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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, :

Civil Action No. 01-9058 (AGS) :

v. :

ABSOLUTEFUTURE.COM, et al. :

Defendants and Relief Defendants. :

~~PROPOSED~~ FINAL JUDGMENT OF DEFAULT AGAINST *ayk*
ABSOLUTEFUTURE.COM, BERKSHIRE CAPITAL PARTNERS, INC.,
COMMONWEALTH ASSOCIATES, LTD., COMMONWEALTH PARTNERS NY LLC,
ROGER M. DETRANO, DOTTENHOFF FINANCIAL, LTD.,
EDWARD A. DURANTE A/K/A ED SIMMONS,
~~EXCHANGE BANK & TRUST, INC., GALTON SCOTT & GOLETT, INC.,~~
AND ZIMENN IMPORTING AND EXPORTING, INC.

WHEREAS, on October 11, 2001, Plaintiff Securities and Exchange Commission (the "Commission"), commenced this action by filing a Complaint against Defendants AbsoluteFuture.com ("AFTI"), Berkshire Capital Partners, Inc. ("Berkshire"), Commonwealth Associates, Ltd. ("Commonwealth Associates"), Commonwealth Partners NY LLC ("Commonwealth Partners"), Roger M. DeTrano ("DeTrano"), Dottenhoff Financial, Ltd. ("Dottenhoff"), Edward A. Durante ("Durante"), Galton Scott & Golett, Inc. ("Galton"), Zimenn Importing and Exporting, Inc. ("Zimenn"), collectively referred to herein as "Defendants," and ~~Relief Defendant Exchange Bank & Trust, Inc. ("EBT" or "Relief Defendant")~~ and summonses were issued on that date to the same;

WHEREAS, in accordance with Rule 4(h)(1) of the Federal Rules of Civil Procedure, the Commission served a copy of the summons and complaint on AFTI and Commonwealth Partners on October 15, 2001;

WHEREAS, in accordance with Rule 4(h)(1) of the Federal Rules of Civil Procedure, the Commission served a copy of the summons and complaint pursuant to Section 307 of the Business Corporation Law of the State of New York on defendant Zimenn on February 8, 2002;

WHEREAS, in accordance with Rule 4(e)(2) of the Federal Rules of Civil Procedure, the Commission served a copy of the summons and complaint by personal service on defendants DeTrano and Durante on October 19, 2001;

WHEREAS, in accordance with Rule 4(f)(2)(C)(ii) of the Federal Rules of Civil Procedure, the Commission served a copy of the summons and complaint by international certified mailing, return receipt requested on defendants Berkshire, Commonwealth Associates, Dottenhoff, ~~BBT~~ and Galton by December 4, 2001; *ah*

WHEREAS, the Court accepts as true the following factual allegations in the complaint against the Defendants and ~~Relief Defendant~~ who have defaulted, and finds: *am*

1. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act of 1933 ("Securities Act"), [15 U.S.C. § 77v(a)], and Sections 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), [15 U.S.C. §§ 78u(e) and 78aa].
2. The Defendants employed the means or instrumentalities of interstate commerce, the mails, or facilities of national securities exchanges to engage in the conduct alleged in the Complaint.
3. From July 1999 through May 2000, the Defendants engaged in a fraudulent

scheme to manipulate the public market for AFTI stock. As part of the scheme, AFTI issued four press releases in July and August 1999 which contained false and misleading statements about AFTI's relationships with third parties and the potential business prospects that would result from those relationships. Starting in November 1999, Durante and DeTrano conspired with AFTI to use false Form S-8 registrations in order to place 4.1 million unrestricted shares under Durante's control for use in the manipulative trading. AFTI issued 4.1 million shares pursuant to Form S-8 to entities controlled by Durante and DeTrano (Berkshire, Commonwealth Partners, Dottenhoff, Galton, and Zimenn) purportedly in exchange for consulting services. AFTI issued the shares even though the shares were not eligible for registration on Form S-8 because Durante and DeTrano did not intend to provide bona fide consulting services in exchange for them. DeTrano, via Commonwealth Partners, facilitated the transfer of 1 million of the 4.1 million shares to Durante. Durante used the S-8 shares he obtained to manipulate AFTI stock by conducting manipulative buying and selling with market makers in brokerage accounts held by Berkshire, Commonwealth Associates, Dottenhoff, Galton, and Zimenn. Durante also used the shares to create the appearance of an active market for AFTI shares by orchestrating large block deals which contained hidden unreported discounts and which were structured so that they were reported to the market twice, falsely inflating the apparent trading volume of the stock. AFTI participated in Durante's manipulative use of the S-8 shares by issuing at least two press releases, one of which was false, which were timed to coincide with Durante's trading. Through this conduct, the Defendants violated Section 17(a) of the Securities Act, [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act, [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder, [17 C.F.R. § 240.10b-5].

