


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

19
FILED

JUL 18 2006

MICHAEL E. KUNZ, Clerk
By  Dep. Clerk

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MICHAEL L. HERSHEY, ROBERT D. LEAR,
LANDIS ASSOCIATES, LLC, and
TREMONT MEDICAL, INC.,

Defendants.

CIVIL ACTION
No. 04-CV-2742 JPF

FINAL JUDGMENT AS TO DEFENDANT MICHAEL L. HERSHEY

The Securities and Exchange Commission having filed a Complaint and Defendant Michael L. Hershey having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act")

[15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using 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) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to 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
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] 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 use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of 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.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-6(1) and 80b-6(2), by use of the mails or any means or instrumentality of interstate commerce:

- (a) to employ any device, scheme, or artifice to defraud any client or prospective client;
- (b) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; or
- (c) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from, directly

or indirectly, aiding and abetting violations of Sections 204 of the Investment Advisers Act, 15 U.S.C. §§ 80b-4 and Rule 204-2(a), 17 C.F.R. § 275.204(a), thereunder.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$1.00, and a civil penalty in the amount of \$100,000.00 pursuant to pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e). These disgorgement and civil penalty amounts shall be distributed to the Estate of J. Eric May, in accordance with the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. To effect that result, Defendant shall satisfy this obligation by delivering to the Estate of J. Eric May, William Prost, Executor, P.O. Box 22, Montchanin, DE 19710, within ten (10) business days after entry of this Final Judgment, a certified check, bank cashier's check, or United States postal money order in the amount of \$100,001.00, payable to the Estate of J. Eric May, together with a cover letter identifying Michael L. Hershey as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. At the same time, a copy of the cover letter and of the check or money order will be sent to Commission counsel in this action, Amy J. Greer, District Trial Counsel, Securities and Exchange Commission, Philadelphia District Office, 701 Market Street, Suite 2000, Philadelphia, PA 19106. Within ten (10) business days of making such payment, Defendant shall file of record with this Court proof of such payment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961. By

making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant.

Amounts ordered to be paid as civil penalties pursuant to this Final Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant's Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: July 18, 2006

John P. Fullam
JOHN P. FULLAM
UNITED STATES DISTRICT JUDGE

7-18-06 - FAXED
BY CHAMBERS TO:

A. J. GREEN

R. A. LEVAN

Mait Tremont Medical
Windsor
Kelly
Gimbel
Horowitz
Freebery