

NY-083B-B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COURTESY COPY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CHIMAY CAPITAL MANAGEMENT, INC., and
GUY ALBERT DE CHIMAY,

Defendants.

10 Civ. 4582 (WHP)

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 1/31/11

~~Proposed~~ **PARTIAL JUDGMENT ON CONSENT IMPOSING
PERMANENT INJUNCTION AND CONTINUING OTHER RELIEF**

The Securities and Exchange Commission ("Commission") having filed a Complaint in this matter on June 11, 2010 and having amended that Complaint on July 14, 2010; the Commission having filed on June 11, 2010 an Emergency Application for Temporary Restraining Order, Preliminary Injunction, Order to Show Cause, Order Freezing Assets and Other Relief; the Court having entered on June 11, 2010 a Temporary Restraining Order, Preliminary Injunction, Order to Show Cause, Order Freezing Assets and Other Relief, and having entered on June 28, 2010 a Preliminary Injunction and Order Freezing Assets and Granting Additional Relief; and Defendants Chimay Capital Management, Inc. and Guy Albert de Chimay ("Defendants") having entered general appearances; consented to the Court's jurisdiction over Defendants and the subject matter of this action; consented to entry of this Partial Judgment without admitting or denying the allegations of the Amended Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Partial Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Partial 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 Defendants and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Partial Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (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 Defendants shall pay disgorgement of ill-gotten gains, prejudgment interest thereon and 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 Court shall determine the amounts of the disgorgement and civil penalty upon motion of the Commission. Prejudgment interest shall be calculated from the date of the first violation, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendants will be precluded from arguing that they did not violate the federal securities laws as alleged in the Amended Complaint; (b) Defendants may not challenge the validity of this Consent of the Partial Judgment; (c) solely for the purposes of such motion, the allegations of the Amended Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues

raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Sections II through VIII of the Court's Preliminary Injunction and Order Freezing Assets and Granting Additional Relief, dated June 28, 2010, are incorporated into this Partial Judgment and shall remain in full force until this action is fully resolved or as otherwise ordered by this Court.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Partial Judgment shall be, and is, binding upon Defendants and their partners, agents, servants, employees, attorneys, subsidiaries, affiliates and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, telephone, e-mail or otherwise.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of Defendants Chimay Capital Management, Inc. and Guy Albert de Chimay to a Partial Judgment filed herewith is incorporated herein with the same force and effect as if fully set forth herein, and that Defendants 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 Partial Judgment.

VIII.

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

Dated: 1/31/11,
New York, New York


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COURTESY COPY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CHIMAY CAPITAL MANAGEMENT, INC., and
GUY ALBERT DE CHIMAY,

Defendants.

10 Civ. 4582 (WHP)

**CONSENT OF DEFENDANTS
CHIMAY CAPITAL MANAGEMENT, INC. AND
GUY ALBERT DE CHIMAY TO A PARTIAL JUDGMENT**

1. Defendants Chimay Capital Management, Inc. and Guy Albert de Chimay (“Defendants”) acknowledge having been served with the Amended Complaint in this action and admit the Court’s jurisdiction over Defendants and over the subject matter of this action.

2. Without admitting or denying the allegations of the Amended Complaint (except as to personal and subject matter jurisdiction, which Defendants admit), Defendants hereby consent to the entry of the Partial Judgment in the form attached hereto (the “Partial Judgment”) and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendants from violation of Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

- (b) directs the issues of disgorgement and civil penalty to be decided at a later time in this action; and
- (c) continues the relief imposed in Sections II through VIII of the Court's Preliminary Injunction and Order Freezing Assets and Granting Additional Relief, dated June 28, 2010.

3. Defendants waive the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

4. Defendants waive the right, if any, to a jury trial and to appeal from the entry of the Partial Judgment.

5. Defendants agree that the Court shall order disgorgement of ill-gotten gains, prejudgment interest thereon, and 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)].

Defendants further agree that the amounts of the disgorgement and civil penalty shall be determined by the Court upon motion of the Plaintiff Securities and Exchange Commission ("Commission"), and that prejudgment interest shall be calculated from the date of the first violation, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). Defendants further agree that in connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendants will be precluded from arguing that they did not violate the federal securities laws as alleged in the Amended Complaint; (b) Defendants may not challenge the validity of this Consent to a Partial Judgment; (c) solely for the purposes of such motion, the allegations of the Amended Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the

basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

6. Defendants enter into this Consent voluntarily and represent that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendants to enter into this Consent.

7. Defendants agree that this Consent shall be incorporated into the Partial Judgment with the same force and effect as if fully set forth therein.

8. Defendants will not oppose the enforcement of the Partial Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waive any objection based thereon.

9. Defendants waive service of the Partial Judgment and agree that entry of the Partial Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendants of its terms and conditions. Defendants further agree to provide counsel for the Commission, within thirty days after the Partial Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendants have received and read a copy of the Partial Judgment.

10. Consistent with 17 C.F.R. 202.5(f), this Consent partially resolves only the claims asserted against Defendants in this civil proceeding. Defendants acknowledge that no promise or representation has been made by the Commission or any member, officer, employee, agent, or

representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendants waive any claim of Double Jeopardy based upon the partial settlement of this proceeding, including the imposition of any remedy or civil penalty. Defendants further acknowledge that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendants understand that they shall not be permitted to contest the factual allegations of the Amended Complaint in this action.

11. Defendants understand and agree to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendants agree: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the Amended Complaint or creating the impression that the Amended Complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendants hereby withdraw any papers filed in this action to the extent that they deny any allegation in the Amended Complaint. If Defendants breach this agreement, the Commission may petition the Court to vacate the Partial Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendants': (i)

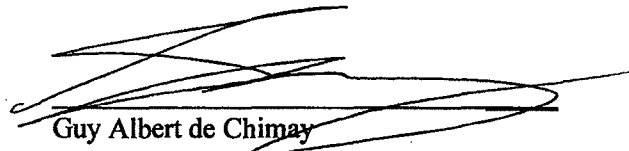
testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. Defendants hereby waive any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendants to defend against this action. For these purposes, Defendants agree that Defendants are not the prevailing parties in this action since the parties have reached a good faith partial settlement.

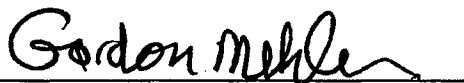
13. Defendants agree that the Commission may present the Partial Judgment to the Court for signature and entry without further notice.

14. Defendants agree that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Partial Judgment.

Dated: November 19, 2010


Guy Albert de Chimay

On November 19, 2010, Guy de Chimay, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.


Notary Public
Commission expires: 4/11

GORDON MEHLER
Notary Public, State of New York
No. 02ME6075899
Qualified in New York County
Commission Expires 4/11

Approved as to form:

Gordon Mehler

Gordon Mehler, Esq.
Law Offices of Gordon Mehler, PLLC
747 Third Avenue, 32nd Floor
New York, New York 10017-2803
Telephone: (212) 661-2414
Attorney for Defendant Guy Albert de Chimay

AND

Chimay Capital Management, Inc. (CCM)

By: [Signature]

Guy Albert de Chimay

[Title] Chairman

[Address] 15-15 Waverly St
Elmhurst, NY 11320

On November 19, 2010, Guy de Chimay, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent with full authority to do so on behalf of CCM as its Chairman.

Gmehl

Notary Public

Commission expires: 4/11

GORDON MEHLER
Notary Public, State of New York
No. 02ME6075899
Qualified in New York County
Commission Expires

Approved as to form:

St. Joyce Young by GM

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