

6-9-04 UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS JUN -8 P 3:42

HCB

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

GUILLERMO GARCIA SIMON, V. ARANA,
& A. GARCIA SIMON,

Defendants.

Case Action No.
03-12079 (PBS)

FINAL JUDGMENT

The Securities and Exchange Commission ("Commission") having filed a Complaint; Defendant Guillermo Garcia Simon ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant 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; and the parties having filed a stipulation of dismissal as to the claims against Victoria Arana and Andres Garcia Simon:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant, Defendant's agents, servants, employees, attorneys, assigns, 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, § 10(b) of the Securities Exchange Act of 1934 ("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:

- (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, in connection with the purchase or sale of any security.

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$473,000, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$1,576.67, and a civil penalty in the amount of \$51,842.36, pursuant to § 21A of the Exchange Act [15 U.S.C. § 78u-1]. In satisfaction of this disgorgement and penalty obligation, \$526,419.03 shall be paid by Defendant to the Court in the manner set

forth below from the funds presently in Account BSC-888705 held in the name of Defendant, Victoria Arana and Andres Garcia Simon, at Prudential Securities, a Division of Wachovia Securities, LLC. ("Prudential"), which account includes the proceeds of the FleetBoston Options frozen by order of this Court dated October 27, 2003, as modified by the Court's Order dated November 10, 2003. Upon the payment of these funds (\$526,419.03), Defendant, Victoria Arana and Andres Garcia Simon relinquish all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to them.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that immediately upon service of this Final Judgment upon Prudential, by personal service or otherwise, including by facsimile transmission or overnight delivery, Prudential shall transfer \$526,419.03 to the Registry of this Court, by check made payable to "Clerk, United States District Court", under cover of a letter that identifies the payment as being made in connection with this Final Judgment as to "Defendant Guillermo Garcia Simon, in the matter of SEC v. Guillermo Garcia Simon, et al., Civil Action No. 03-12079- PBS (D. Mass.)", with a copy to Luke Cadigan, Senior Trial Counsel, Securities and Exchange Commission, Boston District Office, 73 Tremont Street, Boston, Massachusetts, 02108. Defendant shall take whatever steps are required of him in order to ensure the transfer of these funds. The disgorgement and penalty payment shall be made within ten days of entry of this judgment.

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.

IV.

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

V.

IT IS FURTHER ORDERED, AND ADJUDGED AND DECREED that by stipulation of the parties, the Commission's claims in this action against Victoria Arana and Andres Garcia Simon are hereby dismissed, with prejudice.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that each party shall bear its own costs and expenses, including attorneys fees, incurred during the course of the litigation of this matter.

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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, there being no just reason for delay, the Clerk of the Court is hereby directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment forthwith.

Dated: 6/9, 04



UNITED STATES DISTRICT JUDGE