

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGE MUKASEY  
05 CV 9921

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

BERTON M. HOCHFELD and  
HOCHFELD CAPITAL MANAGEMENT, INC.,

Defendants.

CIV. ( )

FINAL JUDGMENT

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: 1506  
DATE FILED: 15/06

FINAL JUDGMENT OF PERMANENT INJUNCTION AND  
OTHER RELIEF AS TO DEFENDANTS

BERTON M. HOCHFELD AND HOCHFELD CAPITAL MANAGEMENT, LLC

The Securities and Exchange Commission having filed a Complaint and Defendants Berton M. Hochfeld ("Hochfeld") and Hochfeld Capital Management, LLC ("HCM LLC") having entered a general appearance; consented to the Court's jurisdiction over them 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.

FRAUD IN VIOLATION OF  
SECTION 17(a) OF THE SECURITIES ACT

IT IS ORDERED, ADJUDGED AND DECREED that Hochfeld and HCM LLC, their officers, agents, servants, employees, representatives, and all persons in active concert or participation with them, and each of them, directly or indirectly, who receive actual notice of this

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Final Judgment, by personal service or otherwise, be and they hereby are, permanently restrained and enjoined from, directly or indirectly, singly or in concert, as aiders and abettors or otherwise, 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:

- (a) knowingly or recklessly employing any device, scheme or artifice to defraud;
- (b) obtaining money or property by means of any untrue statement of material fact or omission to state any material fact necessary in order to make the statement made, in light of the circumstances under which it was 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 purchasers or prospective purchasers of any such security,

in violation of Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77q(a)(1), 77q(a)(2) and 77q(a)(3)].

## II.

### **FRAUD IN VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 THEREUNDER**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Hochfeld and HCM LLC, their officers, agents, servants, employees, representatives, and all persons in active concert or participation with them, and each of them, directly or indirectly, who receive actual notice of this Final Judgment, by personal service or otherwise, be and they hereby are, permanently restrained and enjoined from, knowingly, willfully, or recklessly, directly or indirectly, singly or in concert, as aiders and abettors or otherwise, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange:

- (a) employing any device, scheme or artifice to defraud;

- (b) making any untrue statements of 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,

in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5], thereunder.

### III.

#### **DISGORGEMENT AND CIVIL PENALTY**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Hochfeld and HCM LLC shall be jointly and severally liable with each other to pay disgorgement in the amount of \$77,915, representing the proceeds they received as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$5,545, for a total of \$83,460 (the "disgorgement amount").

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Hochfeld and HCM LLC shall be jointly and severally liable with each other to pay a civil penalty in the amount of \$75,000, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 78t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78(d)(3)].

Hochfeld and HCM LLC shall, within one year of the entry of this Final Judgment, pay the disgorgement amount and the civil penalty amount to the Securities and Exchange Commission as follows: (1) \$40,000 shall be due and payable within ten business days after entry of this Final Judgment; (2) three payments of \$30,000 each shall be due and payable within three months, six months and nine months of the entry of this Final Judgment; and (3) \$28,460

shall be due and payable within one year of the entry of this Final Judgment. Interest shall accrue on the amount remaining after the initial \$40,000 payment and after each subsequent payment at a rate of interest set forth in Rule 600(b) of the Commission's Rules of Practice, 17 C.F.R. §201.600(b), from the date of entry of the Final Judgment until such amount is paid in full. All payments shall be made by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. All payments shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Berton M. Hochfeld and Hochfeld Capital Management, LLC as defendants 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; a copy of said letter and check or money order shall be sent to Chedly C. Dumornay, Securities and Exchange Commission, Southeast Regional Office, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131. Hochfeld and HCM LLC shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

If Hochfeld and HCM LLC fail to make any single payment, or part of any single payment, within the precise time specified for such payment as set forth in the preceding paragraph, the installment terms of that paragraph shall no longer apply, and the full amount of Hochfeld's and HCM LLC's remaining unpaid disgorgement amount and civil penalty shall be immediately due, owing and payable, plus post-judgment interest on such remaining unpaid amount calculated at the rate of interest set forth in Rule 600(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.600(b), from the date of entry of the Final Judgment until such amount is paid in full. Hochfeld and HCM LLC also shall pay post-judgment interest on any delinquent

amounts pursuant to 28 U.S.C. § 1961.

IV.

**INCORPORATION OF CONSENT**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Consents of Hochfeld and HCM LLC are incorporated herein with the same force and effect as if fully set forth herein, and that Hochfeld and HCM LLC shall comply with all of the undertakings and agreements set forth therein.

V.

**RETENTION OF JURISDICTION**

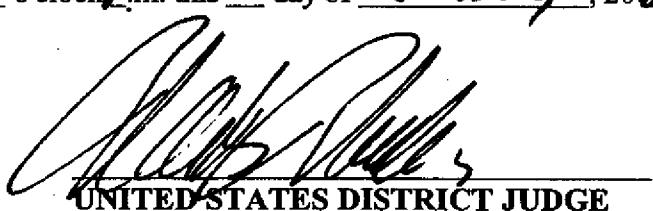
**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VI.

**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.

DONE AND ORDERED at 5:40 o'clock p.m. this 3<sup>rd</sup> day of January, 2006.



UNITED STATES DISTRICT JUDGE

Copies to:

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