

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

<p align="center">U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED</p> <p align="center">APR 30 2002</p> <p align="center">CLERK, U.S. DISTRICT COURT By _____ Deputy</p>
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SECURITIES AND EXCHANGE
COMMISSION,
Plaintiff,

v.

BIG COUNTRY AGS, INC. d/b/a AGS, INC.,
ARDIS D. GAITHER,
JOHN R. TEMPLE,
MARK LESTER TULEY,
AFRICA GEMSTONE CORPORATION, and
GODFRIED MARTIN SARPONG,
Defendants

CIVIL ACTION NO.:

3-02CV-606-L



**FINAL JUDGMENT
AND ORDER OF PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

Plaintiff, Securities and Exchange Commission ("the Commission"), having filed its Complaint; there having been no trial of this matter; defendants Big Country AGS, Inc. d/b/a AGS, Inc. ("AGS"), Ardis D. Gaither, John R. Temple, and Mark Lester Tuley having acknowledged in the Stipulation and Consent, filed herein, receipt of the Complaint filed in this matter, having waived service of the Summons and Complaint, having admitted the *in personam* jurisdiction of this Court and the jurisdiction of this Court over the subject matter of this action, having waived the entry of Findings of Fact and Conclusions of Law under Rule 52 of the Federal Rules of Civil Procedure, having agreed, for purposes of this action only, without admitting or denying any of the allegations of the Complaint, except as to *in personam* and subject matter jurisdiction, to the entry of this Final Judgment and Order enjoining defendants

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AGS, Gaither, Temple and Tuley from violating Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77e(a), § 77e(c) and § 77q(a)], and Section 10(b) of the Securities Exchange Act of 1934, as amended ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5]. It further appearing that this Court has jurisdiction over defendants AGS, Gaither, Temple and Tuley and the subject matter of this action; it appearing that no further notice of hearing for the entry of this Final Judgment and Order need be given; the Court being fully advised in the premises, and no just reason for delay appearing:

I.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that defendants AGS, Gaither, Temple and Tuley and their agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder by, directly or indirectly, in connection with the purchase or sale of any security, making use of any means or instrumentalities 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, or
- (b) to make any untrue statement of a material fact or 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.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants AGS, Gaither, Temple and Tuley and their agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] by, directly or indirectly, in the offer or sale of any security, making use of any means or instruments of transportation or communication in interstate commerce, or of the mails:

- (a) to employ any device, scheme or artifice to defraud, or
- (b) to obtain 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
- (c) to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any purchaser.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants AGS, Gaither, Temple and Tuley and their agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby 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, directly or indirectly, in the absence of any applicable exemption:

- (a) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell the securities of any issuer, through the use or medium

of any prospectus or otherwise, unless and until a registration statement is in effect as to such securities;

(b) carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or for delivery after sale, the securities of any issuer, unless and until a registration statement is in effect as to such securities; 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 the securities of any issuer, unless and until a registration statement has been filed with the Commission as to such securities, or while a registration statement as to such securities has been 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].

IV.

IT IS ORDERED, ADJUDGED AND DECREED that:

(a) Defendants AGS, Gaither, Temple and Tuley jointly and severally pay disgorgement in the amount of \$200,000, representing their gains from the conduct specified in the Complaint, plus prejudgment interest thereon in the amount of \$22,840;

(b) Jeffrey Hamilton, an attorney with Jackson & Walker, LLP, 901 Main Street, Suite 6000, Dallas, TX 75202, is appointed by the Court as Special Master for the purpose of distributing, on a *pro rata* basis, to the *bona fide* holders of the AGS promissory notes described in the Complaint, the disgorgement proceeds and prejudgment interest set forth in this paragraph IV;

(c) Within ten (10) days of the entry of this Order, defendants AGS, Gaither, Temple and Tuley jointly and severally shall make payment of \$222,840 in the form of a cashiers check, certified check or postal money order payable to the Special Master under cover of a letter that identifies defendants AGS, Gaither, Temple and Tuley, the caption and case number of this action and the name of this Court. Defendants AGS, Gaither, Temple and Tuley shall transmit the payment and accompanying cover letter to Harold F. Degenhardt, District Administrator, Securities and Exchange Commission, Fort Worth District Office, 801 Cherry Street, 19th Floor, Fort Worth, Texas 76102. At such time as defendants AGS, Gaither, Temple and Tuley pay such funds to the Special Master, they relinquish all legal and equitable right, title, and interest in those funds, and no part of such funds shall be returned to them or their affiliates, heirs, successors, or assigns;