4. In December 1999 and January 2000, AFTI issued a total of 4.1 million shares of

stock to Commonwealth Partners, Berkshire, Dottenhoff, Galton, and Zimenn. AFTI purported to register all 4.1 million shares pursuant to two Forms S-8 that were filed in December 1999 and January 2000. Neither of AFTI's offerings met the requirements of Form S-8 and therefore no registration was in effect for the shares. The 3 million shares issued to Berkshire, Dottenhoff, Galton, and Zimenn were not eligible for registration because those shares were not issued in exchange for bona fide services. The 1.1 million shares issued to Commonwealth Partners were not eligible for registration because those shares were issued explicitly in exchange for the promotion of AFTI's stock and the raising of capital for AFTI. In addition, in each case, the shares were issued to corporate entities, not natural persons. As such, the Form S-8 registration statements that were filed were invalid. Durante and DeTrano used the entities to which the shares were issued, Berkshire, Commonwealth Partners, Dottenhoff, Galton, and Zimenn, to sell the unregistered stock to the public. No valid registration statement was ever filed in connection with either: (1) the initial sale to Commonwealth Partners, Berkshire, Dottenhoff, Galton, and Zimenn; or (2) the resales by those entities to the public. Accordingly, Berkshire, Commonwealth Partners, DeTrano, Dottenhoff, Durante, Galton and Zimenn violated Sections 5(a) and 5(c) of the Securities Act, [15 U.S.C. §§ 77e(a), 77e(c)].

5. AFTI filed a Form 10-KSB, filed with the Commission on April 14, 2000 which contained false and misleading statements about the shares that were registered pursuant to Form S-8 and the consulting services that the company was to receive in exchange for those shares. Accordingly, AFTI violated Exchange Act Section 13(a), [15 U.S.C. § 17(m)(a)], and Rules 12b-20 and 13a-1 [17 C.F.R. §§ 240.12b-20, 240.13a-1], thereunder.

6. In December 1999, DeTrano became the beneficial owner of approximately 23% of

the outstanding shares of AFTI common stock. In January 2000, Durante became the beneficial owner of approximately 22% of the outstanding shares of AFTI common stock. Neither Durante nor DeTrano ever made any of the filings required by Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1 and 16a-3. Both Durante and DeTrano therefore violated Sections 13(d) and 16(a) of the Exchange Act, [15 U.S.C. § 78m(d), 78p(a)], and Rules 13d-1 and 16a-3, [17 C.F.R. § 240.13d-1, 240.16a-3], thereunder.

7. As part of the scheme, AFTI received a total of \$850,000 from Durante and DeTrano. DeTrano and Commonwealth Partners made \$160,694.64, and DeTrano made \$240,416.97 in illicit profits from the sale of AFTI stock during the course of the scheme. Durante and Berkshire made \$1,615,227 in illicit profits from sales of the AFTI stock during the course of the scheme. AFTI, Berkshire, Commonwealth Partners, DeTrano and Durante must disgorge their illicit profits. Durante

and Berkshire transferred the \$1,615,227 in profits they made to Relief Defendant EBT in March 2000. The Relief Defendant does not have a legitimate right to the funds it received, which properly belong to defrauded investors, and accordingly, the Relief Defendant must disgorge those funds.

WHEREAS, the Commission has applied, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, for the entry of this Final Default Judgment based on the Defendants' ~~and the~~ Relief Defendant's failure to answer or otherwise respond to the Commission's Complaint and the Court having considered the *prima facie* case for relief shown by the Commission in this matter which is supported by the full record and the Declaration of LeeAnn G. Gaunt dated September 18, 2002 and the Supplemental Declaration of LeeAnn G. Gaunt dated January 17, 2003 and filed with the Commission's motion for entry of this Final Judgment, and the exhibits thereto, which showing has not been rebutted by the Defendants ~~or the Relief Defendant;~~

NOW THEREFORE, BASED ON THE FOREGOING:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Commission's application for entry of this Final Judgment by Default is **GRANTED**.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants be and hereby are permanently enjoined and restrained, directly or indirectly, singly or in concert, 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, from:

- (1) employing any device, scheme, or artifice to defraud;
- (2) obtaining money or property by means of any untrue statement of 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
- (3) 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 Section 17(a) of the Securities Act, [15 U.S.C. § 77q(a)].

III.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendants hereby are permanently enjoined and restrained from, directly or indirectly, singly or in concert, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange:

- (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 statement made, in the light of the circumstances under which it was made, not misleading; and
- (3) engaging in any act, transaction, 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 thereunder, [17 C.F.R. § 240.10b-5].

