

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Case No. 1:02CV00397 ESH

FILED

MAR 10 2003

**NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

EAGLE BUILDING TECHNOLOGIES, INC.,
ANTHONY M. DAMATO,

Defendants.

**FINAL JUDGMENT AGAINST ANTHONY M. DAMATO
ORDERING PAYMENT OF DISGORGEMENT AND PREJUDGMENT INTEREST**

Plaintiff Securities and Exchange Commission has filed a motion along with the consent of defendant Anthony Damato, who neither admits nor denies the allegations of the Complaint, requesting the Court to set the amount of disgorgement and prejudgment interest to be assessed against Damato. In Damato's consent, he agrees to entry of an order requiring him to disgorge his trading profits and shares he received as compensation for acting as an officer and director of Eagle Building Technologies Inc. (Eagle Building) from 1999 through 2001 plus prejudgment interest. The Commission has also filed the consent of Eagle Building in which it agrees to cancel the shares that Damato is disgorging.

On October 22, 2002, the Court entered a permanent injunction against Damato based on his consent with out admitting or denying the allegations in the complaint, which enjoined him from violating the anti-fraud, periodic reporting, and internal record-keeping provisions of Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Securities Exchange Act of

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1934, and Rules 10b-5, 12b-20, 13a-1, 13a-13, 13b2-1, and 13b2-2. The injunction provided that the Court retained jurisdiction to determine whether disgorgement and pre-judgment interest should be entered against Damato based on his violations of the provisions listed above.

The Court finds that it has jurisdiction over the subject matter of this action and personal jurisdiction over the defendant Damato, based on his admission of jurisdiction in his Consent. The Court finds that Damato has waived service of the Complaint pursuant to Rule 4(d) of the Federal Rules of Civil Procedure, the right to present evidence at trial, and preparation of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

The Court finds that it is appropriate to order Damato to disgorge his personal trading profits of \$53,263.20 and additionally 286,500 shares that he received as compensation for acting as an officer and director of Eagle Building. Disgorgement is an appropriate equitable remedy granted to the district court by Section 27 of the Exchange Act, 15 U.S.C. § 78aa. *See e.g., SEC v. Wang*, 944 F.2d 80, 85 (2d Cir. 1991); *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1103 (2d Cir. 1972).

The Court finds it appropriate to order Damato to pay prejudgment interest of \$5,637.25 upon the profits from his personal trading. The Court accepts the SEC's calculation of the amount of prejudgment interest using the IRS underpayment rates contained in 26 C.R.F. § 301.6621-1. *See e.g., SEC v. Stephenson*, 732 F. Supp. 438, 439 (S.D.N.Y. 1990); *SEC v. Tome*, 638 F. Supp. 638, 639 (S.D.N.Y. 1986), *aff'd*, 833 F.2d 1086 (2d Cir. 1987), *cert. denied*, 486 U.S. 1014 (1988); *SEC v. Drexel Burnham Lambert, Inc.* 837 F. Supp. 587, 612 n. 8 (S.D.N.Y. 1993), *aff'd*, 16 F.3d 520 (2d Cir. 1994), *cert. denied*, 115 S.Ct. 724 (1995).

Now, therefore,

I.

IT IS ORDERED that Anthony M. Damato shall disgorge \$53,263.20 plus prejudgment interest of \$5,637.25.

II.

IT IS FURTHER ORDERED that Anthony M. Damato shall disgorge 286,500 post-split shares of Eagle Building Technology stock held in his name that he received as compensation from the company, which shares shall be cancelled.

III.

IT IS FURTHER ORDERED that Damato shall satisfy this order for disgorgement and pre-judgment interest in the following manner:

Within ten (10) days of entry of this Order, Damato shall prepare and send a letter to the transfer agent of Eagle Building Technologies, Inc. instructing the transfer agent to cancel the following list of certificates consisting of 342,242 post-split shares currently held in his name: certificate no. EBC 6555 for 16,667 shares, certificate no. 6543 for 8,333 shares, certificate no. 6544 for 6,667 shares, certificate no. 5799 for 166,667 shares, certificate no. 6545 for 3,167 shares, and certificate no. 6391 for 140,741 shares.

Additionally, within ten (10) days of entry of this Order, Damato shall also prepare and send a letter to the transfer agent of Eagle Building Technologies, Inc. along with the certificates and stock powers signed by the persons named on the certificates assigning the certificates to the Securities Exchange Commission, instructing the transfer agent to cancel the following list of certificates consisting of 25,500 post-split shares, which he possesses: certificate no. 5467 for 5,000 shares held in the name Anthony Damato UGMA Brittney Damato; certificate no. 5471 for

5,000 shares held in the name of Elizabeth Hajdu; certificate no. 5468 for 3,000 shares held in the name of Steven & Regina Hajdu; certificate no. 5472 for 2,500 shares held in the name of Gertrude Hintz for Bryan Damato; certificate no. 5473 for 4,000 shares held in the name of Gertrude Hintz; certificate no. 5474 for 3,000 shares held in the name of Deborah & Craig Castro-Giovanni; and certificate no. 5477 for 3,000 shares held in the name Maria & George Mayer.

Simultaneously with sending the instructions to the transfer agent, Damato shall send copies of the transfer agent instruction letters to Leslie Hendrickson Hughes, Trial Counsel, Securities and Exchange Commission, 1801 California Street, Suite 1500, Denver, Colorado 80202-2656.

IV.

Pursuant to its continuing jurisdiction in this matter, the Court orders Eagle Building Technology, Inc. to cause certificates EBC 6555, 6543, 6544, 5467, 5468, 5471, 5472, 5473, 5474, 5477, 5799, 6545, and 6391 which are beneficially owned by Anthony Damato, to be cancelled within ten (10) days of entry of this Order. These certificates represent 367,742 shares of stock that will be cancelled.

V.

The parties have agreed that 286,500 of these shares represent disgorgement of compensation Damato received as an officer and director of Eagle Building. The balance of 81,242 shares that Damato is disgorging, will be assigned a value of \$.725 per share, which the parties have agreed upon, and \$58,900.45 of value shall be applied to satisfy disgorgement of Damato's trading profits and prejudgment interest ordered in paragraph I above which total

\$58,900.45.

VI.

IT IS FURTHER ORDERED that post-judgment interest shall accrue at the rate set by 28 U.S.C. § 1961 from the date of entry of this Permanent Injunction and continue until all disgorgement and pre-judgment interest have been paid.

VII.

IT IS FURTHER ORDERED that Anthony M. Damato shall sign an affidavit acknowledging receipt of this Order within ten (10) days of his receipt of the Order and promptly return the affidavit to Plaintiff's counsel of record for filing with this Court.

VIII.

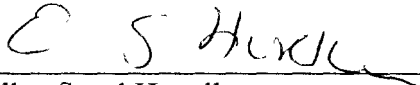
IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of implementing and enforcing the terms and conditions of the Final Judgment.

IX.

IT IS FURTHER ORDERED that there being no just reason for delay, 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 and without further notice.

The Clerk of the Court is directed to send a copy of this order to all counsel of record.

ORDERED on March 10, 2003.



Ellen Segal Huvelle
UNITED STATES DISTRICT JUDGE

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