

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
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SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

UNITED STATES SECURITIES)
AND EXCHANGE COMMISSION,)
)
Plaintiff,)
v.)
JAMES R. HARROLD, *et al.*) CAUSE NO. IP 01-1318-C H/G
)
Defendants.)
)
)
)
)
)

**ORDER OF PERMANENT INJUNCTION AGAINST JAMES R. HARROLD,
FRANKLIN MANAGEMENT AND CONSULTING, LLC, ACCIPTEER, LLC,
FRANKLIN ASSET MANAGEMENT AND CONSULTING, LLC, FRANKLIN
MANAGEMENT AND CONSULTING, INC. AND
CONCORD DEVELOPMENT GROUP, LLC.**

Plaintiff Securities and Exchange Commission (“Commission”) has filed a Complaint in this matter, and Defendants James R. Harrold (“Harrold”), Franklin Management and Consulting, LLC, Accipter, LLC, Franklin Asset Management and Consulting, LLC, Franklin Management and Consulting, Inc. and Concord Development Group, LLC (collectively referred as “Defendants”) have, in their Consent and Stipulation attached hereto and incorporated herein, acknowledged receipt of the Complaint, admitted the jurisdiction of this Court over them and over the subject matter thereof, and without admitting or denying the allegations of the Complaint, except as to jurisdiction, and without trial, argument or adjudication of any facts or law herein, consented to the entry of this Order of Permanent Injunction (“Order”). The Commission and Defendants have waived the entry of findings of fact and conclusions of law, as

provided by Rule 52 of the Federal Rules of Civil Procedure. The Court having jurisdiction over the parties and the subject matter hereof, and being fully advised in the premises:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendants, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, and each of them, be and are hereby permanently restrained and enjoined from, in the offer or sale of any securities, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, employing any device, scheme or artifice to defraud, in violation of Section 17(a)(1) of the Securities Act of 1933 [15 U.S.C. § 77q(a)(1)].

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, and each of them, be and are hereby permanently restrained and enjoined from, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, 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 light of the circumstances under which they were made, not misleading, or engaging in any transaction, practice, or course of business

which operates or would operate as a fraud or deceit upon the purchaser, in violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, and each of them, be and are hereby permanently restrained and enjoined from, 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 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 violation of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants, their officers, agents, partners, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this

Order, by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from directly or indirectly:

- (1) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails, to offer to sell or sell securities through the use or medium of any prospectus or otherwise unless and until a registration statement is in effect with the Commission as to such securities;
- (2) Carrying or causing to be carried securities through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or for delivery after sale, unless and until a registration statement is in effect with the Commission as to such securities;
- (3) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails, to offer to sell or offer to buy through the use or medium of any prospectus or otherwise securities unless and until a registration statement has been filed with the Commission as to such securities, or while the registration statement is the subject of a refusal or stop order or under any public proceeding or examination under Section 8 of the Securities Act of 1933 [15 U.S.C. §77h];

Provided, however, that nothing in this portion of the Order (Section III) shall apply to any security or transaction which is exempt from the provisions of Section 5 of the Securities Act of 1933 [15 U.S.C. §77e].

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants disgorge all ill-gotten gains received by them as a result of the conduct alleged in the Commission's Complaint, plus prejudgment interest on those amounts. This Court will set the specific amount of disgorgement in a separate hearing upon due notice and motion by the Commission. At that hearing, the issue will be limited to determining the amount of disgorgement to be ordered and the Defendants will be precluded from denying that they violated the federal securities laws.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the imposition of civil penalties against the Defendants may be appropriate. This Court will set the specific amount of the penalties in a separate hearing upon due notice and motion by the Commission. At that hearing, the issue will be limited to determining the amount of the civil penalties to be ordered and the Defendants will be precluded from denying that they violated the federal securities laws.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, and each of them, be and are hereby permanently restrained and enjoined from, directly or indirectly:

A. transferring, selling, assigning, pledging, dissipating, concealing or otherwise disposing of, in any manner, any funds, assets, accounts, businesses or other property belonging to, or directly or indirectly, in the possession, custody or control of Defendants or in which Defendants have a beneficial interest, wherever located, subject to further order of the Court;

