

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

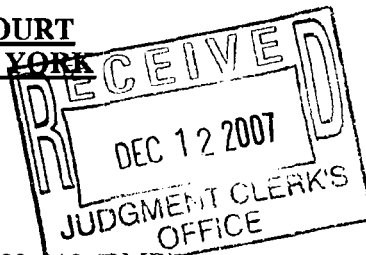
**SECURITIES AND EXCHANGE  
COMMISSION,**

Plaintiff,

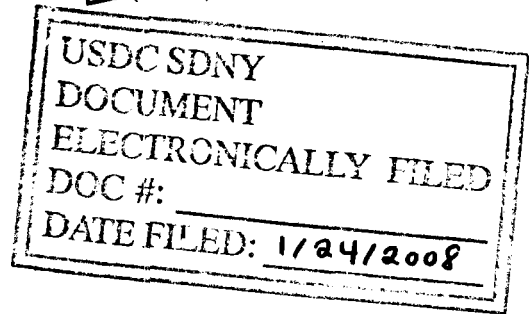
v.

**TODD M. EBERHARD, PARK SOUTH  
SECURITIES, LLC AND EBERHARD  
INVESTMENT ASSOCIATES, INC.,**

Defendants.



C.A. No. 03-813 (RMB)



**FINAL JUDGMENT AS TO DEFENDANTS  
TODD M. EBERHARD, PARK SOUTH SECURITIES LLC  
AND EBERHARD INVESTMENT ASSOCIATES, INC.**

The Securities and Exchange Commission having filed a Complaint, and Defendants Park South Securities LLC (“Park South”) and Eberhard Investment Associates, Inc. (“EIA”) having acknowledged service of the summons and Complaint; and Irving H. Picard, Esq., as Trustee for the liquidation of Park South and EIA under the Securities Investor Protection Act, 15 U.S.C. §78aaa et seq. (“SIPA”), solely in his capacity as Trustee and not personally (“Trustee”), having received authorization from the Bankruptcy Court to enter into the Final Judgment and Consent and bind Park South and EIA; the Trustee, having executed the Consent on behalf of Park South and EIA (the “Consent”) annexed hereto and incorporated herein, in which on behalf of Park South and EIA he waives entry of findings of fact and conclusions of law, and waives any right on their behalf to appeal from this Final Judgment; and

The Court, having granted summary judgment on March 6, 2006 against Defendant Todd M. Eberhard (“Eberhard”) as to liability on all of Plaintiff’s claims (Dkt. No. 173); the Court

(Sweet, J.), having entered an order of restitution against Eberhard on June 6, 2006 in the parallel criminal action, United States v. Todd M. Eberhard, 03-Cr.-562 (RWS)(SDNY) (Dkt. No. 66), requiring payment amounting to \$19,870,412.66; and the Court, having granted the application of Receiver Aaron R. Marcu to distribute funds in the receivership estate pursuant to the criminal restitution order; and

The Plaintiff, having withdrawn its claims against Eberhard for disgorgement, penalties and other monetary relief; and having withdrawn its claims against Park South and BIA for penalties and other monetary relief; and having withdrawn its motion for a preclusion order against Eberhard:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants and Defendants' 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, excluding the Trustee, are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act's) [15 U.S.C. § 78j(b)] and Rule 10(b)-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 Defendants and Defendants' 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, excluding the Trustee, are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (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 snails, 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 FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of the Trustee on behalf of Defendants Park South and EIA is incorporated herein with the same force and effect as if fully set forth herein.

IV.

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.

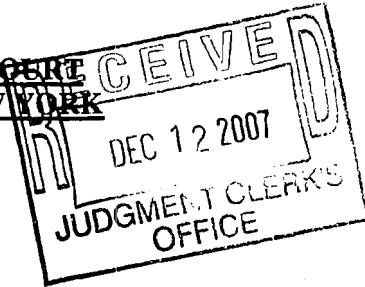
V.

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: 1/24/08, \_\_\_\_\_

RMB  
UNITED STATES DISTRICT JUDGE  
Richard M. Beeman

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**



SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

TODD M. EBERHARD, PARK SOUTH  
SECURITIES, LLC AND EBERHARD  
INVESTMENT ASSOCIATES, INC.;

Defendants.

C.A. No. 03 813 (RMB)

**CONSENT ON BEHALF OF DEFENDANTS  
PARK SOUTH SECURITIES, LLC AND  
EBERHARD INVESTMENT ASSOCIATES. INC.**

1. Irving H. Picard, Esq., solely in his capacity as Trustee for the Liquidation of Defendants Park South Securities LLC and Eberhard Investment Associates, Inc. (collectively "Defendants") and not individually and only to the extent authorized by law ("Trustee"), having been appointed after the commencement of this action, acknowledges that Defendants were served with the complaint in this action, admits to the jurisdiction of this Court over the Defendants and over the subject matter of this action, and appears herein for the limited purpose of entering into this consent on behalf of Defendants.

