

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

CASE NO: 8:04-cv-2288-T-23MAP

JOHN MERVYN NABORS and
ERIC J. McCracken,

Defendants.

ORDER

Pursuant to the Securities and Exchange Act of 1933 (the "Securities Act") and the Securities and Exchange Act of 1934 (the "Exchange Act"), the Securities and Exchange Commission (the "Commission") files a complaint (Doc. 1) against John Mervyn Nabors and Eric J. McCracken seeking permanent injunction. Nabors consented to entry of judgment and permanent injunction (Doc. 11). The Commission submits (Doc. 21) the consent (the "Consent") of McCracken to the entry of a proposed "final judgment of permanent injunction and other relief against Eric J. McCracken." McCracken neither admits nor denies any allegation in the complaint, except that he acknowledges proper service of process and admits jurisdiction. Further, McCracken waives both findings of fact and conclusions of law and waives any right to appeal from

this order. Accordingly, the proposed permanent injunction and judgment is **ADOPTED** as follows:

I. PERMANENT INJUNCTION

McCracken, his directors, officers, agents, servants, employees, attorneys, and those persons in active concert or participation with him, and each of them, are restrained and enjoined from:

A. violating, directly or indirectly, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce or of the mails, or any facility of any national securities exchange, in connection with the purchase or sale of any security, to knowingly or recklessly: (i) employ any device, scheme or artifice to defraud; (ii) make any untrue statement of material fact or omit to state any material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading; or (iii) engage in any act, practice, or course of business which has operated, is now operating, or will operate as a fraud upon any purchaser of security;

B. violating, directly or indirectly, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), by using any means or instrument of transportation or communication in interstate commerce, or by using the mails, in the offer or sale of any security, to knowingly or recklessly employ any device, scheme, or artifice to defraud;

C. violating, directly or indirectly, Section 13(b)(5) of the Exchange Act, 15 U.S.C. § 78m(b)(5), and Rules 13b2-1 and 13b2-2, 17 C.F.R. §§ 240.13b2-1 and 240.13b2-2, by (i) knowingly circumventing or knowingly failing to implement a system

of internal accounting controls, or knowingly falsifying or causing the falsification of any book, record or account as described in Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78(b)(2)(A), and Rule 13b2-1, 17 C.F.R. §§ 240.13b2-1; or (ii) directly or indirectly making or causing to be made any materially false or misleading statement, or omitting to state, or causing another person to omit to state, any material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading to an accountant in connection with: (a) any audit or examination of financial statements or (b) the preparation or filing of any document or report required to be filed with the Commission;

D. aiding and abetting any violation of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1 and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13 thereunder, by failing to file any report with the Commission that accurately and fairly reflects financial information, including the information expressly required to be included in a statement or report and such further material information as may be necessary to make any required statement, in the light of the circumstances under which it was made, not misleading, or by aiding and abetting, filing or causing to be filed with the Commission any annual or quarterly report on behalf of any issuer required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a) and the rules and regulations promulgated thereunder, which contains a certification required by Rule 13a-13 under the Exchange Act, 17 C.F.R. § 240.13a-13, containing any untrue statement of material fact, which omits to state any material fact necessary in order to make any statement made, in the

light of the circumstances under which it was made, not misleading, or which omits to disclose any information required to be disclosed; and

E. aiding and abetting any violation of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B), and Rule 13a-14, 17 C.F.R. §§ 240.13a-14 thereunder, by failing to (i) make and keep accurate books, records and accounts, which, in reasonable detail, accurately and fairly reflect any transactions and disposition of any asset of the issuer; (ii) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements; or (iii) file or cause to be filed with the Commission any annual or quarterly report on behalf of any issuer required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and the rules and regulations promulgated thereunder, which contains a certification required by Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-14, containing any untrue statement of material fact, which omits to state any material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading, or which omits to disclose any information required to be disclosed.

II. OFFICER AND DIRECTOR BAR

Pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), McCracken is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C.

§ 78l, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

III. DISGORGEMENT AND CIVIL PENALTY

McCracken is liable for disgorgement of \$40,000.00 representing his ill-gotten gains from the conduct alleged in the complaint. In consideration of (i) McCracken's sworn representations in the "Statement of Financial Condition" dated November 18, 2005, and other documents submitted to the Commission and (ii) McCracken's agreement to pay \$40,000.00 within thirty months of entry of this order, McCracken is not required to pay an additional \$283,097.00 in disgorgement and pre-judgment interest or civil penalty. McCracken shall satisfy his obligation by paying the \$40,000.00 as follows: \$2,000.00 shall be due and payable within ten business days of entry this order; an additional \$38,000.00 shall be due and payable in ten quarterly installments of \$3,800.00 each to commence within three months of entry of this order.

All payments shall be (a) made by United States postal money order, certified check, bank cashier's check, or bank money order; (b) made payable to the Securities and Exchange Commission; (c) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (d) submitted under cover letter that identifies McCracken as a defendant in these proceedings. A copy of the cover letter and money order or check shall be sent to Robert K. Levenson, Regional Trial Counsel, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, Florida,

33131. By making these payments, McCracken relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to him. If McCracken fails to make any single payment, or part of any single payment, within the precise time specified for such payment as set forth in the preceding paragraph, the installment terms of that paragraph shall no longer apply, and the full amount of McCracken's remaining unpaid disgorgement and pre-judgment interest shall be immediately due, owing and payable, plus post-judgment interest on such remaining unpaid amount calculated at the rate of interest set forth in Rule 600(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.600(b), from the date of entry of this order until such amount is paid in full. McCracken also shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

The determination to waive payment of all but \$40,000.00 of the disgorgement and pre-judgment interest and civil penalty is contingent upon the accuracy and completeness of the "Statement of Financial Condition." If at any time following the entry of this order the Commission obtains information indicating that McCracken's 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 McCracken, petition for an order requiring him to pay the unpaid portion of the disgorgement, pre-judgment and post-judgment interest thereon, and the maximum civil penalty allowable under law. In connection with any such petition, the only issue shall be whether the financial information provided by

McCracken 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 to consider all available remedies, including, but not limited to, ordering McCracken to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this order. The Commission may also request additional discovery.

McCracken may not, by way of defense to such petition, (1) challenge the validity of the Consent or this order; (2) contest the allegations in the complaint; (3) assert that payment of disgorgement and pre-judgment and post-judgment interest 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 limitation defense.

IV. INCORPORATION OF CONSENT

The Consent is incorporated herein with the same force and effect as if fully set forth herein. McCracken shall comply with all of the undertakings and agreements in the Consent.

V. RETENTION OF JURISDICTION

The Court retains jurisdiction for the limited purpose of enforcing the permanent injunction.*

*But see SEC v. Smyth, 420 F.3d 1225, 1233 n.14 (11th Cir. 2005).

Pursuant to Rule 54(b), Federal Rules of civil Procedure, the Clerk is direct to enter judgment in favor of the Commission and against McCracken.

ORDERED in Tampa, Florida, February 10, 2006.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

cc: US Magistrate Judge