

MURPHY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,


v.

RYAN J. FONTAINE and
SIMPLETON HOLDINGS CORPORATION a/k/a
SIGNATURE INVESTMENTS HEDGE FUND,

Defendants.

02 Civ. 9420 (MBM)

FINAL JUDGMENT
ON CONSENT
AGAINST DEFENDANTS
RYAN J. FONTAINE and
SIMPLETON HOLDINGS
CORPORATION a/k/a
SIGNATURE
INVESTMENTS
HEDGE FUND

 _____

The Securities and Exchange Commission having filed a Complaint and Defendants Ryan J. Fontaine and Simpleton Holdings Corporation a/k/a Signature Investments Hedge Fund ("Signature") (collectively, "Defendants") having entered a general appearance; consented to the Court's jurisdiction over Defendants and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment,

NOW THEREFORE:

I.

IT IS ORDERED that Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 5(a) and Section 5(c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a) and 77e(c), by, directly or indirectly, in the absence of any applicable exemption:

- (a) unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) 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 any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding of examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

II.

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a) in the offer or sale of any security by using any means or instruments of transportation or communication in interstate commerce or by using the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of 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) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined 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 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or the mails, or any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit 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) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IV.

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. §§ 80b-6(1), 80b-6(2) by, while acting as an investment adviser, using the mails or any means or instrumentality of interstate commerce, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud any client or prospective client; or
- (b) to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.

V.

IT IS FURTHER ORDERED that Signature, Signature’s officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 7 of the Investment Company Act of 1940 (“Investment Company Act”), 15 U.S.C. § 80a-7, by, directly or indirectly, while acting as an investment

company organized or otherwise created under the laws of the United States or of a state, unless registered under Section 8 of the Investment Company Act, 15 U.S.C. § 80a-8:

- (a) offering for sale, selling, or delivering after sale, by the use of the mails or any means or instrumentalities of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person; or offering for sale, selling, or delivering after sale any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by the use of the mails or any means or instrumentalities of interstate commerce;
- (b) purchasing, redeeming, retiring, or otherwise acquiring or attempting to acquire, by use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person;
- (c) controlling any investment company which does any of the acts enumerated in subparagraphs V.a. or V.b., above;
- (d) engaging in any business in interstate commerce; or
- (e) controlling any company which is engaged in any business in interstate commerce.

Provided, however, that the provisions of this paragraph V. shall not prohibit Signature from engaging in transactions which are limited to and merely incidental to its dissolution, provided that any such transaction is (a) consented to in writing in advance by the Commission, and (b) expressly authorized by further order of this Court.

VI.

IT IS FURTHER ORDERED that Defendants are jointly and severally liable for disgorgement of \$10,615.74, representing undisgorged profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest in the amount of \$533.91, and a third-tier civil penalty in the amount of \$29,300 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), Section 42(e) of the Investment Company Act, 15 U.S.C. § 80a-41(e), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e). Defendants shall satisfy this obligation by paying \$40,449.65 within ten business days to the Clerk of this Court, together with a cover letter identifying Ryan J. Fontaine and Simpleton Holdings Corporation a/k/a Signature Investments Hedge Fund as defendants in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendants shall simultaneously transmit photocopies of such payment and letter to:

James E. Burt IV, Esq.
Securities and Exchange Commission
Northeast Regional Office
233 Broadway
New York, New York 10279
Facsimile: (646) 428-1981.

By making this payment, Defendants relinquish all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendants. The Clerk shall deposit the funds into the interest bearing account with the Court Registry Investment System ("CRIS") that was previously established pursuant to the Order of Judge Michael B. Mukasey dated November 26, 2002. These funds, together with all funds previously deposited into said CRIS account by the Defendants and any interest and income earned thereon (collectively, the "Fund"), shall be

held by the CRIS until further order of the Court. In accordance with the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Commission may by motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes.

VII.

IT IS FURTHER ORDERED that the Consent of Defendants Ryan J. Fontaine and Simpleton Holdings Corporation a/k/a Signature Investments Hedge Fund is incorporated herein with the same force and effect as if fully set forth herein, and that Defendants shall comply with all of the undertakings and agreements set forth therein.

VIII.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes of enforcing the terms of this Final Judgment.

**CONSENT OF DEFENDANTS RYAN J. FONTAINE and
SIMPLETON HOLDINGS CORPORATION a/k/a
SIGNATURE INVESTMENTS HEDGE FUND**

1. Defendants Ryan J. Fontaine and Simpleton Holdings Corporation a/k/a Signature Investments Hedge Fund (“Signature”) (collectively, “Defendants”) acknowledge having been served with the Complaint in this action, enter a general appearance, and admit the Court’s jurisdiction over Defendants and over the subject matter of this action.

