

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ APR 29 2009 ★

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SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

BROOKLYN OFFICE

CV-99-7357 (NG) (VVP)

- v -

PHILLIP J. MILLIGAN, et al.,

Defendants.
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**FINAL JUDGMENT AND INJUNCTION
AS TO DEFENDANT PHILLIP J. MILLIGAN**

Plaintiff Securities and Exchange Commission ("Commission") having duly commenced this action by the filing and service of its complaint upon defendant Phillip J. Milligan, and the Commission having thereafter moved the Court pursuant to Fed. R. Civ. P. 56(a) for an order granting summary judgment in favor of the Commission and against Milligan, and the Court having granted the Commission's motion,

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Milligan, and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment and Injunction by personal service or otherwise are permanently enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or 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 transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Milligan, and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment and Injunction by personal service or otherwise are permanently 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 instrumentals 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 any person.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Milligan is liable for disgorgement of \$93,600, representing unjust enrichment as a result of the conduct alleged in the complaint, together with prejudgment interest in the amount of \$144,430.49, for a total of \$238,030.49. The Commission may enforce the Court's judgment for

disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after ten days following entry of this Final Judgment. In response to any such civil contempt motion by the Commission, Milligan may assert any legally permissible defense. Milligan shall satisfy his obligation by paying the above disgorgement and prejudgment interest within ten business days to the Clerk of this Court, together with a cover letter (i) identifying Phillip J. Milligan as a defendant in this action; (ii) setting forth the title and civil action number of this action and the name of this Court; and (iii) specifying that payment is made pursuant to this Final Judgment and Injunction. Milligan shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Milligan relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Milligan. The Clerk shall deposit the funds into an interest bearing account utilized by the Court (preferably, an interest bearing account with the Court Registry Investment System ("CRIS")). These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Commission, in its discretion, may propose a plan to distribute the Fund subject to the Court's approval, or may send the Fund to the U.S. Treasury. Milligan shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Milligan shall pay a civil penalty in the amount of \$100,000 pursuant to 15 U.S.C. §§ 77t(d) and 78u(d)(3). Milligan shall make this payment within ten 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 (i) identifying Phillip J. Milligan as a defendant in this action; (ii) setting forth the title and civil action number of this action and the name of this Court; and (iii) specifying that payment is made pursuant to this Final Judgment and Injunction. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

V.

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 and Injunction.

SO ORDERED:



s/NG

NINA GERSHON
United States District Judge

Dated: April 27, 2009
Brooklyn, NY