

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

V.

PATRICK BALLINGER, et al.

DEFENDANTS.

1:03-cv-1659-LJM-WTL

FINAL JUDGMENT AS TO DEFENDANT KOSTA S. KOVACHEV

The Securities and Exchange Commission (“Commission” or “SEC”) having filed a Complaint and Defendant Kovachev having entered a general appearance; consented to the Court’s jurisdiction over Defendant Kovachev 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:

I.

**PERMANENT INJUNCTION PROHIBITING VIOLATIONS
OF SECTION 10(b) OF EXCHANGE ACT AND RULE 10b-5 THEREUNDER**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Kovachev and Defendant Kovachev'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.

PERMANENT INJUNCTION PROHIBITING VIOLATIONS OF SECTION 17(a) OF SECURITIES ACT

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Kovachev and Defendant Kovachev'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 of 1933 ("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.

PERMANENT INJUNCTION PROHIBITING VIOLATIONS OF SECTION 5 OF SECURITIES ACT

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Kovachev and Defendant Kovachev'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 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.

**ORDER REQUIRING PAYMENT OF DISGORGEMENT AND
PREJUDGMENT INTEREST**

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Kovachev is liable for disgorgement of \$217,527.21, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$20,621.15, for a total of \$238,148.36. The Commission or the Receiver appointed in this action (the "Receiver") 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 or the Receiver, the defendant may assert any legally permissible defense. Payments under this paragraph shall be made to the order of "Resort Hotels et al. Receivership" and delivered to the Receiver, Stephen P. Bedell, Foley & Lardner LLP, 321 N. Clark Street, Suite 2800, Chicago, Illinois 60610-4768. Each payment shall be accompanied by a cover letter identifying Defendant Kovachev 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 Kovachev shall simultaneously transmit photocopies of each such payment and letter to the Commission's counsel of record in this action. Defendant Kovachev relinquishes all legal and equitable right, title, and interest in such payments, and no part of the funds shall be returned to Defendant Kovachev. The Receiver shall deposit this payment or payments into an interest-bearing account and shall deduct from the account only such fees and expenses as are authorized by the Court. The Court and the parties contemplate that disgorged funds will be distributed to injured investors.

Defendant Kovachev shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

V.

**ORDER REQUIRING PAYMENT OF CIVIL PENALTY
AND FAIR FUND DISTRIBUTION**

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Kovachev shall pay a civil penalty in the amount of \$120,000 pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. Defendant Kovachev shall make this payment within ten (10) business days after entry of this Final Judgment to the "Resort Hotels et al. Receivership," by cashier's check, certified check or United States postal money order and delivered to the Receiver, Stephen Bedell, Esq., Foley & Lardner LLP, 321 N. Clark Street, Suite 2800, Chicago, Illinois 60610-4768. This payment shall be submitted under a cover letter that identifies Defendant Kovachev as a defendant in this action, sets for the title and civil action number of this action and the name of this Court, and specified that the payment is being made pursuant to this Final Judgment. A copy of such cover letter and money order or check shall also

be delivered to counsel for the Commission in this action. By making this payment, Defendant Kovachev relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant Kovachev. Defendant Kovachev shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

The Receiver shall deposit all payments Defendant Kovachev makes pursuant to this order requiring payment of civil penalties into a segregated interest-bearing account, pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246, which provides that civil penalties may be distributed to injured investors, rather than paid to the U.S. Treasury, in accordance with a Court-approved plan of distribution of investor funds ("Fair Fund distribution"). No portion of this civil penalty amount may be used for any purpose other than for a Fair Fund distribution to injured investors, to the extent that the total amount of disgorgement and interest ultimately paid by all defendants in this action remains insufficient to make whole all investors injured in connection with this lawsuit. To the extent that the disgorgement and interest payments received from Defendant Kovachev and the other defendants in this action are sufficient to make whole all injured investors without resort to using the entire portion of the civil penalty amount, then the Receiver shall: (1) pay any such remaining civil penalty by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission; (2) deliver or mail such payment(s) to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312; and (3) submit such payment(s) under a cover letter setting forth the reason for the payment(s), the title and civil action number of this matter, and the name of this Court. A copy of such cover letter and money order or check shall

be sent to the Commission's counsel in this action.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Final 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 Kovachev shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant Kovachev's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant Kovachev's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant Kovachev shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's and the Receiver'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 Defendant Kovachev by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

The Commission or the Receiver may enforce the Court's judgment for civil penalties through all collection procedures authorized by law at any time after ten days following entry of this Final Judgment. In response to any such collection proceeding brought by the Commission or the Receiver, Defendant Kovachev may assert any legally permissible defense.

VI.

**TREATMENT OF DEFENDANT KOVACHEV PURSUANT TO
THE FIRST SUPPLEMENTAL RECEIVER ORDER**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Kovachev shall be deemed a "Judgment Defendant" for the purposes of the First Supplemental Receiver Order.

VII.

CONTINUATION OF ASSET FREEZE

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the asset freeze against Defendant Kovachev pursuant to the Preliminary Injunction entered against Defendant Kovachev will remain in effect until the monetary portions of this Final Judgment are satisfied, all assets are liquidated, or for eighteen months following the entry of this Final Judgment, whichever occurs first; except, however, that the asset freeze is hereby modified to provide Defendant Kovachev with the ability to spend up to \$2,500 per month from any income that he legitimately and lawfully earns during this period. Defendant Kovachev is required to send a written report to the Commission and the Receiver every two months, from the date of entry of this order until such time as the asset freeze is lifted, setting forth the source of all income received by him during the preceding two month period, briefly describing the basis for the income and providing a contact person who can verify the payment(s) of the income and the reason(s) for which the payment(s) was made. To the extent that Defendant Kovachev receives more than \$2,500 of income during any month in which the asset freeze is in place, such additional sums shall be paid to the Receiver and applied to Defendant Kovachev's disgorgement obligations.

VIII.

SHARING OF DISGORGEMENT AMONG INVESTORS IN TWO LAWSUITS

The Court understands that some of the funds invested by investors in an investment program that is the subject of a lawsuit styled as SEC v. First Choice Management Services, Inc., Case No. 3:01CV0446RM, currently pending in the federal district court for the Northern District of Indiana (the "First Choice" lawsuit), were applied to one or more of the investment programs that are the subject of this lawsuit. The Court understands that some of the amounts paid in connection with this lawsuit may be used to pay investors whose claims arise in the First Choice lawsuit. The Court also understands that the Receiver in the First Choice action has filed a claim against Defendant Kovachev. The Court does not make any ruling at this time concerning the allocation of assets collected pursuant to this Final Judgment, and understands that the Receivers for the two actions and the Commission are working together to determine the appropriate allocation percentages. In the event that the Receivers and the Commission are unable to agree upon the appropriate allocation of assets collected pursuant to this Final Judgment, any of them may move this Court for appropriate relief.

IX.

INCORPORATION OF CONSENT OF DEFENDANT KOVACHEV

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 Kovachev shall comply with all of the undertakings and agreements set forth therein.

X.

RETENTION OF JURISDICTION


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.

XI.

RULE 54(b) CERTIFICATION

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: 06/29/2006


LARRY J. MCKINNEY, CHIEF JUDGE
United States District Court
Southern District of Indiana