2. Without admitting or denying the allegations of the complaint (except admitting personal and subject matter jurisdiction over Defendants), the Trustee, as Trustee on behalf of the Defendants, with the approval of the United States Bankruptcy Court for the Southern District of New York (No. 03-08024A (RDD)), hereby consents to the entry of the final judgment as to the Defendants in the form attached hereto (the "Final Judgment") and

incorporated by reference herein, which, among other things, permanently restrains and enjoins Defendants from violation of Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

3. The Trustee, as Trustee on behalf of the Defendants, waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

4. The Trustee, as Trustee on behalf of the Defendants, waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

5. The Trustee, as Trustee on behalf of the Defendants, enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce the Trustee, as Trustee on behalf of the Defendants, to enter into this Consent.

6. The Trustee, as Trustee on behalf of the Defendants, agrees that this Consent shall be incorporated into the Final Judgment against Defendants with the same force and effect as if fully set forth therein.

7. The Trustee, as Trustee on behalf of the Defendants, will not oppose the enforcement of the Final Judgment against Defendants on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

8. The Trustee, as Trustee on behalf of the Defendants, waives service of the Final Judgment and agrees that entry of the Final Judgment against Defendants by the Court and filing with the Clerk of the Court will constitute notice to the Trustee, on behalf of the Defendants, of

its terms and conditions. The Trustee, on behalf of the Defendants, has received and reviewed a copy of the proposed Final Judgment against Defendants to which this Consent applies and that he need take no further action.

9. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against the Defendants, in this civil proceeding. The Trustee, as Trustee on behalf of the Defendants, acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. The Trustee, as Trustee on behalf of the Defendants waives any claim of Double Jeopardy that Defendants may have based upon the settlement of this proceeding, including, among other things, the imposition of any remedy herein. The Trustee, as Trustee on behalf of the Defendants, further acknowledges that the Court's entry of a permanent injunction against Defendants may have collateral consequences under federal or state law as to them and the rules and regulations of self regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification of Defendants with respect to membership or participation in, or association with a member of, a self regulatory organization. This statutory disqualification has consequences for the Defendants that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding against Defendants before the Commission based on the entry of the injunction in this action, the Trustee, as Trustee on behalf of the Defendants, understands that he shall not be permitted to contest the factual allegations of the complaint against Defendants in this action.

10. The Trustee, as Trustee on behalf of the Defendants, understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, the Trustee, as Trustee on behalf of the Defendants, agrees: (i) not to take any action on behalf of Defendants or to make or permit to be made any public statement denying, directly or indirectly, any allegation against Defendants in the complaint or creating the impression that the complaint against them is without factual basis; and (ii) that upon the filing of this Consent, any papers filed by the Defendants in this action, to the extent that they deny any allegation in the complaint, are hereby deemed withdrawn. In the event of any breach of this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendants': (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

11. The Trustee, as Trustee on behalf of the Defendants, hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by the Trustee, as Trustee on behalf of the Defendants, to defend against this action. For these purposes, the Trustee, as Trustee on behalf of the Defendants, agrees that Defendants are not the prevailing party in this action since the parties have reached a good faith settlement.

12. The Trustee, on behalf of the Defendants, agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

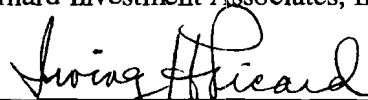


13. The Trustee, as Trustee on behalf of the Defendants, agrees that this Court shall retain jurisdiction over the Defendants in this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: New York, New York  
November 16, 2007

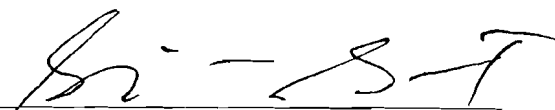
Park South Securities LLC and  
Eberhard Investment Associates, Inc.

By:



Irving H. Picard, Esq., solely in his capacity as  
Trustee for the Liquidation of Park South Securities  
LLC and Eberhard Investment Associates, Inc. and  
not individually  
c/o Gibbons P.C.  
One Pennsylvania Plaza, 37th Floor  
New York, New York 10119-3701

On November 16, 2007, Irving H. Picard, a person known to me personally, appeared before me and acknowledged executing the foregoing Consent with full authority to do so on behalf of Park South Securities, LLC and Eberhard Investment Associates, Inc. as it's the trustee for their liquidation under the Securities Investor Protection Act.



