

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE)	
COMMISSION,)	
Plaintiff)	
v.)	✓ CIVIL ACTION NO. 00-30170-FHF
)	
ROBERT C. SEARS, and)	
Defendant)	
)	
LAST MINUTE CONCESSIONS, INC.,)	
JAMES W. CASAGRANDE, COLD)	
SPRING GOLF COURSE, INC., and)	
COLD SPRING DEVELOPMENT, INC.,)	
Relief Defendants))	

DOCKETED

DEFAULT JUDGMENT

September 10, 2002

FREEDMAN, S.J.

Plaintiff Securities and Exchange Commission ("Commission") having filed a Complaint on September 26, 2000, and having filed an Amended Complaint on January 31, 2001, defendant Robert C. Sears ("Sears") having failed to appear, plead or otherwise defend in this action, a default having been entered as to Sears on June 25, 2001, the Court having considered the Commission's motion for entry of a default judgment against Sears and all the pleadings and evidence submitted in support thereof; and the Court having determined that Sears is not an infant or incompetent person and is not in the military service of the United States:

I.

It is hereby ordered, adjudged, and decreed that Sears and his agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation

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with him who receive actual notice of this final judgment, are permanently restrained and enjoined from violating section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), by directly or indirectly, 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 the use of the mails: (a) employing any device, scheme or artifice to defraud; (b) obtaining 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) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser of such security.

II.

It is hereby ordered, adjudged, and decreed that Sears and his agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with him who receive actual notice of this final judgment, are permanently restrained and enjoined from violating 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, by 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, in connection with the purchase or sale of any security: (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.

III.

It is hereby ordered, adjudged, and decreed that Sears and his agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with him who receive actual notice of this final judgment, are permanently restrained and enjoined from violating sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1) and 80b-6(2), by directly or indirectly, using the mails or any means or instrumentality of interstate commerce to: (a) employ any device, scheme, or artifice to defraud any client or prospective client; or (b) engage in any transaction practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

IV.

It is hereby further ordered, adjudged, and decreed that, pursuant to section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e), Sears is liable for disgorgement of \$2,214,485,

representing profits gained as a result of the conduct alleged in the Complaint, plus pre-judgment interest in the amount of \$304,354, for a total disgorgement amount of \$2,518,839. Sears shall pay this disgorgement obligation within thirty (30) days after entry of this final judgment. The payment shall be made by money order, certified check or cashier's check made payable to the Clerk, United States District Court for the District of Massachusetts. The payment shall be mailed to the Clerk of the United States District Court for the District of Massachusetts at the Federal Building and Courthouse, 1550 Main Street, Springfield, MA 01103, with a cover letter identifying Sears, the name and number of this action, and the name of this Court, and copies of the payment and cover letter shall be mailed to Frank C. Huntington, Securities and Exchange Commission, 73 Tremont Street, Suite 600, Boston, MA 02108. The disgorged funds and pre-judgment interest shall be held by the Registry of this Court in an interest-bearing account pending further order of the Court. Upon payment of the disgorgement obligation set forth above, Sears shall relinquish all legal and equitable right, title and interest in such payment, and no part of the funds shall be returned to him.

V.

It is hereby further ordered, adjudged, and decreed that a civil monetary penalty in the amount of \$500,000 is imposed against Sears pursuant to section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), section 21(d)(3) of the Exchange Act, 15

U.S.C. § 78u(d)(3), and section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e). Sears shall pay this penalty within thirty (30) days after entry of this final judgment. The payment shall be made by money order, certified check or cashier's check made payable to the U.S. Securities and Exchange Commission. The payment shall be mailed to the Comptroller, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 1-3, Washington, DC 20549, with a cover letter identifying Sears, the name and number of this action, and the name of this Court, and copies of the payment and cover letter shall be mailed to Frank C. Huntington, Securities and Exchange Commission, 73 Tremont Street, Suite 600, Boston, MA 02108.

VI.

It is hereby further ordered, adjudged, and decreed that this Court shall retain jurisdiction over Sears as a party to this matter for all purposes, including the implementation and enforcement of this judgment.

VII.

It is hereby further ordered, adjudged, and decreed that because of Sears' failure to defend this action and the Court finding no just reason for delay, the entry of this judgment shall constitute a final judgment as to all of the Commission's claims against Sears in this action, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

It is So Ordered.



Senior United States District Judge