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that AFTI, Berkshire, Commonwealth Partners, DeTrano, Dottenhoff, Durante, Galton, and Zimenn are permanently enjoined and restrained from, directly or indirectly, unless a registration statement is in effect as to a security:

- (1) use any means or instrumentality of interstate commerce or the mails to sell such security; or
- (2) carry or cause to be carried through the mails or in interstate commerce, by any means or instrumentality of interstate commerce, any such security for the purpose of sale or for delivery after sale;

in violation of Section 5(a) of the Securities Act, [15 U.S.C. § 77e(a)].

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that AFTI, Berkshire, Commonwealth Partners, DeTrano, Dottenhoff, Durante, Galton and Zimenn are permanently

enjoined and restrained from, directly or indirectly, unless a registration statement is in effect as to a security, or while the registration statement is the subject of a refusal order or stop order or any public proceeding or examination under Section 8 of the Securities Act, [15 U.S.C. § 77h], use any means or instrumentality of interstate commerce or the mails to offer to sell or offer to buy through the use or medium or any prospectus or otherwise any security in violation of Section 5(c) of the Securities Act, [15 U.S.C. § 77e(c)].

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that DeTrano and Durante are hereby permanently enjoined and restrained from, directly or indirectly, singly or in concert, acquiring, directly or indirectly, the beneficial ownership of more than five percent of any equity security of a class which is registered pursuant to Section 12 of the Exchange Act, [15 U.S.C. § 78l], or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in Section 12(g)(2)(G) of the Exchange Act, [15 U.S.C. § 78l(g)(2)(G)], or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., and failing, within ten days after such acquisition, to send to the issuer of the security, to each exchange where the security is traded and to file with the Commission, a statement required by Section 13(d) of the Exchange Act, which among other things, identifies the background, identity and the nature of such beneficial ownership by such person on whose behalf the purchases have been made and identifies the source and amount of the funds used in making the purchases, in violation of Section 13(d) of the Exchange Act, [15 U.S.C. § 78m(d)], and Rule 13d-1 thereunder, [17 C.F.R. § 240.13d-1].

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that DeTrano and Durante hereby are permanently enjoined and restrained from, directly or indirectly, singly or in concert, acquiring, directly or indirectly, the beneficial ownership of more than ten percent of any equity security of a class which is registered pursuant to Section 12 of the Exchange Act, [15 U.S.C. § 781], or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in Section 12(g)(2)(G) of the Exchange Act, [15 U.S.C. § 781(g)(2)(G)], or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., and failing, within ten days after such acquisition, to send to each exchange where the security is traded and to file with the Commission, a statement required by Section 16(a) of the Exchange Act, which among other things, identifies the amount of all equity securities of such issuer of which he is a beneficial owner, in violation of Section 16(a) of the Exchange Act, [15 U.S.C. § 78p(a)], and Rule 16a-3 thereunder, [17 C.F.R. § 240.16a-3].

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that AFTI is hereby permanently enjoined and restrained from, directly or indirectly, violating Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1 and 12b-20 [17 C.F.R. §§ 240.13a-1 and 240.12b-20] thereunder, by filing with the Commission an annual report on behalf of any issuer which is required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(1)] and the Rules and regulations promulgated thereunder, which contains any untrue statements of material fact required to be stated therein or necessary to make the

statements made, in light of the circumstances under which they were made, not misleading, or which fails to comply in any material respect with the requirement of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)].

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that AFTI shall pay disgorgement in the amount of \$850,000, representing its ill-gotten gains from the conduct alleged in this proceeding, plus prejudgment interest thereon through December 2002, in the amount of \$176,093.91 for a total disgorgement amount of \$1,026,093.91. Payment shall be made within thirty days of entry of this judgment to the Registry of the Court, by cashier's check, certified check, or U.S. postal money order, made payable to "Clerk, United States District Court", under cover of a letter that identifies AFTI as the defendant, the name and number of this action and the name of this Court, with a copy to SEC counsel at the Commission's Boston District Office located at Tremont Street, Suite 600, Boston, MA 02108. The disgorged funds and prejudgment interest shall be held by the Registry of this Court in an interest bearing account pending further order of the Court.

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that DeTrano shall pay disgorgement in the amount of \$401,111.61, representing his ill-gotten gains from the conduct alleged in this proceeding, plus prejudgment interest thereon through December 2002, in the amount of \$93,583.21 for a total disgorgement of \$494,694.82, provided that DeTrano shall be jointly and severally liable with Commonwealth Partners for \$198,187.50 of the total \$494,694.82. Payment shall be made within thirty days of entry of this judgment to the Registry

of the Court, by cashier's check, certified check, or U.S. postal money order, made payable to "Clerk, United States District Court," under cover of a letter that identifies DeTrano as the defendant, the name and number of this action and the name of this Court, with a copy to SEC counsel at the Commission's Boston District Office located at Tremont Street, Suite 600, Boston, MA 02108. The disgorged funds and prejudgment interest shall be held by the Registry of this Court in an interest bearing account pending further order of the Court.