(d) Within ten (10) days of the entry of this Order, defendants AGS, Gaither, Temple and Tuley shall deliver to the Special Master copies of all records that the Special Master, in his sole discretion, deems reasonably necessary for the Special Master to arrive at an appropriate *pro rata* distribution of the disgorgement proceeds and prejudgment interest; and

(e) Within ten (10) days of the entry of this Order, defendants AGS, Gaither, Temple and Tuley jointly and severally shall make payment of \$25,000 (“the Special Master Fee”) to the Special Master, for the purpose of paying the costs of distributing the disgorgement proceeds and prejudgment interest, including a reasonable fee for the services of the Special Master. Defendants AGS, Gaither, Temple and Tuley shall make such payment in the form of a cashier’s check, certified check or postal money order payable to the Special Master, under cover of a letter that identifies defendants AGS, Gaither, Temple and Tuley, the caption and case number of this action and the name of this Court. Defendants AGS, Gaither, Temple and Tuley shall

transmit the payment and accompanying cover letter to Harold F. Degenhardt, District Administrator, Securities and Exchange Commission, Fort Worth District Office, 801 Cherry Street, 19th Floor, Fort Worth, Texas 76102. At such time as defendants AGS, Gaither, Temple and Tuley pay such funds to the Special Master, they relinquish all legal and equitable right, title, and interest in those funds, and no part of such funds shall be returned to them or their affiliates, heirs, successors, or assigns.

(f) Upon receipt of the disgorgement and prejudgment amounts set forth herein, the Special Master shall prepare and submit to the Court a plan of distribution setting forth the *pro rata* amounts to be paid to the *bona fide* holders of the AGS promissory notes. If the costs of disbursing the disgorgement proceeds and prejudgment interest are less than the Special Master Fee, the Special Master shall disburse the balance of the Special Master Fee to the *bona fide* holders of the AGS promissory notes on the same *pro rata* basis as the disgorgement proceeds and prejudgment interest. If the costs of disbursing the disgorgement proceeds and prejudgment interest exceed the Special Master Fee, then upon approval of the Court and in consultation with the Commission, any excess costs shall be paid to the Special Master from the disgorgement proceeds.

V.

IT IS ORDERED, ADJUDGED, AND DECREED that a civil penalty in the amount of \$20,000 shall be imposed upon each of the defendants AGS, Gaither, Temple and Tuley, pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], and Section 21 of the Exchange Act [15 U.S.C. § 78u]. Within 10 days of the entry of this Order, defendants AGS, Gaither, Temple and Tuley shall each make payment of \$20,000 in the form of a cashiers check, certified check or postal money order payable to the "Securities and Exchange Commission"

under cover of a letter that identifies the defendant making payment, the caption and case number of this action and the name of this Court. Defendants AGS, Gaither, Temple and Tuley shall transmit the payments and accompanying cover letters to Harold F. Degenhardt, District Administrator, Securities and Exchange Commission, Fort Worth District Office, 801 Cherry Street, 19th Floor, Fort Worth, Texas 76102. At such time as defendants AGS, Gaither, Temple and Tuley pay such funds to the Commission, they relinquish all legal and equitable right, title, and interest in those funds, and no part of such funds shall be returned to defendants AGS, Gaither, Temple and Tuley or their affiliates, heirs, successors, or assigns.

VI.

There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Final Judgment and Order of Permanent Injunction and Other Equitable Relief pursuant to Rule 54 of the Federal Rules of Civil Procedure.

Signed this 30th day of April, 2002.


UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd day of March, 2002, I caused a true and correct copy of the foregoing COMPLAINT, with the proposed FINAL JUDGMENT AND ORDER OF PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF to be served by Federal Express Overnight Priority Delivery on the following:

Zollie C. Steakley, Esq.
Steakley & Wetsel, L.L.P.
207 Oak Street
Sweetwater, TX 79556
[counsel for defendants Big Country AGS, Inc., Gaither, Temple and Tuley].

On the same date, I caused true and correct copies of the same papers to be served on the following by personal service:

Godfried Sarpong
94 Plevna Crescent
London N15 6DW
United Kingdom

Africa Gemstone Corporation
456-460 High Road
Tottenham, London N17 7ND
United Kingdom



Steven J. Korotash