

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TECUMSEH HOLDINGS CORPORATION,
TECUMSEH TRADEVEST LLC,
S.B. CANTOR & CO., INC., JOHN L. MILLING,
GERARD A. McCALLION,
ANTHONY M. PALOVCHIK, and DALE CARONE,

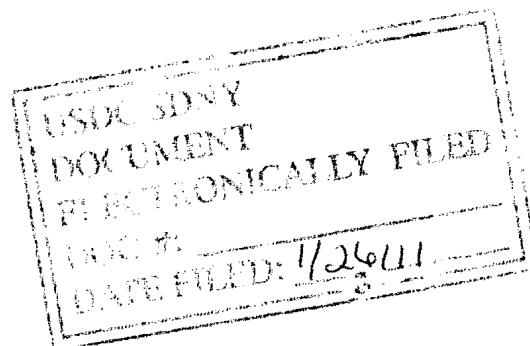
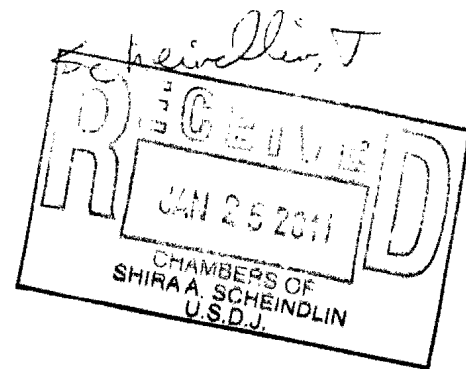
Defendants,

- and -

TECUMSEH ALPHA FUND LP,
TECUMSEH ALPHA LLC, and
STRACQ, INC.,

Relief Defendants.
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03 Civ. 5490 (SAS)



[PROPOSED] FINAL JUDGMENT AS TO DEFENDANT JOHN L. MILLING

WHEREAS, on December 22, 2009, the Court entered an Opinion and Order that, among other things, granted the motion of Plaintiff Securities and Exchange Commission (the "Commission") for partial summary judgment against Defendant John L. Milling ("Milling") on the Third Claim for Relief set forth in the Complaint, having found that Milling violated Section 5 of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77e]; ordered Milling to disgorge ill-gotten gains, plus prejudgment interest thereon; ordered Milling to be jointly and severally liable with Defendant Tecumseh Holdings for the disgorgement of ill-gotten gains; and imposed a civil penalty pursuant to Section 20(d) of the Securities Act, [15 U.S.C. § 77t(d)];

WHEREAS, on January 18, 2011, the Court entered an Opinion and Order that, among other things, granted the Commission's motion for summary judgment against Milling on the First Claim for Relief set forth in the Complaint, having found that Milling violated Section 17(a) of the Securities Act [15 U.S.C. § 77q], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and imposed a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act, [15 U.S.C. § 78u(d)];

NOW, THEREFORE,

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Milling 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 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 Milling 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 Milling 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 or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Milling is jointly and severally liable with defendant Tecumseh for disgorgement of \$7,242,167, representing profits gained as a result of the conduct alleged in the Complaint, and Milling is individually liable for prejudgment interest thereon in the amount of \$3,466,346.48, for a total of \$10,708,513.48. Milling shall satisfy this obligation by paying \$10,708,513.48 within 14 days after entry of this Final Judgment to the Clerk of this Court, together with a cover letter identifying Milling 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. Milling shall simultaneously transmit photocopies of such payment and letter to the

Commission's counsel in this action. By making this payment, Milling relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Milling. The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS") or any other type of interest bearing account that is utilized by the Court. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held in the interest bearing account 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 propose a plan to distribute the Fund subject to the Court's approval. Milling shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Milling shall pay a civil penalty in the amount of \$116,500 pursuant to Section 20(d) of the Securities Act, [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act, [15 U.S.C. § 78u(d)]. Milling shall make this payment within 14 days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Milling 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. Milling shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

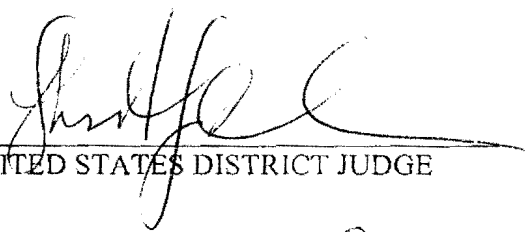
VI.

IT IS HEREBY 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.

Having resolved all claims against Milling, each of which is separable and extricable from the remaining claims against defendants Dale Carone and Anthony Palovchik for monetary relief, and 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, 2011


UNITED STATES DISTRICT JUDGE
