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CHARLOTTE, N.C.

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Clerk, U. S. Dist. Court  
W. Dist of N. C.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JAMES A. NIES,  
JEFFREY DENE LEADER and  
HAROLD DALTON DAVLIN,

Defendants.

CIVIL ACTION NO.  
3:00-CV-465-MU

FILED  
CHARLOTTE, N.C.

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**ORDER OF PERMANENT INJUNCTION  
AND OTHER RELIEF AS TO JAMES A. NIES**

Defendant James A. Nies ("Nies") by signed stipulation and consent, without admitting or denying any of the allegations in the Commission's Complaint, except that he is admitting the allegation as to the jurisdiction over him of this Court and over the subject matter of this action, has agreed to the entry of this Order Of Permanent Injunction And Other Relief. This Court having accepted such Consent and having jurisdiction over Defendant Nies and the subject matter hereof, and the Court being fully advised in the premises,

**I.**

**FRAUD IN VIOLATION OF SECTION 10(b) OF  
THE EXCHANGE ACT AND RULE 10b-5 THEREUNDER**

**IT IS ORDERED** that Nies, his officers, agents, servants, employees, attorneys, and those persons in active concert or participation with him and each of them, in connection with the purchase or sale of any security by use of any means or instrumentality of interstate commerce or of the mails, or by use of any facility of any national securities exchange, be and they hereby are, restrained and enjoined from, directly or indirectly, or as a control person under Section 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"):

1. employing any device, scheme, or artifice to defraud;
2. making any untrue statement of a material fact or omitting 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
3. engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person;

in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder.

**II.**

**INCORPORATION OF CONSENT**

**IT IS FURTHER ORDERED** that Defendant Nies shall comply with the provisions of his Stipulation and Consent to this Order, and that such Consent is incorporated herein by reference as if fully set forth herein.

### **III.**

#### **DISGORGEMENT AND PREJUDGMENT INTEREST**

**IT IS HEREBY FURTHER ORDERED** that Defendant Nies pay disgorgement in the amount of \$300,000, representing his gains from the conduct alleged in the Complaint, plus pre-judgment interest. However, based upon Nies's sworn representations in his Statement of Financial Condition dated December 15, 2000, and submitted to the Commission, payment of disgorgement and pre-judgment interest thereon in excess of the sum of \$40,000 is waived, contingent upon the accuracy and completeness of his Statement of Financial Condition. Nies is ordered to pay \$40,000 to the United States Treasury within thirty (30) days from the date of the entry of this Order by cashier's check, certified check, or postal money order made payable to the U.S. Treasury; hand-delivered or delivered by overnight delivery service to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and submitted under a cover letter which identifies Nies as a defendant in these proceedings, a copy of which cover letter and money order or check shall be sent to Edward G. Sullivan, Senior Trial Counsel, Securities and Exchange Commission, 3475 Lenox Road, N.E., Suite 1000, Atlanta, Georgia 30326-1232, within 35 days from the entry of this order. The requirements of this paragraph shall not preclude defendant Nies from challenging the amount of his disgorgement in his defense in any subsequent criminal action, which may arise from the facts and circumstances alleged by the Securities and Exchange Commission in its Complaint in this action. The determination to waive the remainder of disgorgement and prejudgment interest is contingent upon the accuracy and completeness of Nies's Statement of Financial

Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Defendant's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant, petition this Court for an order requiring Defendant to pay the remainder of the ordered disgorgement plus all prejudgment interest. In connection with any such petition, the only issues shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Order of Permanent Injunction, and the Commission may also request additional discovery. Defendant may not, by way of defense to such petition, challenge the validity of his Consent or the Order of Permanent Injunction, contest the allegations in the Complaint filed by the Commission or assert that the remainder of disgorgement or that prejudgment interest should not be ordered to be paid.

#### **IV.**

#### **CIVIL PENALTY**

**IT IS HEREBY FURTHER ORDERED** that based upon Defendant Nies's sworn representations in his Statement of Financial Condition dated December 15, 2000, and submitted to the Commission, the Court is not ordering him to pay a civil penalty pursuant to Section 21 (d) (3) of the Exchange Act, 15 U.S.C. §78 (d) (3). The

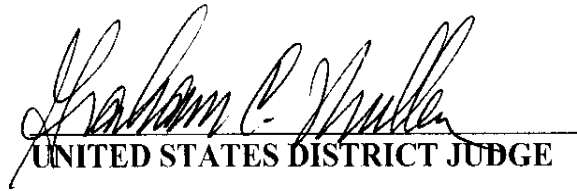
determination not to impose a civil penalty is contingent upon the accuracy and completeness of Nies's Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Defendant's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant, petition this Court for an order requiring Defendant to a civil penalty. In connection with any such petition, the only issues shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, and the amount of penalty to be imposed. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Order of Permanent Injunction, and the Commission may also request additional discovery. Defendant may not, by way of defense to such petition, challenge the validity of his Consent or the Order of Permanent Injunction, contest the allegations in the Complaint filed by the Commission or assert that the payment of a civil penalty should not be ordered.

V.

**RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court will retain jurisdiction over this matter and Defendant Nies in order to implement and carry out the terms of all Orders and Decrees that may be entered.

**DONE AND ORDERED** this 1st day of Nov, 2001.

  
UNITED STATES DISTRICT JUDGE

United States District Court  
for the  
Western District of North Carolina  
November 1, 2001

\* \* MAILING CERTIFICATE OF CLERK \* \*

Re: 3:00-cv-00465

True and correct copies of the attached were mailed by the clerk to the following:

Edward G. Sullivan, Esq.  
Securities and Exchange Commission  
3475 Lenox Road, N.E., Suite 1000  
Atlanta, GA 30326-1232

Betty M. Terry, Esq.  
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cc:  
Judge ( )  
Magistrate Judge ( )  
U.S. Marshal ( )  
Probation ( )  
U.S. Attorney ( )  
Atty. for Deft. ( )  
Defendant ( )  
Warden ( )  
Bureau of Prisons ( )  
Court Reporter ( )  
Courtroom Deputy ( )  
Orig-Security ( )  
Bankruptcy Clerk's Ofc. ( )  
Other \_\_\_\_\_ ( )

Date: 11/1/01

Frank G. Johns, Clerk

By:   
Deputy Clerk