Notary Public  
Commission expires:

**SONIA BONAVENTURE**  
Notary Public, State of New York  
No. 01BO6145436  
Qualified in Suffolk County  
Commission Expires May 8, 2010

**United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213**

Date:

In Re:

-v-

Case #: ( )

Dear Litigant,

Enclosed is a copy of the judgment entered in your case.

Your attention is directed to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, which requires that if you wish to appeal the judgment in your case, you must file a notice of appeal within 30 days of the date of entry of the judgment (60 days if the United States or an officer or agency of the United States is a party).

If you wish to appeal the judgment but for any reason you are unable to file your notice of appeal within the required time, you may make a motion for an extension of time in accordance with the provision of Fed. R. App. P. 4(a)(5). That rule requires you to show "excusable neglect" or "good cause" for your failure to file your notice of appeal within the time allowed. Any such motion must first be served upon the other parties and then filed with the Pro Se Office no later than 60 days from the date of entry of the judgment (90 days if the United States or an officer or agency of the United States is a party).

The enclosed Forms 1, 2 and 3 cover some common situations, and you may choose to use one of them if appropriate to your circumstances.

The Filing fee for a notice of appeal is \$5.00 and the appellate docketing fee is ~~\$250.00~~ <sup>\$450.00</sup> payable to the "Clerk of the Court, USDC, SDNY" by certified check, money order or cash. No personal checks are accepted.

**J. Michael McMahon, Clerk of Court**

by: \_\_\_\_\_

, Deputy Clerk

APPEAL FORMS

Docket Support Unit

Revised: March 4, 2003

United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

-----X  
-V-  
-----X

NOTICE OF APPEAL

civ. ( )

Notice is hereby given that \_\_\_\_\_  
(party)  
hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment [describe it]

entered in this action on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
(day) (month) (year)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

Date: \_\_\_\_\_

( ) \_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form to take an appeal provided that it is received by the office of the Clerk of the District Court within 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 1

APPEAL FORMS

Docket Support Unit

Revised: March 4, 2003

United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

-----X  
-V-  
-----X

**MOTION FOR EXTENSION OF TIME  
TO FILE A NOTICE OF APPEAL**

civ. ( )

Pursuant to Fed. R. App. P. 4(a)(5), \_\_\_\_\_ respectfully  
(party)  
requests leave to file the within notice of appeal out of time. \_\_\_\_\_  
(party)  
desires to appeal the judgment in this action entered on \_\_\_\_\_ but failed to file a  
(day)  
notice of appeal within the required number of days because:

[Explain here the "excusable neglect" or "good cause" which led to your failure to file a notice of appeal within the required number of days.]

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

Date: \_\_\_\_\_

( ) \_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form, together with a copy of Form 1, if you are seeking to appeal a judgment and did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be received in the office of the Clerk of the District Court no later than 60 days of the date which the judgment was entered (90 days if the United States or an officer or agency of the United States is a party).

FORM 2

APPEAL FORMS

Docket Support Unit

Revised: March 4, 2003

United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

-v-

NOTICE OF APPEAL  
AND  
MOTION FOR EXTENSION OF TIME

civ. ( )

1. Notice is hereby given that \_\_\_\_\_ hereby appeals to  
(party)  
the United States Court of Appeals for the Second Circuit from the judgment entered on \_\_\_\_\_.  
[Give a description of the judgment]

2. In the event that this form was not received in the Clerk's office within the required time  
\_\_\_\_\_ respectfully requests the court to grant an extension of time in  
(party)  
accordance with Fed. R. App. P. 4(a)(5).

a. In support of this request, \_\_\_\_\_ states that  
(party)  
this Court's judgment was received on \_\_\_\_\_ and that this form was mailed to the  
(date)  
court on \_\_\_\_\_  
(date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

Date: \_\_\_\_\_ ( ) \_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form if you are mailing your notice of appeal and are not sure the Clerk of the District Court will receive it within the 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 3

APPEAL FORMS

Docket Support Unit

Revised: March 4, 2003

United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

-----X  
-V-  
-----X

**AFFIRMATION OF SERVICE**

civ. ( )

I, \_\_\_\_\_, declare under penalty of perjury that I have  
served a copy of the attached \_\_\_\_\_

upon \_\_\_\_\_

whose address is: \_\_\_\_\_

Date: \_\_\_\_\_  
New York, New York

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

**FORM 4**

**APPEAL FORMS**

Docket Support Unit

Revised: March 4, 2003