

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 04-60493 – Civ – COHN/SNOW

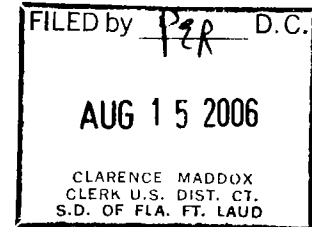
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOHN W. SURGENT, BARRY ABRAMS,
WARREN HEMEDINGER, SCOTT PICCININNI
PAUL TAHAN, ROBERT VITALE, MARK
CHAVEZ, SAL PUCCIO and VICTOR A.
LESSINGER,

Defendants.



FINAL JUDGMENT AS TO DEFENDANT ROBERT VITALE

The Securities and Exchange Commission (the "Commission") having filed a Complaint and Defendant ROBERT VITALE ("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, which he admits); waived findings of fact and conclusions of law; waived any right to a trial by jury of any and all claims asserted by the Commission, and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant, his agents, servants, employees, attorneys, and all those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, are hereby permanently restrained and enjoined from violating,

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directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Exchange Act 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 any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (1) to employ any device, scheme or artifice to defraud;
- (2) 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
- (3) 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, his agents, servants, employees, attorneys, and all those 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 (“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:

- (1) to employ any device, scheme, or artifice to defraud;
- (2) 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

- (3) 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, his 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 Securities Act Sections 5(a) and 5(c) [15 U.S.C. §§ 77e(a) and 77e(c)] by, directly or indirectly, in the absence of any applicable exemption:

- (1) 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;
- (2) 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
- (3) 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.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant, his agents, servants, employees, attorneys, and all those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, are hereby permanently enjoined and restrained from aiding and abetting any violations of Exchange Act Section 15(g) [15 U.S.C § 78o(g)] and Exchange Act Rules 15g-2, 15g-4 and 15g-5 [17 C.F.R. §§ 240.15g-2, 15g-4 and 15g-5], by knowingly providing substantial assistance to a broker or dealer, directly or indirectly, singly or in concert, by 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 penny stock (as defined in Exchange Act Section 3(a)(51)(A) [15 U.S.C. § 78c (a)(51)(A)] and Exchange Act Rule 3a51-1 [17 C.F.R. § 240.3a51-1]) by, with, or for the account of any customer without complying with the following requirements:

- (1) prior to effecting such transaction, having furnished the customer a document containing the information set forth in Schedule 15G, 17 C.F.R. § 240.15g-100, and having obtained from the customer a manually signed and dated written acknowledgment of receipt of the document; and

(2) disclosing to such customer, orally or in writing prior to effecting any such transaction, and giving or sending to the customer in writing, at or prior to the time that any written confirmation of such transaction is given or sent to the customer pursuant to 17 C.F.R. § 240.10b-10, the following information:

- (a) the aggregate amount of any compensation received by the broker or dealer in connection with such transaction; and
- (b) the aggregate amount of cash compensation that any natural person associated with the broker or dealer who has communicated with the customer concerning the transaction at or prior to receipt of the customer's transaction order (other than any person whose function is solely clerical or ministerial) has received or will receive from any source in connection with the transaction that is determined at or prior to the time of the transaction, including separate disclosure of the source and amount of such compensation that is not paid by the broker or dealer.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently barred from participating in an offering of penny stock, including engaging in activities with a broker, dealer or issuer for purposes of issuing, trading or inducing or attempting to induce the purchase or sale of any penny stock. All equity stocks are penny stock unless exempted per Exchange Act Section 3(a)(51) [15 U.S.C. § 78c (a)(51)(A)] and Exchange Act Rule 3a51-1 [17 C.F.R. § 240.3a51-1].

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant is liable for disgorgement of \$30,000.00, representing ill-gotten gains received by Defendant as a result of the conduct alleged in the Complaint, together with pre-judgment interest thereon in the amount of \$10,025.00, for a total of \$40,025.00.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$60,000.00 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall satisfy his disgorgement and civil penalty obligations by paying \$100,025.00 within thirty (30) days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Clerk of this Court, together with a cover letter identifying Vitale 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 shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS") or any other type of interest bearing account that is utilized by the Court. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914 and 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.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a

Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

IX.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of Defendant Robert Vitale, a copy of which is attached hereto be, and hereby 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.

X.

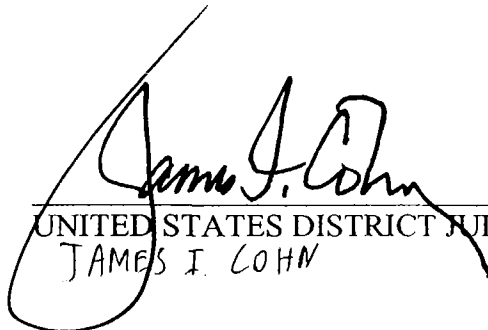
IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this action for all purposes, including the implementation and enforcement of this Final Judgment.

XI.

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: August 15, 2006


UNITED STATES DISTRICT JUDGE
JAMES I. COHN

cc: All counsel of record