchange Commission, 73 Tremont Street, Suite 600, Boston, MA 02108.

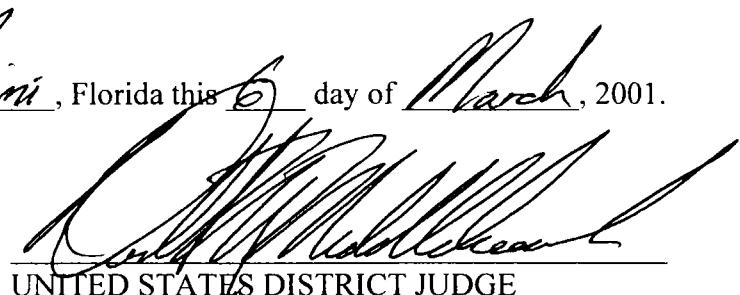
VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over Levy as a party to this matter for all purposes, including the implementation and enforcement of this Final Judgment.

VIII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, the Court finding no just reason for delay, the entry of this Final Judgment shall constitute a final judgment as to all of the Commission's claims against Levy in this action, and the Clerk of the Court is directed to enter this Final Judgment forthwith pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

DONE AND ORDERED at Miami, Florida this 6 day of March, 2001.



UNITED STATES DISTRICT JUDGE