

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DOC #:

FILED: 12/26/07

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

MITCHELL S. DRUCKER and RONALD DRUCKER,

Defendants,

WILLIAM V. MINERVA,

Relief Defendant.

06 CV 1644 (CM)

# 07,2455

**FINAL JUDGMENT AGAINST DEFENDANT MITCHELL S. DRUCKER**

WHEREAS,

1. Plaintiff Securities and Exchange Commission ("SEC") commenced this action on March 2, 2006;
2. The defendants are Mitchell S. Drucker ("Mitchell Drucker"), the former associate general counsel of NBTY, Inc. ("NBTY"), a nutritional supplements manufacturer and retailer, and his father, Ronald Drucker ("Ronald Drucker");
3. The relief defendant William Minerva ("Minerva") is a friend of Mitchell Drucker;
4. A trial by jury commenced in this action on November 26, 2007;

5. On December 3, 2007, the jury returned a verdict finding that:

- a. Mitchell Drucker violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities and Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] when he sold 25,700 shares of NBTY stock on October 18 and 19, 2001;
- b. Mitchell Drucker violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] when he sold 1,575 shares of NBTY stock for relief defendant Minerva on October 18, 2001;
- c. Mitchell Drucker violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] as a tipper when he tipped defendant Ronald Drucker on October 18, 2001, and Ronald Drucker traded 10,000 shares of NBTY stock; and
- d. Ronald Drucker violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] as a tippee by trading 10,000 shares of NBTY stock on October 18, 2001.

6. On December 20, 2007, the Court entered its Decision On Relief, which provides findings for this Final Judgment.

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT, defendant Mitchell Drucker, his 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 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 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.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED THAT defendant Mitchell Drucker, his 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 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 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.

### III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] [and/or Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)]], Defendant Mitchell Drucker is prohibited following the date of entry of this Final Judgment from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78j] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

### IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Mitchell Drucker is liable for disgorgement of ill-gotten gains of \$138,174, representing losses he avoided by selling his shares of NBTY securities on October 18, and 19, 2001, in violation of the antifraud provisions of the federal securities laws, together with prejudgment interest from October 18, 2001 to December 1, 2007, in the amount of \$61,789, for a total of \$199,963. Prejudgment interest on the amount of \$199,963 for the period December 1, 2007 to the date of the entry of this judgment is calculated by the Clerk of the Court as \$ 1,183.34, bringing

the total prejudgment interest and disgorgement amount to \$ 201,146.34. Defendant shall satisfy this obligation by paying \$ 201,146.34 within twenty business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying defendant Mitchell Drucker 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. Defendant Mitchell Drucker shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961. The SEC shall remit the funds paid pursuant to this paragraph to the United States Treasury.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Mitchell Drucker is jointly and severally liable with relief defendant William Minerva for disgorgement of ill-gotten gains of \$7,953, representing losses that relief defendant Minerva avoided when defendant Mitchell Drucker sold Minerva's shares of NBTY securities on October 18, 2001, in violation of the antifraud provisions of the federal securities laws, together with prejudgment interest from October 18, 2001 to December 1, 2007 in the amount of \$3,556, for a total of \$11,509. Prejudgment interest for the period December 1, 2007 to the date of the entry of this judgment on the amount of \$11,509 is calculated by the Clerk of the Court as \$ 68.11, bringing the total interest and disgorgement amount to \$ 11,577.11. Defendant Mitchell Drucker shall satisfy this obligation by paying \$ 11,577.11 within twenty business days after entry of this Final Judgment by certified check, bank cashier's check, or United States

postal money order payable to the Securities and Exchange Commission. Any payments made to the SEC by relief defendant Minerva towards the prejudgment interest or the disgorgement obligation in this Paragraph V. will correspondingly reduce defendant Mitchell Drucker's payment obligation under this Paragraph V. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Minerva as a relief defendant and Mitchell Drucker 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. Defendant Mitchell Drucker and relief defendant Minerva shall be jointly liable for, and shall pay, post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961. The SEC shall remit the funds paid pursuant to this paragraph to the United States Treasury.

## VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Mitchell Drucker is jointly and severally liable with defendant Ronald Drucker for disgorgement of ill-gotten gains of \$51,116, representing losses that Ronald Drucker avoided when defendant Mitchell Drucker tipped Ronald Drucker on October 18, 2001, and Ronald Drucker then sold Ronald Drucker's shares of NBTY securities in violation of the antifraud provisions of the federal securities laws, together with prejudgment interest for the period October 18, 2001 to December 1, 2007 in the amount of \$22,858, for a total of \$73,974. Prejudgment interest for the period December 1, 2007 to the date of the entry of this judgment on the amount of \$73,974 is calculated by the Clerk of the Court as \$ 432.76, bringing the total interest and disgorgement amount to \$ 74,411.76. Defendant Mitchell Drucker shall satisfy this

obligation by paying \$ 74,411.76 within twenty business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. Any payments made to the SEC by defendant Ronald Drucker towards the prejudgment interest or the disgorgement obligation in this Paragraph VI. will correspondingly reduce defendant Mitchell Drucker's payment obligation under this Paragraph VI. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Mitchell Drucker and Ronald Drucker as defendants 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. Defendant Mitchell Drucker and defendant Ronald Drucker shall be jointly liable for, and shall pay, post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961. The SEC shall remit the funds paid pursuant to this paragraph to the United States Treasury.

## VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Mitchell Drucker shall pay a civil penalty in the amount of \$394,486 pursuant to Section 20(d) of the Securities Act, and Sections 21(d) and 21A of the Exchange Act, equaling two times the amount of losses avoided by Mitchell Drucker, Minerva and Ronald Drucker as a result of Mitchell Drucker's violations of the antifraud provisions of the federal securities laws. Defendant Mitchell Drucker shall satisfy this obligation by paying \$394,486 within twenty business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The

payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying defendant Mitchell Drucker 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. Defendant Mitchell Drucker shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961. The SEC shall remit the funds paid pursuant to this paragraph to the United States Treasury.

**VIII.**

IT IS HEREBY 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: December 21, 2007  
New York, New York

**SO ORDERED**



United States District Judge

**THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON \_\_\_\_\_**