XI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Commonwealth Partners shall be jointly and severally liable with DeTrano to pay disgorgement in the amount of \$160,694.64, representing its ill-gotten gains from the conduct alleged in this proceeding, plus prejudgment interest thereon through December 2002, in the amount of \$37,491.86 for a total disgorgement amount of \$198,187.50. Payment shall be made within thirty days of entry of this judgment to the Registry of the Court, by cashier's check, certified check, or U.S. postal money order, made payable to "Clerk, United States District Court", under cover of a letter that identifies Commonwealth Partners as the defendant, the name and number of this action and the name of this Court, with a copy to SEC counsel at the Commission's Boston District Office located at Tremont Street, Suite 600, Boston, MA 02108. The disgorged funds and prejudgment interest shall be held by the Registry of this Court in an interest bearing account pending further order of the Court.

XII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Durante shall be jointly and severally liable with Berkshire to pay disgorgement in the amount of \$1,615,227

representing his ill-gotten gains from the conduct alleged in this proceeding, plus prejudgment interest thereon through December 2002, in the amount of \$353,907.30, for a total disgorgement figure of \$1,969,134.30. Payment shall be made within thirty days of entry of this judgment to the Registry of the Court, by cashier's check, certified check, or U.S. postal money order, made payable to "Clerk, United States District Court", under cover of a letter that identifies Durante as the defendant, the name and number of this action and the name of this Court, with a copy to SEC counsel at the Commission's Boston District Office located at Tremont Street, Suite 600, Boston, MA 02108. The disgorged funds and prejudgment interest shall be held by the Registry of this Court in an interest bearing account pending further order of the Court.

XIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Berkshire shall be jointly and severally liable with Durante to pay disgorgement in the amount of \$1,615,227 representing his ill-gotten gains from the conduct alleged in this proceeding, plus prejudgment interest thereon through December 2002, in the amount of \$353,907.30, for a total disgorgement figure of \$1,969,134.30. Payment shall be made within thirty days of entry of this judgment to the Registry of the Court, by cashier's check, certified check, or U.S. postal money order, made payable to "Clerk, United States District Court", under cover of a letter that identifies Berkshire as the defendant, the name and number of this action and the name of this Court, with a copy to SEC counsel at the Commission's Boston District Office located at Tremont Street, Suite 600, Boston, MA 02108. The disgorged funds and prejudgment interest shall be held by the Registry of this Court in an interest bearing account pending further order of the Court.

XIV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Relief Defendant EBT shall pay disgorgement of proceeds received and retained from the conduct alleged in the Complaint in the amount of \$1,615,227, plus prejudgment interest thereon through December 2002, in the amount of \$363,655.49, for a total disgorgement figure of \$1,978,882.49. Payment shall be made within thirty days of entry of this judgment to the Registry of the Court, by cashier's check, certified check, or U.S. postal money order, made payable to "Clerk, United States District Court", under cover of a letter that identifies EBT as the Relief Defendant, the name and number of this action and the name of this Court, with a copy to SEC counsel at the Commission's Boston District Office located at Tremont Street, Suite 600, Boston, MA 02108. The disgorged funds and prejudgment interest shall be held by the Registry of this Court in an interest bearing account pending further order of the Court.

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~~XIV.~~ XIV

IT IS FURTHER ORDERED THAT Defendants shall pay the maximum third tier civil money penalty authorized by Section 20(d)(2) of the Securities Act, 15 U.S.C. §77t(d)(2), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. §78u(d)(3); and 17 C.F.R. § 201.1002, setting inflation adjustment calculation. The Commission will submit for the Court's consideration proposed orders setting forth a proposed proper amount of civil money penalties each Defendant should be ordered to pay and setting forth a proposed disposition of such funds.

~~XVI.~~ XV

IT IS FURTHER ORDERED that the Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, implementing and enforcing the terms and conditions

of this Final Judgment.

~~XVI~~ XVI


IT IS FURTHER ORDERED that the Court expressly determines that there is no just reason for delay in the entry of this Final Judgment. The Clerk of the Court is hereby directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure to enter this Final Judgment forthwith.

~~XVII~~ XVII

IT IS FURTHER ORDERED that pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, this Final Judgment is binding upon the Defendants and ~~the Relief Defendant~~ and *gmn* their agents, servants, employees, partners, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

Dated: New York, New York

January 22, 2003


ALLEN G. SCHWARTZ
UNITED STATES DISTRICT JUDGE