

John L. Hunter
Bonnie S. Kartzman
Rami Sibay
Attorneys for Plaintiff
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549
202-942-4825

Thomas M. Melton (4999)
Attorney for Plaintiff
Securities and Exchange Commission
15 W. South Temple, Suite 1800
Salt Lake City, Utah 84144-0402
Local Counsel: 801-524-6748

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

SECURITIES AND EXCHANGE COMMISSION, : 2:02 CV-1086 (TC)

Plaintiff,

v.

ALLEN Z. WOLFSON, et al.,

Defendants.

FILED
CLERK, U.S. DISTRICT COURT
2005 JAN 25 A 10: 04
DISTRICT OF UTAH
BY: JUDGE TENA CAMPBELL
DEPUTY CLERK
RECEIVED
DEC 22 2004
OFFICE OF

RECEIVED CLERK

DEC 22 2004

U.S. DISTRICT COURT

**FINAL JUDGMENT AS TO
DEFENDANT DAVID WOLFSON**

The Securities and Exchange Commission having filed a Complaint and Defendant David Wolfson ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant 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:

129

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's 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 (the "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 of the mails, or of 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.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's 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 the use of any means or

instruments of transportation or communication in interstate commerce or by use of 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 HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$86,117, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$21,535, and a civil penalty in the amount of \$50,000 pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. This obligation shall be satisfied when, upon motion of counsel, the Judge presiding over a separate matter before this Court, *SEC v. David M. Wolfson, et. al*, Civil No. 2:03 CV 0914K (DK), directs the Receiver controlling Defendant's assets previously frozen in that case to pay the foregoing amounts into the registry of this Court as follows: after the Court directs the Receiver to act, the Receiver will make the payment to the Clerk of this Court, together with a cover letter identifying David Wolfson 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. The Receiver shall

simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. Once this payment has been made, Defendant will have relinquished 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") identified by this civil action number. 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 by motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002, or any other fair and reasonable plan for distribution of the Fund, subject to approval of the Court. Regardless of whether any such Fair Fund distribution, or any other fair and reasonable distribution approved by the Court, 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. To preserve the deterrent effect of the civil penalty, Defendant shall not, in any Related Investor Action, benefit from any offset or reduction of any investor's claim by the amount of any Fair Fund distribution, or any other fair and reasonable distribution approved by the Court, to such

investor in this action that is proportionately attributable to the civil penalty paid by Defendant ("Penalty Offset"). If the court in any Related Investor Action grants such an offset or reduction, Defendant shall, within 30 days after entry of a final order granting the offset or reduction, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, or any other fair and reasonable distribution approved by the Court, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

V.

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 Final Judgment.

VI.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: Jan 25, 2005

Jens Campbell
UNITED STATES DISTRICT JUDGE

alt

United States District Court
for the
District of Utah
January 25, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-01086

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Thomas M Melton, Esq.
SECURITIES AND EXCHANGE COMMISSION
15 W SOUTH TEMPLE STE 1800
SALT LAKE CITY, UT 84101
EMAIL

I Bennett Capers, Esq.
US ATTY'S OFFICE/SDNY
ONE ST ANDREW'S PLAZA
NEW YORK, NY 10007

David W. Brown, Esq.
BLAKE PROFESSIONAL PLAZ
2880 W 4700 S STE F
WEST VALLEY CITY, UT 84118
EMAIL

John L. Hunter, Esq.
SECURITIES & EXCHANGE COMMISSION
450 5TH ST NW STE 2200
WASHINGTON, DC 20549
EMAIL

Timothy C. Houpt, Esq.
JONES WALDO HOLBROOK & MCDONOUGH
170 S MAIN ST STE 1500
PO BOX 45444
SALT LAKE CITY, UT 84145-0444
EMAIL

James L. Sanders, Esq.
MCDERMOTT WILL & EMERY
2049 CENTURY PARK E STE 3400
LOS ANGELES, CA 90067-3208
EMAIL

John W. Cruickshank Jr
9530 E IMPERIAL HWY STE K
DOWNEY, CA 90242

Mr. Neil A. Kaplan, Esq.
CLYDE SNOW SESSIONS & SWENSON
ONE UTAH CENTER 13TH FL
201 S MAIN ST
SALT LAKE CITY, UT 84111-2216
EMAIL

Irving M. Einhorn, Esq.
LAW OFFICES OF IRVING M EINHORN
1710 10TH ST
MANHATTAN BEACH, CA 90266-6206
EMAIL

Erik A. Christiansen, Esq.
PARSONS BEHLE & LATIMER
201 S MAIN ST STE 1800
PO BOX 45898
SALT LAKE CITY, UT 84145-0898
EMAIL

Mervyn A. Phelan Jr
USP LOMPOC
#545-48-054
3901 KLEIN BLVD
LOMPOC, CA 93436

Douglas P. Hoyt, Esq.
EMTEK INTL
6202 STRATLER ST
MURRAY, UT 84107
EMAIL

Brett L Benson, Esq.
GREGORY BARTON & SWAPP
2975 W EXECUTIVE PKWY STE 300
LEHI, UT 84043-9627

Craig H. Brown
c/o H. Mazurek
570 LEXINGTON AVE 16TH FL
NEW YORK, NY 10022

Bonnie Jean C. Tippetts
1122 W 1185 N
FARMINGTON, UT 84025

Kevin M. Sheff, Esq.
ROBERT B SYKES & ASSOCIATES
311 S STATE ST STE 240
SALT LAKE CITY, UT 84111-2320
EMAIL

Mark W. Pugsley, Esq.
RAY QUINNEY & NEBEKER
36 S STATE ST STE 1400
PO BOX 45385
SALT LAKE CITY, UT 84145-0385
EMAIL

David Wolfson

6565 SUNSET BLVD STE 417
HOLLYWOOD, CA 90028

Mervyn A. Phelan Sr
c/o M.A.Phelan Invst
410 BROADWAY 2ND FL
LAGUNA BEACH, CA 92651