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U.S. DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

NOV - 3 2001  
LUTHER  
By: *Challen*  
Deputy Clerk

MAY 24 2002

*[Signature]*  
Deputy Clerk

Civil Action File No.  
1:01-CV-1344-CC

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

RICHARD P. SMYTH,  
ARNOLD E. JOHNS, JR.,  
MICHAEL J. BECKER, and  
ALAN T. DAVIS,

Defendants.

DEFAULT JUDGMENT AND ORDER OF PERMANENT INJUNCTION  
AND OTHER RELIEF AGAINST ALAN T. DAVIS

Plaintiff Securities and Exchange Commission ("Commission") filed its Amended Complaint herein on June 20, 2001, and perfected service of process on defendant Alan T. Davis ("Davis") on June 28, 2001. The Clerk of Court properly entered a default against Davis on August 24, 2001. The Commission's motion for default judgment is now properly before the Court. For good cause shown, default judgment is granted against defendant Davis. The facts and the allegations contained in the Amended Complaint are deemed true against defendant Davis, and the Court makes the following findings of fact and conclusions of law under Rules 52 and 65 of the Federal Rules of Civil Procedure with respect to the relief granted in this Order:

1. Vista 2000, Inc. ("Vista") was a Delaware corporation based, during the relevant periods, in Roswell, Georgia, which designed, developed, manufactured and marketed consumer products including trigger guards for firearms and carbon monoxide detectors for homes. Vista successfully conducted its initial public offering ("IPO") on

October 25, 1994. Vista's common stock, which was registered pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act") was traded on the NASDAQ Small Cap Market until it became listed on the NASDAQ National Market on February 13, 1996. Vista's stock was delisted on May 31, 1996. In November 1995, Vista sold its interests in subsidiary Promotional Marketing, Inc. ("PMI"). During 1997, Vista sold its interests in subsidiaries Intelock Technologies, Inc., Alabaster Industries, Inc., and American Consumer Products, Inc. ("ACPI"). On December 7, 1998, Vista changed its name to Boss Holdings, Inc. and is now located in Kewanee, Illinois. (Amended Complaint, para. 19)

2. Alan T. Davis ("Davis") is a CPA and a member of the American Institute of Certified Public Accountants and the Georgia Society of Certified Public Accountants. He also has a master's degree in accountancy. Davis, in a joint venture-partnership with another CPA, audited Vista's 1994 annual financial statements at a time when he owned 23,333 shares of Vista common stock. (Amended Complaint, para. 18)

3. As fully set forth in the Commission's amended complaint, Davis violated the antifraud and accounting control provisions of the Exchange Act during Vista's 1995 and 1996 fiscal years. These violations affected Vista's September 1994 Form 10-KSB and December 1994, March 1995, June 1995 and September 1995 Forms 10-QSB. Davis also violated the antifraud provisions of the Securities Act and Exchange Act by engaging in illegal insider trading in Vista stock and American Consumer Products, Inc. ("ACPI") stock. He also violated GAAS while conducting the audit of Vista's 1994 financial statements.

4. Davis submitted an audit opinion which represented that his audit of Vista's 1994 financial statements was performed in accordance with Generally Accepted Auditing Standards ("GAAS"). However, during his 1994 audit, Davis failed to exercise due professional care, failed to obtain sufficient competent evidential matter, and failed to maintain a healthy degree of skepticism when he ignored facts, GAAP and GAAS pronouncements relating to Vista's accounting for and reporting of a purported \$1.2 million sale of marketing rights. More importantly, Davis held a direct financial interest in Vista during his audit thereby violating the basic auditing concept of auditor independence and causing Vista to file financial statements that had not been certified by independent accountants despite representations to the contrary. (Amended Complaint, para. 338-350) The issuance of an unqualified opinion violated the reporting standards of GAAS because Davis was not independent, and because he knew or should have known that the sale of marketing rights transaction had not been recorded by Vista in conformity with GAAP. (Amended Complaint, para. 52, 63, 64, 66, 67, 351-352, 354-357) Davis also failed to comply with GAAS when he failed to communicate with the auditors who preceded him prior to accepting the Vista audit. (Amended Complaint, para. 65, 353, 355, 357)

5. As set forth in the Commission's amended complaint, after the 1994 audit was completed and Davis was no longer providing audit services, Vista hired Davis as an accounting consultant to assist Vista, among other things, in the preparation of the December 1994, March 1995, June 1995, and September 1995 Forms 10-QSB. (Amended Complaint, para. 18, 83, 84, 86-90, 94, 97-100, 114-116, 119, 122, 143-145, 155, 158, 161-163, 167-168, 170-173, 177-178, 180-181, 187, 207, 208, 210, 211-216,

217-221, 225-227, 230-232, 235, 239, 249-271, 273, 274, 276, 278, 281-284, 296, 301, 304) As the equivalent of an “in-house” consultant, Davis participated in the improper recording and reporting of four acquisitions and the calculation of the EPS contained in these reports. (Amended Complaint, 359-361, 366-367)

6. As further set forth in the Commission’s amended complaint, at various times 1995 and 1996, Davis sold Vista common stock while in possession of material, nonpublic information regarding Vista’s reported financial condition and operations. (Amended Complaint, para. 370) The information Davis possessed did not become public until after the markets closed on April 15, 1996, at which time Vista announced there had been material accounting and financial improprieties extending over several reporting periods that had to be remedied by restating Vista’s historical financial statements. (Amended Complaint, para. 370) Specifically, in 1995 and 1996, Davis sold a total of 42,333 shares of Vista stock while in possession of material, adverse, nonpublic information at varying prices which allowed him to avoid losses of approximately \$239,519. (Amended Complaint, para. 396-397)

