

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED

2005 DEC 14 A 9:42

U.S. DISTRICT COURT
NEW HAVEN, CT

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

NO. 3:05CV510(MRK)

DAVID M. FAUBERT and
FAUBERT FINANCIAL GROUP, INC.,

Defendants.

**FINAL JUDGMENT OF PERMANENT INJUNCTION,
DISGORGEMENT AND OTHER RELIEF**

Plaintiff Securities and Exchange Commission ("Commission") having filed a Complaint on March 23, 2005, defendants David M. Faubert ("Faubert") and Faubert Financial Group, Inc. ("FFG") having failed to answer, plead or otherwise defend in this action, a default having been entered on May 6, 2005, the Court having considered the Commission's motion for entry of a default judgment and all the pleadings and evidence submitted in support thereof; and the Court having determined that Faubert is not an infant or incompetent person and is not in the military service of the United States:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Faubert, FFG and their agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment, are

permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §77q(a)] by, directly or indirectly, 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 the use of the mails: (a) employing any device, scheme or artifice to defraud; (b) obtaining money or property by means of any untrue statement of a material fact or any omission 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) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser of such security.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Faubert, FFG and their agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment, are permanently restrained and enjoined from violating Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5] by, directly or indirectly, by the use of 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) employing any device, scheme, or artifice to defraud; (b) making any untrue statement of a material fact or omitting 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) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Faubert, FFG and their agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment, are permanently restrained and enjoined from violating Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§80b-6(1) and 80b-6(2)] by, directly or indirectly, using the mails or any means or instrumentality of interstate commerce to: (a) employ any device, scheme, or artifice to defraud any client or prospective client; or (b) engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)], Faubert and FFG are liable, jointly and severally, for disgorgement of \$3,712,020, representing profits gained as a result of the conduct alleged in the Complaint, plus pre-judgment interest in the amount of \$134,503, for a total disgorgement amount of \$3,846,523, and that, pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. §80b-

9(e)], Faubert and FFG shall be jointly and severally liable for payment of a civil penalty in the amount of \$3,712,020, representing the gross gain to Defendants of the conduct alleged in the Complaint. Faubert and FFG shall pay these disgorgement and penalty obligations within ten (10) days after entry of this Final Judgment. Any amounts recovered from Faubert and/or FFG in connection with their obligation to pay restitution pursuant to a final judgment entered against them in any subsequent criminal proceeding based upon the same conduct alleged in the Complaint in this action shall be credited toward their respective obligations to pay disgorgement pursuant to this Final Judgment.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the payments required pursuant to Paragraph IV above shall be made by money order, certified check or cashier's check made payable to the Clerk, United States District Court for the District of Connecticut. The payments shall be mailed to the Clerk of this Court at the Richard C. Lee U.S. Court House, 141 Church Street, New Haven, CT 06510, with a cover letter identifying Faubert and FFG, the name and number of this action, and the name of this Court, and copies of the payment and cover letter shall be mailed to counsel of record for the Commission. Upon payment of the disgorgement and penalty obligations set forth above, Faubert and FFG shall relinquish all legal and equitable right, title and interest in such payments, and no part of the funds shall be returned to them. The Clerk shall deposit the payments 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 the 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 propose a plan to distribute the Fund subject to the Court's approval. Such plan may provide that the 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 a civil penalty pursuant to this Final Judgment shall be treated as a penalty paid to the government for all purposes, including all tax purposes.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over Faubert and FFG as parties to this matter for all purposes, including the implementation and enforcement of this Final Judgment.

IT IS SO ORDERED

Mark R. Kravitz
United States District Judge.

Dated at New Haven Connecticut: December 13, 2005.