

ENTERED

10/28/03

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

CLERK'S OFFICE U.S. DIST. COURT
AT HARRISONBURG, VA
FILED

OCT 27 2003

JOHN F. O'NEILL, CLERK
BY: *B. K. [Signature]*
DEPUTY CLERK

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

Thomas Gregory Cook
James H. Malbaff
Malbaff & Cook
Lytle E. Foglesong

Defendants. :

Civil Action No. 5: 01CV00104

Chief Judge
Samuel G. Wilson

FINAL JUDGMENT AS TO LYTLE E. FOGLESONG

The Securities and Exchange Commission having filed a Complaint and Defendant Lytle E. Foglesong having entered a general appearance herein; consented the jurisdiction of this Court over him and over the subject matter of this action; withdrawn his answer to the complaint; waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure; and without admitting or denying the allegations of the complaint, except as to jurisdiction, which he admits, consented to the entry of this Final Judgment. It further appearing that this Court has jurisdiction over Foglesong and the subject matter hereof, and the Court being fully advised in the premises and there being no just cause for delay, it is hereby ordered, adjudged and decreed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure as follows:

I.

Foglesong, his agents, servants, employees, and attorneys-in-fact, successors, and assigns and all those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], in the offer or sale of any securities by use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly:

- A. to employ any device, scheme, or artifice to defraud; or
- B. to obtain money or property by means of an untrue statement of a material fact or 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. to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

II.

Foglseong, his agents, servants, employees, attorneys-in-fact, successors, and assigns and all those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and they hereby 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 [17 C.F.R. § 240.10b-5] promulgated thereunder, directly or indirectly, by the use of any means

or instrumentality of interstate commerce, or of the mails, or any facility of any national securities exchange:

- A. to employ any device, scheme, or artifice to defraud; or
- B. 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 light of the circumstances under which they were made, not misleading; or
- C. 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.

Foglesong, his agents, servants, employees, attorneys-in-fact, successors, and assigns and all those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and they hereby are permanently restrained and enjoined from violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] by, directly or indirectly effecting securities transactions for the account of others or engaging in business as a dealer without being registered as a broker-dealer or being associated with a registered broker-dealer for purposes of those transactions or that business.

IV.

Foglesong shall pay disgorgement in the amount of \$1,125,000—which represents sums that Foglesong and the other defendants in this action received from the conduct alleged in the Commission’s complaint, and \$825,000 of which shall be a joint-and-several obligation with the other defendants in this action—plus pre-judgment interest thereon in

the amount of \$655,158—\$451,723 of which shall be a joint-and-several obligation with the other defendants in this action—**provided, however, that** Foglesong's obligation to pay the foregoing disgorgement and prejudgment interest amounts is waived, contingent upon the accuracy and completeness of his Statement of Financial Condition dated April 11, 2003, and supporting documentation, which he submitted to the Commission.

V.

Further, any payments made to victims eligible to receive disgorgement by other persons liable to make such payments as a result of their participation in the fraud alleged in this action will be deducted from the amount of disgorgement Foglesong would otherwise be required to pay under this Final Judgment.

VI.

Based upon Foglesong's sworn representations in his Statement of Financial Condition dated April 11, 2003, and submitted to the Commission, the Court is not ordering him to pay a civil 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)]. The determination not to impose civil penalties and to waive payment of disgorgement and prejudgment interest thereon is contingent upon the accuracy and completeness of his Statement of Financial Condition. If at any time following the entry of this final judgment the Commission obtains information indicating that Foglesong's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such

representations were made, the Commission may, at its sole discretion and without prior notice to Foglesong, petition this Court for an order imposing civil penalties. In connection with any such petition, the only issue shall be whether the financial information provided by Foglesong was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, and the amount of civil penalties to be imposed. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Foglesong to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this final judgment, and the Commission may also request additional discovery. Foglesong may not, by way of defense to such petition: (1) challenge the validity of his Consent or the Final Judgment; (2) contest the allegations in the complaint filed by the Commission; (3) assert that disgorgement or the payment of a civil penalty should not be ordered; (4) contest the amount of disgorgement and interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

VII.

The annexed Consent of Lytle E. Foglesong is hereby incorporated herein with the same force and effect as if fully set forth herein.

VIII.

This Court shall retain jurisdiction of this action, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, for all purposes, including the implementation and enforcement of this Final Judgment.

SO ORDERED, this 27th day of Oct, 2003.



CHIEF UNITED STATES DISTRICT JUDGE