7. Furthermore, during August 1995, Davis through a nominee account and by tipping a friend, traded common stock in American Consumer Products, Inc. (“ACPI”) while in possession of material, non-public information regarding Vista’s proposed takeover of ACPI. (Amended Complaint, para. 371). Davis, by purchases through his brother-in-law and by tipping a friend, is responsible for combined profits in insider trading of ACPI stock of approximately \$5,656. (Amended Complaint, para. 442)

8. Defendant Davis has engaged, and unless restrained and enjoined by this Court, will continue to engage in acts and practices which constitute and will constitute

violations of Section 17(a) of the Securities Act [15 U.S.C. 77q(a)], Sections 10(b), 13(b)(5) and 14(e) of the Exchange Act [15 U.S.C. 78j(b), 78m(b)(5) and 78n(e)] and Rules 10b-5, 13b2-1 and 14e-3 thereunder [17 C.F.R. 240.10b-5, 240.13b2-1 and 240.14e-3]. (Amended Complaint, para. 10)

I.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that defendant Davis and his agents, servants, employees and attorneys, and those persons in active concert or participation with him who receive actual notice of this Order of Permanent Injunction, by personal service or otherwise, and each of them, be and hereby are permanently enjoined and restrained from violating, directly or indirectly, Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. 77q(a)], by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, by:

1. employing any device, scheme or artifice to defraud;
2. 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
3. engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser,

in the offer or sale of any security.

II.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that defendant Davis, and his agents, servants, employees and attorneys, and those persons in active concert or participation with him who receive actual notice of this Order of Permanent Injunction, by personal service or otherwise, and each of them, be and hereby are permanently enjoined and restrained from violating, directly or indirectly, 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 the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange, by:

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 the 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 connection with the purchase or sale of any security.

III.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that defendant Davis, and his agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Order of Permanent Injunction, by personal service or otherwise, and each of them, be and hereby are permanently enjoined and restrained from violating, directly or indirectly, Section

13(b)(5) of the Exchange Act [15 U.S.C. 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. 240.13b2-1] by knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account of any issuer which has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. 78I] or any company which is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. 78o(d)].

IV.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that defendant Davis, and his agents, servants, employees and attorneys, and those persons in active concert or participation with him who receive actual notice of this Order of Permanent Injunction, by personal service or otherwise, and each of them, be and hereby are permanently enjoined and restrained from violating, directly or indirectly, Section 14(e) of the Exchange Act [15 U.S.C. 78n(e)] and Rules 14e-3 thereunder [17 C.F.R. 240.14e-3], by:

1. communicating material, non-public information relating to a tender offer to persons under circumstances in which it was reasonably foreseeable that such communications were likely to result in a violation of the federal tender offer laws;
2. making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
3. engaging in fraudulent deceptive and manipulative acts and practices, in connection with a tender offer and request and invitation for tenders, and a

solicitation of security holders in opposition to or in favor of any such offer, request or invitation.

V.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that pending final determination as to all of the parties to this action, defendant Davis, as well as his agents, servants, employees and attorneys, and those persons in active concert or participation with him who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are enjoined from destroying, mutilating, altering, or disposing of any document referring or relating in any manner to any defendants herein. As used in this Order, "document" means the original and all non-identical copies (whether non-identical because of handwritten notation or otherwise) and all written or graphic electronic data compilation of any sort, including, without limitation, computer disks, computer diskettes, computer tapes, correspondence, memoranda, notes, minutes, telephone records, reports, studies, telexes, diaries, calendar entries, contracts, and letters of agreement, and including any and all existing drafts of all documents.

VI.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that defendant Davis shall pay disgorgement in the amount of \$255,627 which includes \$239,519 of losses illegally avoided in connection with sales of Vista stock Davis made, or caused others to make, during 1995 and 1996; \$5,656 of ill-gotten gains in connection with purchases and sales of American Consumer Products, Inc. ("ACPI") stock Davis made, or caused others to make during 1995; and \$10,452 of fees Davis received during 1995 in



connection with his audit of Vista's 1994 financial statements as a result of the securities fraud schemes outlined in the Commission's Amended Complaint. It is further ordered that Davis shall pay prejudgment interest on the amount of disgorgement. Prejudgment interest has been computed at the Internal Revenue Service rate for unpaid taxes, and through the period up through and including December 31, 2001 is ordered against defendant Davis in the amount of \$159,680.

VII.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that defendant Davis shall pay the above ordered amounts of disgorgement and prejudgment interest to the 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 Davis 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. All disgorgement and prejudgment interest shall be fully paid by Davis within thirty (30) days of the entry of this order.

VIII.


**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that this Court shall retain jurisdiction over this matter for all purposes, including implementing and

enforcing the terms of this Order, and may order other and further relief that this Court deems appropriate under the circumstances.

IX.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that there is no just reason for delay, and the Clerk is directed to enter this judgment forthwith.

SO ORDERED, this 24<sup>th</sup> day of May, 200~~0~~<sup>2</sup>.

  
CLARENCE COOPER, JUDGE  
UNITED STATES DISTRICT COURT