B. transferring, selling, assigning, pledging, dissipating, concealing or otherwise disposing of any funds, assets, accounts or other property into which investor funds, as alleged in the Complaint, were deposited, subject to further order of the Court; Provided, however, that Defendant Harrold may deposit monthly distributions he receives, for the months of September to December 2001, from his American Family Life

Assurance Company of Columbus ("AFLAC") pension in a bank account to be opened for the sole purpose of receiving such deposits, and withdraw funds from this account for personal living expenses, subject to further order of the Court.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, and each of them, be and are hereby permanently restrained and enjoined from, directly or indirectly destroying, mutilating, concealing, altering or disposing of, in any manner, any of the books, records, documents, correspondence, brochures, manuals, obligations or other property belonging to, or directly or indirectly in the possession, custody or control of the Defendants, in whatever form, including electronic, and wherever located, until further order of this Court.

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants, their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, soliciting or receiving any funds from individuals or entities for the purpose of investment, until further order of this Court.

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
Defendants:

A. provide to the Plaintiff, on or before September 24, 2001, with (1) an accounting of all funds received after September 1, 1999, directly or indirectly, from persons who gave the Defendants money for investment, the uses to which such funds were put, and the amounts of any remaining such funds and their location; and (2) an accounting of the assets and liabilities of the Defendants;

B. provide to the Plaintiff, on or before September 24, 2001, all books, records and other documents supporting or underlying the accounting provided to the Plaintiff pursuant to Paragraph X.A. above, including, but not limited to, account statements and documents relating to all off-shore accounts; and

C. produce to the Plaintiff, on or before September 24, 2001, all of the following in the Defendants' actual or constructive possession: current accountant's reports, bank statements, documents indicating title to real or personal property, and any other indicia of ownership or interest in property by Defendants.

D. Provide, on or before September 24, 2001, all necessary instructions to any of Defendants' current and former attorneys to release to Plaintiff any documents, in such attorneys' custody, that were responsive to investigative subpoenas issued to Defendants and their affiliates on August 17, 2001 by the staff of the Division of Enforcement, Securities and Exchange Commission.

XI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants immediately deposit the \$105,000 withdrawn on September 5, 2001 from the Concord Development Group, LLC accounts at the Bank of America, NA with the registry of the Clerk of the Court for the U.S. District Court for the Southern District of Indiana, to the extent any of the \$105,000 is no longer in the Defendants' possession, provide to the Plaintiff, on or before September 24, 2001, an accounting of the use and location of these funds.

XII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT Defendants, no later than September 24, 2001, take all steps necessary to repatriate to the territory of the United States of America, to a bank organized under the laws of the United States of America, or any state thereof, having a combine capital and surplus of not less than \$5,000,000,000 whose deposits are insured by the Federal Deposit Insurance Corporation, all such funds and assets of investors described in the Commission's Complaint in this action which are held by them or are under their direct or indirect control, jointly or singly; and provide the Plaintiff and the Court with a written description of all such funds and assets so repatriated.

XIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attached Consent and Stipulation of the Defendant be, and is hereby, incorporated herein with the same force and effect as if fully set out herein.

XIV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for all purposes, including, but not limited to entertaining any applications for additional relief; and implementing and enforcing this Order.

XV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commission is expressly authorized to engaged in continued discovery regarding any issue in this case including, but not limited to, discovery for the purposes of: determining the amount of ill-gotten gains and civil penalties, if any; to determining the extent and involvement, if any, of other individuals or entities in the acts alleged in the Complaint; and any other violations or possible violations of the federal securities laws by the Defendants or others.

XVI.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that nothing in this Order shall be construed to require the Defendants or others to abandon any constitutional or other legal privilege which they may have available to them.

XVII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there being no just reason for delay, the Clerk of the Court is hereby directed to enter this Order of Permanent Injunction.

IT IS SO ORDERED.

David F. Hamilton

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

Dated: Sept. 14, 2001

UNITED STATES DISTRICT COURT
Southern District of Indiana
I, the undersigned Clerk of the Court, do hereby certify that this is a true, correct and full copy of the original Order on file in my custody.
Cause No. PO-1318-C H/G
Dated 9/14/01
Laura A. Briggs, Clerk
by Libby Cheema Deputy Clerk
10 # of pages (text)
0 # of pages (exhibits)