

UNITED STATES DISTRICT COURT
for the
DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

FRED CARTER :

and :

WENDELL CARTER :

Defendants. :

CIVIL ACTION NO. 99-2848(PLF)

FILED

JAN 29 2001

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

**FINAL JUDGMENT OF PERMANENT INJUNCTION
AND OTHER RELIEF AGAINST DEFENDANT FRED CARTER**

WHEREAS, on October 27, 1999, the Securities and Exchange Commission (the "SEC") commenced this action by filing a Complaint;

WHEREAS, on June 13, 2000, Fred Carter submitted a Waiver of Service of Summons to the SEC in which he acknowledged that he understood "that a judgment may be entered against me . . . if an answer or motion . . . is not served within 60 days . . .";

WHEREAS Fred Carter still has not filed an Answer or other response to the Complaint although such response was due on or about August 14, 2000;

WHEREAS the SEC has moved for the entry of default judgment pursuant to Rule 55(b) of the Federal Rules of Civil Procedure based upon Fred Carter's failure to file an Answer or otherwise respond to the Complaint;

WHEREAS the Court, having reviewed the record in this action and being fully advised in the premises, finds that Fred Carter, directly or indirectly, by the use of the means or instrumentality of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of securities: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material

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facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, acts, practices or courses of business which operated as a fraud or deceit upon persons, including purchasers of securities, in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77q(a)], 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, by participating in a fraudulent scheme to sell securities in an internet telephony business;

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the SEC's motion for entry of default judgment is **GRANTED**.

II.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Fred Carter be and hereby is permanently restrained and enjoined from violating Section 17(a) of the Securities Act by using any means or instruments of transportation or communication in interstate commerce, or by using 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 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. to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser,

in connection with the offer or sale of any security.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Fred Carter be and hereby is permanently restrained and enjoined from violating Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder, 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:

- 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,

in connection with the purchase or sale of any security.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Fred Carter pay: (a) disgorgement in the amount of \$569,850.00, representing his gains from the conduct alleged in the Complaint, plus \$189,145.43 pre-judgment interest thereon, which amount shall be reduced to the extent of any payment received by the Court in disgorgement from defendant Wendell Carter, and (b) a civil penalty of \$ 569,850.00

V.

IT IS FURTHER ORDERED that payment by Fred Carter of the disgorgement plus pre-judgment interest provided in Paragraph IV shall be made:

- (a) in full within ten days of the date of this order;

- (b) into this Court's registry by certified check or money order drawn to the order of "Clerk, United States District Court, District of Columbia," noting on the face of the check the caption and civil action number of this case, whereupon the Clerk of this Court, or the Financial Deputy Clerk, shall deposit such funds into an interest-bearing account (the "Account") with the Court Registry Investment System ("CRIS"). Such payments shall be under cover of a letter that identifies Fred Carter, the caption and case number of this action, and the name of the Court;
- (c) simultaneously with payment, copies of such checks or money orders and accompanying cover letter shall be transmitted to Brian Ochs, Esquire, Assistant Director, Securities and Exchange Commission, Division of Enforcement, 450 5th Street, N.W., Washington, D.C. 20549, and shall be forwarded under cover of letter containing the Commission's file number (HO-3267);
- (d) the Account shall be held by the CRIS until further order of the Court, and distributed pursuant to a Court-approved plan to be proposed by the Commission, but in no event shall the money disgorged revert, directly or indirectly, to the defendants, or to the heirs or assigns of the defendants;
- (e) interest earned on the Account shall be credited to the Account and shall thereafter be treated in the same manner as principal; and
- (f) the Clerk of the Court is directed without further order to deduct from the income earned on the investment a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office at or equal to 10% of the income earned in the investment so held.

Any funds paid by Defendants shall be distributed pursuant to a plan to be submitted by the Commission for the Court's approval.

VI.

IT IS FURTHER ORDERED that payment by Fred Carter of the civil money penalty provided in Paragraph IV shall be made:

- (a) in full within ten days of the date of this order;
- (b) by United States postal money order, certified check, bank cashier check or bank money order;
- (c) made payable to the Securities and Exchange Commission;
- (d) hand-delivered or mailed to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312 with a cover letter that identifies Fred Carter as a defendant in theses proceedings and includes the file number HO-3267 in it; and
- (e) simultaneously with payment, copies of such checks or money orders and accompanying cover letter shall be transmitted to Brian Ochs, Esquire, Assistant Director, Securities and Exchange Commission, Division of Enforcement, 450 5th Street, N.W., Washington, D.C. 20549, and shall be forwarded under cover of letter containing the Commission's file number (HO-3267).

VII.

IT IS FURTHER ORDERED that Fred Carter is prohibited from serving as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

VIII.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this action for the purpose of implementing and enforcing the terms and conditions of this Judgment and for all other purposes.

IX.

There being no just cause for delay, the Clerk of the Court is directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Judgment forthwith and without further notice.

So Ordered.

Washington, D.C.

DATED: January 29, 2001

Paul J. Treanor
United States District Judge

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