

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

THOMAS P. CLARK,

Defendant

No. 06-cv-00380

Judge Ann D. Montgomery

Magistrate Judge Arthur J. Boylan

FINAL JUDGMENT AS TO DEFENDANT THOMAS P. CLARK

The Securities and Exchange Commission having filed a Complaint and Defendant Thomas P. Clark 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); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY 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, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "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 connec-

tion 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 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, directly or indirectly, Section 13(b)(5) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78m(b)(5)] and Rules 13b2-1 and 13b2-2 promulgated thereunder [17 C.F.R. §§ 240.13b2-1, 240.13b2-2], by:

- (a) knowingly falsifying any book, record or account required to be kept under Section 13(b)(2) of the Exchange Act;
- (b) making, or causing to be made, a materially false or misleading statement to an accountant in connection with
 - i. an audit, review or examination of the financial statements of an issuer required to be made under Section 13 of the Exchange Act; or
 - ii. the preparation or filing of any document or report required to be filed

with the Commission under Section 13 of the Exchange Act; or

- (c) omitting to state, or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with:
- i. an audit, review or examination of the financial statements of an issuer required to be made under Section 13 of the Exchange Act; or
 - ii. the preparation or filing of any document or report required to be filed with the Commission under Section 13 of the Exchange Act.

III.

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 aiding and abetting any violation of Section 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)] and Rules 12b-20 and 13a-13 promulgated thereunder [17 CFR §§ 240.12b-20, 240.13a-13] by knowingly providing substantial assistance to an issuer that:

- (a) as to any quarterly report required by Section 13 of the Exchange Act, fails to file a report with the Commission that conforms to generally accepted accounting principles;
- (b) fails to make or keep books, records, and accounts, which in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the

issuer;

- (c) fails to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit the preparation of financial statements in conformity with generally accepted accounting principles; or
- (d) as to any statement or report required by Section 13 of the Exchange Act, fails to include such information as may be necessary to make the required statements, in light of the circumstances under which they are made not misleading.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited, for five years following the date of entry of this Final Judgment, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$20,000 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall make this payment within ten (10) business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment 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 Thomas P. Clark 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 pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the determination to impose a \$20,000.00 civil penalty is contingent upon the accuracy and completeness of Defendant's sworn representations in his August 8, 2005 Statement of Financial Condition which Defendant has updated to March 31, 2006. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Defendant's representations to the Commission 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 Commission may, at its sole discretion and without prior notice to Defendant, petition the Court for an order requiring Defendant to pay the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made. The petition shall specify what financial information the Commission believes to be fraudulent, misleading, inaccurate or incomplete in any material respect, and why. In its petition, the Commission may move the Court to consider all available remedies, including but not limited to ordering Defendant to pay funds or assets, or sanctions for contempt of the Court's Final Judgment. The Commission may

also request additional discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of the Consent or this Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of a civil penalty should not be ordered; (4) contest the imposition of the maximum penalty allowable under the law; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense. Nothing in the preceding clauses (1) through (5) shall be construed to preclude Defendant from contesting that the financial information he provided was fraudulent, misleading, inaccurate or incomplete in any material respect.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent 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.

VIII.

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.

IX.

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.

Dated: October 19, 2006

s/Ann D. Montgomery

ANN D. MONTGOMERY
UNITED STATES DISTRICT JUDGE