2. Without admitting or denying the allegations of the Complaint (except as to personal and subject matter jurisdiction, which Defendants admit), Defendants hereby consent to the entry of the Final Judgment in the form attached hereto and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendants from violation of Section 5(a), Section 5(c) and Section 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§ 77e(a), 77e(c) and 77q(a), Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b) and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, Section 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. §§ 80b-6(1), 80b-6(2), and permanently restrains and enjoins Signature from violation of Section 7 of the Investment Company Act of 1940 (“Investment Company Act”), 15 U.S.C. § 80a-7; and

(b) orders Defendants jointly and severally to pay disgorgement in the amount of \$10,615.74, plus prejudgment interest in the amount of \$533.91; and to pay a third-tier civil penalty in the amount of \$29,300 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), Section 42(e) of the Investment Company Act, 15 U.S.C. § 80a-41(e), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e).

3. Defendants acknowledge that the civil penalty paid pursuant to the Final Judgment to be entered by the Court may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, the civil penalty shall be treated as a penalty paid to the government for all purposes, including all tax purposes.

4. Defendants waive the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendants waive the right, if any, to appeal from the entry of the Final Judgment.

6. Defendants enter into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendants to enter into this Consent.

7. Defendants agree that this Consent shall be incorporated by reference in and made part of the annexed Final Judgment to be presented to the Court for signature, filing, and entry contemporaneously herewith.

8. Defendants will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Defendants waive service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendants of its terms and conditions. Defendants further agree to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendants have received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendants in this civil proceeding. Defendants waive any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendants further acknowledge that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding.

11. Defendants agree not to seek or accept, directly or indirectly, reimbursement or indemnification from any source including, but not limited to, payment made pursuant to any insurance policy, with regard to any penalty amounts that Defendants shall pay pursuant to this Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendants further agree not to

claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state or local tax for any penalty amounts that Defendants shall pay pursuant to this Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

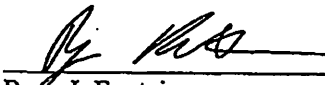
12. Defendants understand and agree to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the Complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendants agree: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating the impression that the Complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendants hereby withdraw any papers filed in this action to the extent that they deny any allegation in the Complaint. If Defendants breach this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendants': (i) testimonial obligations; or (ii) right to take legal or factual positions in defense of litigation or in defense of other legal proceedings in which the Commission is not a party.

13. Defendants hereby waive any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provisions of law to pursue reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendants to defend against this action. For these purposes, Defendants agree that Defendants are not the prevailing party in this action since the parties have reached a good faith settlement.

14. Defendants agree that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

15. Defendants agree that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: July 11, 2003



Ryan J. Fontaine


Simpleton Holdings Corporation a/k/a
Signature Investments Hedge Fund

Dated: July 11, 2003

By: 

Ryan J. Fontaine
President

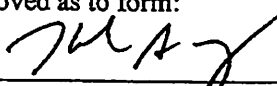
On 11th JULY, 2003, Ryan J. Fontaine, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent on behalf of himself individually, and on behalf of Simpleton Holdings Corporation a/k/a Signature Investments Hedge Fund.



Notary Public
Commission expires:

FERDI NADIR
Notary Public, Oakland County, MI
My Commission Expires May 14, 2007

Approved as to form:



Howard S. Meyers, Esq.
645 Madison Ave
New York, New York 10022
Attorney for Defendants Ryan J. Fontaine and Simpleton Holdings Corporation a/k/a
Signature Investments Hedge Fund

SO ORDERED:

Dated: July 17, 2003
New York, New York



UNITED STATES DISTRICT JUDGE

**RESOLUTION
OF
SIMPLETON HOLDINGS CORPORATION a/k/a
SIGNATURE INVESTMENTS HEDGE FUND**

I, Ryan J. Fontaine, President, Simpleton Holdings Corporation a/k/a Signature Investments Hedge Fund, hereby certify that the following resolution was duly enacted at a meeting of the Board of Directors of Simpleton Holdings Corporation a/k/a Signature Investments Hedge Fund, Incorporated on July 11, 2003.

RESOLVED, that:

Ryan J. Fontaine is authorized and directed to execute, on behalf of Simpleton Holdings Corporation a/k/a Signature Investments Hedge Fund, the Final Judgment on Consent Against Defendants Ryan J. Fontaine and Simpleton Holdings Corporation a/k/a Signature Investments Hedge Fund dated _____, 2003 to the Securities and Exchange Commission for submission to the United States District Court, Southern District of New York, attached hereto and made part hereof, and the aforementioned officer be and hereby is authorized to undertake such actions for and on behalf of Simpleton Holdings Corporation a/k/a Signature Investments Hedge Fund as he may deem necessary and advisable, including the execution of such documents as may be required by the Securities and Exchange Commission or the Court, in order to effectuate the foregoing.

I further certify that the aforesaid resolution has not been amended or revoked in any respect and is still in full force and effect.

Simpleton Holdings Corporation a/k/a
Signature Investments Hedge Fund

Dated: July 11, 2003

By: _____

Ryan J. Fontaine
President