

FILED

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA 2007 AUG 31 AM 11:17
ORLANDO DIVISION**

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

**SECURITIES AND EXCHANGE
COMMISSION,**

CASE NO.: 6:05-cv-1880-ORL-31KRS

Plaintiff,

v.

DAVID L. SMITH, JR., et al.,

Defendants,

SUSSEX AVENUE PARTNERS LLC,

Relief Defendant.

A M E N D E D

**FINAL JUDGMENT SETTING DISGORGEMENT AND IMPOSING
CIVIL PENALTIES AGAINST DEFENDANT DAVID L. SMITH, JR.**

THIS MATTER is before the Court on Plaintiff's Motion to Set Disgorgement And Civil Penalty Amount As To Defendant David L. Smith, Jr. (D.E. # 111). The Court has fully considered the motion, the record herein and being fully advised in the premises; accordingly, it is hereby

ORDERED AND ADJUDGED that the Commission's motion to set disgorgement and civil penalty is **GRANTED** and Final Judgment is entered against Smith as follows:

I. DISGORGEMENT AND PREJUDGMENT INTEREST

IT IS FURTHER ORDERED AND ADJUDGED that Defendant Smith shall pay \$4,270,450 in disgorgement, representing the ill-gotten gains he received as a result of his violations of the federal securities laws, and \$464,271.47 in prejudgment interest.

II. CIVIL MONEY PENALTY

IT IS FURTHER ORDERED AND ADJUDGED that pursuant to Section 20(d) of the Securities Act of 1933, 15 U.S.C. § 77t(d), and Section 21(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u(d)(3), Smith is hereby ordered to pay a civil penalty in the amount of \$120,000.

III. PAYMENT INSTRUCTIONS

IT IS FURTHER ORDERED AND ADJUDGED that Smith's payment of disgorgement, prejudgment interest, and civil penalty shall be due and payable within ten (10) days from the date of this Final Judgment. Payments shall be made to the Clerk of this Court, together with a cover letter identifying Smith 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. Smith shall simultaneously transmit photocopies of such payment and letter to: Roger Cruz, Senior Trial Counsel, U.S. Securities & Exchange Commission, 801 Brickell Avenue, Ste. 1800, Miami, FL 33131. By making this payment, Smith relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Smith. Smith 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 USC § 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.

IV. RULE 54(b) CERTIFICATION


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.

V. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction over this matter and Smith in order to implement and carry out the terms of all Orders and Decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

DONE AND ORDERED in Chambers in Orlando, Florida, this 31 day of August, 2007.

SHERYL L. LOESCH, CLERK


C. Houston, Deputy Clerk

Copies to:

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