

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

U.S. FUNDING CORPORATION,
U.S. FUNDING COMPANY,
CAPITAL CONCEPTS MARKETING, INC.,
ANGELICA GWINNETT, and
CHARLES FREMER,

Defendants.

Civil Action No. 02-2089 (WJM)

FINAL JUDGMENT AS TO DEFENDANTS
CAPITAL CONCEPT MARKETING, INC.
AND CHARLES FREMER

This matter has come before the Court on the motion of plaintiff Securities and Exchange Commission for summary judgment against defendants Capital Concept Marketing, Inc. (“CCM”) and Charles Fremer (“Fremer”), pursuant to Federal Rule of Civil Procedure 56. The Court has received and considered the moving and opposition papers of the parties, including the evidence attached thereto, the arguments of the parties and all other matters presented to the Court. Being so informed, and finding that there are no genuine issues of material fact and that plaintiff is entitled to judgment as a matter of law against defendants CCM and Fremer,

I.

IT IS HEREBY ORDERED AND ADJUDGED that CCM and Fremer and their respective 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 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;
- (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 HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that defendants CCM and Fremer, and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, are permanently restrained and enjoined from, directly or indirectly, through use of the means or instruments of transportation or communication in interstate commerce or the mails, acting as a broker and/or effecting transactions in, or inducing or attempting to induce the purchase or sale of, securities (other than an exempted security or commercial paper, bankers’ acceptances, or commercial bills) without being registered with the Commission in accordance with Section 15(b) of the Securities

Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78o(b)], in violation of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that CCM and Fremer are jointly and severally liable for disgorgement of \$501,385, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$78,427.82, calculated for the period March 18, 2002 through March 3, 2005 at the Internal Revenue Service rate for underpayment of taxes as defined by 26 U.S.C. § 6621(2)(2). Further, defendant Fremer shall pay a civil penalty in the amount of \$50,000, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21A of the Exchange Act [15 U.S.C. § 78u-a]. Defendants shall satisfy their respective obligations by paying the amounts in full within ten business days to the Clerk of this Court, together with a cover letter identifying Capital Concept Marketing, Inc. and Charles Fremer 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 payments and letter to the Commission’s counsel in this action. By making this payment, defendants CCM and Fremer relinquish all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to defendants CCM and Fremer. Defendants CCM and Fremer shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

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 28 U.S.C. § 1914 and 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. To preserve the deterrent effect of the civil penalty, defendant Fremer shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on his payment of disgorgement in this action, further benefit by offset or reduction of such compensatory damages award by the amount of any part of his payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, defendant Fremer shall, within 30 days after entry of a final order granting the Penalty Offset, 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, 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 defendants CCM and Fremer 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 Affirmative Defenses 1 through 7 asserted by defendants CCM and Fremer are hereby stricken, with prejudice.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the crossclaims asserted by defendants CCM and Fremer for indemnity and contribution against defendants U.S. Funding Corporation, U.S. Funding Company and Angelica Gwinnett are dismissed without prejudice to their reassertion in a separate action.


VI.

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.

VII.

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: 3/24/05


UNITED STATES DISTRICT JUDGE