

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DERRICK S. MCKINLEY,

Defendant.

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**C.A. No.1:04CV1613
Hon. Dan A. Polster**

FINAL JUDGMENT AGAINST DEFENDANT DERRICK S. MCKINLEY

The Court having considered all the evidence and the arguments before it, and being fully advised in the premises:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Derrick S. McKinley (“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, directly or indirectly, Section 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, 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.

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 Sections 17(a)(1), (2) and (3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)(1), (2) and (3)] by, in the offer or sale of any security, using any means or instruments of transportation or communication in interstate commerce or 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.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant realized ill-gotten gains of \$1,591,390 as a result of the conduct alleged in the

Complaint filed in this matter, with prejudgment interest thereon. Based on Defendant's sworn representations in his Statement of Financial Condition dated March 26, 2007, and other documents and information submitted to the Securities and Exchange Commission ("SEC"), the Court is not ordering Defendant to pay any amount of disgorgement with prejudgment interest thereon or a civil penalty. The Court's determination not to impose any amount of disgorgement with prejudgment interest or a civil penalty is premised on Defendant's inability to pay any such disgorgement, prejudgment interest or civil penalty as evidenced by Defendant's Statement of Financial Condition and other documents and information provided to the SEC. If within 5 years of the entry of this Final Judgment, the SEC obtains information indicating that Defendant's representations to the SEC 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 SEC may, at its sole discretion and without prior notice to Defendant, petition the Court for an order requiring Defendant to pay disgorgement of ill-gotten gains of \$1,591,390, with prejudgment interest thereon, and a civil penalty in the amount of \$1,591,390 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1(a)]. In its petition, the SEC shall not seek prejudgment interest on any amount of disgorgement after January 18, 2006.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall provide counsel for the SEC, John E. Birkenheier, Supervisory Trial Counsel, 175 West Jackson Boulevard, Suite 900, Chicago, Illinois 60604, with his federal tax returns and all supporting schedules and attachments for the years ending December 31, 2007 and December 31, 2008 within 10 days of filing each return. If the SEC believes based on Defendant's federal

tax returns and/or supporting schedules and attachments that Defendant can pay any part of the disgorgement or civil penalty set forth in Section III of this Final Judgment, the SEC may at its sole discretion and without prior notice to Defendant, petition the Court for an order requiring Defendant to pay part or all of the disgorgement amount of \$1,591,390, with prejudgment interest thereon, and a civil penalty in the amount of \$1,591,390 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1(a)]. The SEC must make any such petition no later than 60 days after receiving Defendant's federal tax return and supporting schedules and attachments for the year ending December 31, 2008. In its petition, the SEC shall not seek prejudgment interest on any amount of disgorgement after January 18, 2006. In its petition, the SEC may request additional discovery, but must seek leave of Court to obtain financial information from Defendant's spouse, Yvonne H. McKinley.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant's Consent dated December 30, 2005 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 HEREBY 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.

/s/Dan Aaron Polster
JUDGE DAN A. POLSTER
UNITED STATES DISTRICT JUDGE

DATED: 6/21/07