

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

FILED
CHARLOTTE, N.C.

OCT 26 2004

U.S. DISTRICT COURT
W. DIST. OF N.C.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

FREDERICK J. GILLILAND,

Defendant,

and

MM ACMC BANQUE DE COMMERCE, INC.,

Relief Defendant.

CIVIL ACTION FILE

NO. 3:02CV128-McK

FINAL JUDGMENT
AS TO DEFENDANT FREDERICK GILLILAND

This Court, having granted plaintiff Securities & Exchange Commission's motion for default judgment against defendant Frederick Gilliland ("Gilliland"), hereby directs that judgment be entered in this action against Gilliland as follows:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Gilliland, his agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Order 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 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated

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thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- (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,

in connection with the purchase or sale of any security.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Gilliland, his agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are permanently restrained and enjoined from directly or indirectly aiding and abetting violations of Section 15(a) of the Exchange Act [15 U.S.C. § 780(a)] by, directly or indirectly, through the use of any means or instrumentalities of interstate commerce, or of the mails, engaging in the business of a broker or dealer without registering with the Commission as a broker or dealer or a registered representative thereof.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Gilliland, his agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Order 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)] by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, 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

in the offer or sale of any security.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Gilliland, his agents, servants, employees, attorneys, assigns, 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 Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)] by:

- a. making use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of any prospectus or otherwise;
- b. carrying securities or cause securities to be carried through the mails or in interstate commerce, by means or instruments of transportation, for the purpose of sale or for delivery after sale; or
- c. making use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell securities through the use or medium

of any prospectus or otherwise,

without a registration statement having been filed or being in effect with the Commission or an applicable exemption from the securities registration requirements of the federal securities laws.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Gilliland is liable for disgorgement of \$ 9.4 million, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$635,179.31, for a total of \$10,035,179.31.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Gilliland pay a civil penalty of \$110,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall satisfy the payments specified in paragraphs V. and VI. of this Final Judgment by paying \$10,145,179.31 within ten business days to the Clerk of this Court, together with a cover letter identifying Gilliland as a defendant 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. Defendant shall simultaneously transmit photocopies of such payment and letter to the SEC's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. The Clerk shall deposit the funds into an interest bearing account with

the Court Registry Investment System ("CRIS"). These funds, together with 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 propose a plan to distribute the Fund subject to the Court's approval.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Order.

Dated: Oct 26th, 2004



H. BRENT MCKNIGHT
UNITED STATES DISTRICT JUDGE

United States District Court
for the
Western District of North Carolina
October 26, 2004

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:02-cv-00128

True and correct copies of the attached were mailed by the clerk to the following:

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cc:
Judge ()
Magistrate Judge ()
U.S. Marshal ()
Probation ()
U.S. Attorney ()
Atty. for Deft. ()
Defendant ()
Warden ()
Bureau of Prisons ()
Court Reporter ()
Courtroom Deputy ()
Orig-Security ()
Bankruptcy Clerk's Ofc. ()
Other _____ ()

Date: 10-26-04

Frank G. Johns, Clerk

By: 
Deputy Clerk