

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 DARIN W. ROBERTS**

The Securities and Exchange Commission having filed a Complaint and Defendant Darin W. Roberts (“Defendant Roberts”) having entered a general appearance; consented to the Court’s jurisdiction over Defendant Roberts 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 Roberts and Defendant Roberts’ 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 FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Roberts and Defendant Roberts' 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 (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.**

**PERMANENT INJUNCTION PROHIBITING VIOLATIONS  
OF SECTION 5 OF SECURITIES ACT**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Roberts and Defendant Roberts' 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.**

**PERMANENT INJUNCTION PROHIBITING VIOLATIONS  
OF SECTION 15(a) OF EXCHANGE ACT**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Roberts and Defendant Roberts' agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, effecting any transaction in, or inducing or attempting to induce the purchase or sale of any security (other than an exempted security or commercial paper, bankers' acceptances or commercial bills) unless registered with the SEC as a broker or dealer in accordance with Section 15(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78o(b)], in violation of Section 15(a) of the Securities Exchange Act of 1934 [15 U.S.C. §78o(a)].

**V.**

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

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Roberts is liable for disgorgement of \$125,097.08, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$8,145.22, for a total of \$133,242.30. The Commission or the Receiver appointed in this lawsuit (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, 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, Suite 2800 Chicago, Illinois 60610. Each payment shall be accompanied by a cover letter identifying Defendant Roberts 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 Roberts shall simultaneously transmit photocopies of each such payment and letter to the Commission’s counsel of record in this action. Defendant Roberts relinquishes all legal and equitable right, title, and interest in such payments, and no part of the funds shall be returned to Defendant Roberts. 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 Roberts shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

**VI.**

**WAIVER OF IMPOSITION OF CIVIL PENALTIES**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that based on Defendant Roberts’ sworn representations in his Statement of Financial Condition dated April 8, 2005, and other documents and information submitted to the Commission, the Court is not ordering Defendant Roberts to pay a civil penalty. The determination not to impose a civil penalty is contingent upon the accuracy and completeness of Defendant Roberts’ Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Defendant Roberts’ representations to the Commission concerning his

assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant Roberts, petition the Court for an order requiring Defendant Roberts to pay the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by Defendant Roberts was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant Roberts to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Defendant Roberts may not, by way of defense to such petition: (1) challenge the validity of the Consent or this Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

## **VII.**

### **TREATMENT OF ROBERTS PURSUANT TO FIRST SUPPLEMENTAL RECEIVER ORDER**

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

**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 Roberts. 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 ROBERTS**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Consent of Defendant Roberts is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant Roberts 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.

**SO ORDERED:**

Dated: 06/29/2006

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