

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

SECURITIES AND EXCHANGE }
COMMISSION, }
 }
Plaintiff, }
 }
v. }
 }
ERIC TYRA; SCOTT WYNNE; PETER }
BERMAN; SCOTT CAREY, }
 }
Defendants. }

Case No.: 2:04-cv-1052-RDP

AMENDED FINAL JUDGMENT AS TO DEFENDANT SCOTT CAREY

The Securities and Exchange Commission having filed a Complaint and Defendant Scott Carey (“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:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant’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 enjoined¹ from violating, directly or indirectly, Section 10(b) of the

¹ The court is aware of the Eleventh Circuit’s discussion of “obey the law” injunctions in *SEC v. Smyth, et al.*, 420 F.3d 1225, n. 14. (11th Cir. 2005), but the court finds that this matter is distinguishable from the matters addressed by the Eleventh Circuit in *Smyth*. The court notes that Defendant Carey has consented to the court’s continuing jurisdiction for purposes of enforcing this Final Judgment, and this consent is consistent with Section 27 of the Securities Exchange Act of 1934 which permits nationwide service of process in actions commenced under that Act. Plaintiff

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 security 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 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 Defendant and Defendant’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 [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;

and Defendant Carey have both requested that this Final Judgment be entered. In the event that Plaintiff, at some time in the future, seeks to enforce the injunction through a civil contempt proceeding, the court will convene an initial hearing where the procedure for such enforcement will be determined consistent with the United States Constitution and the Federal Rules of Civil Procedure.

- (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 Defendant and Defendant'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 aiding and abetting any violation of Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20 and 13a-1 promulgated thereunder [17 C.F.R. §240.12b-20 and 17 C.F.R. §240.13a-1] by knowingly providing substantial assistance to an issuer that fails to file annual reports with the Commission in the appropriate form authorized or prescribed and containing, in addition to the information expressly required to be included in the report, such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the court is not ordering Defendant to pay a civil penalty. The determination not to impose a civil penalty is contingent upon the accuracy and completeness of Defendant's Statement of Financial Condition provided to the Securities and Exchange Commission reflecting an inability to pay any such penalty. If at any time following the entry of this Final Judgment the Commission obtains information

indicating that Defendant’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 Defendant, petition the court for an order requiring Defendant to pay a penalty up to the maximum civil penalty allowable under the law. In its petition, the Commission may move this court to consider all available remedies, including, but not limited to, ordering Defendant 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 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; or (3) assert any defense to liability or remedy, except that the defendant may continue to assert a statute of limitations defense. In the event that the court denies such petition, the Commission may appeal that ruling, whether based upon the statute of limitations, as previously construed by this court, or otherwise. The court’s prior dismissal of the claim for civil penalties shall be set aside for this limited purpose.

V.

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.

VI.

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.

VII.

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.

DONE and **ORDERED** this 28th day of December, 2005.



R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE