

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**FILED**

SEP 12 2005

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT-----X
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DARYL G. DESJARDINS, ROBERT S. ZABA,
ALNOOR JIWAN, RONALD D. BROULLIETTE, JR.
and BRIAN A. KOEHN,Defendants.
-----X

1:03CV01992(PLF)

**[PROPOSED] FINAL JUDGMENT AS TO DEFENDANT
DARYL G. DESJARDINS**

Plaintiff, United States Securities and Exchange Commission ("Commission"), commenced this action on September 25, 2003, by filing its Complaint ("Complaint") for injunctive and other relief, charging, among others, defendants Ronald Brouillete, Daryl Desjardins, Alnoor Jiwan and Brian Koehn (collectively, "Defendants") with violating Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5; with aiding and abetting violations of Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder; with violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]; and Section 5 of the Securities Act [15 U.S.C. § 77e]. The Commission timely served a Summons and Complaint upon each of the Defendants. Following the Defendants' failure to answer or otherwise respond to the Complaint within the time provided by the Federal Rules of Civil Procedure, the Commission filed and served upon the Defendants a Motion, Declaration of Michael K. Lowman, dated March 17, 2004 and Memorandum of Law in Support of Entry of a Final

Judgment by Default Against Defendants Ronald Brouillete, Daryl Desjardins, Alnoor Jiwan and Brian Koehn, and a copy of the proposed Final Judgment by Default Against Defendants Ronald Brouillete, Daryl Desjardins, Alnoor Jiwan and Brian Koehn.

Thereafter, the Court ordered the Defendants, including defendant Desjardins, to show cause why a default should not be entered. This Court having found that, pursuant to Federal Rule of Civil Procedure 55(b)(2), Defendant Desjardins has failed properly to defend the Commission's action, and having further found that this Court has jurisdiction over the subject matter of this action and over Defendant Desjardins, and venue properly lies in this district, and the jurisdiction to grant the relief requested by the Commission, and upon consideration of the Complaint filed by plaintiff Securities and Exchange Commission, its Motion for Default Judgment, and the entire record herein, this Court orders, adjudges and decrees as follows with respect to:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Desjardins and his 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 Desjardins and his 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 Desjardins and his 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 of the Securities Act [15 U.S.C. § 77e] 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;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; 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 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].

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Desjardins is permanently barred from participating in an offering of any penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R. 240.3a51-1].

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Desjardin is liable for disgorgement, representing his respective profits gained and/or losses avoided as a result of the conduct alleged in the Complaint, which include prejudgment interest thereon in the amount of \$3,057,466.27.

Defendant shall satisfy his obligation by paying all of the amount specified above within ten business days to the Clerk of this Court, together with a cover letter identifying himself 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. Defendant shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Defendant relinquishes 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"). 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 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.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after ten days following entry of this Final Judgment. In response to any such civil contempt motion by the Commission, Defendant may assert any legally permissible defense.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Desjardins shall pay a civil penalty as follows pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), in the amount of \$2,332,455.41.

Defendant Desjardins shall satisfy his obligation by paying all the penalty specified above within ten business days to the Clerk of this Court, together with a cover

letter identifying himself 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. Defendant Desjardins shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. Defendant Desjardins, by making this payment, relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to any Defendant.

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 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.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection

procedures authorized by law) at any time after ten days following entry of this Final Judgment. In response to any such civil contempt motion by the Commission, Defendant may assert any legally permissible defense.

VII.

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.

VIII.

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: 9/12/05


UNITED STATES DISTRICT JUDGE