

JP

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

FILED  
MAY 16 2006  
By MICHAEL E. KUNZ, Clerk  
Dep. Clerk

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

ROBERT J. DOWNS, JR. and  
STEPHEN J. MESSINA, :

Defendants. :

C.A. No.

06 - 2031

**FINAL JUDGMENT AS TO DEFENDANT STEPHEN J. MESSINA**

The Securities and Exchange Commission (the "Commission") having filed a Complaint and Defendant Stephen J. Messina ("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); 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

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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) to employ any device, scheme, or artifice to defraud;
- (b) 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
- (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 is liable for disgorgement of \$308,335.76, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$18,914.61, for a total of \$327,250.37. Defendant shall satisfy this obligation by paying pursuant to the terms of the payment schedule set forth in paragraph IV below to the Clerk of this Court, together with a cover letter identifying Stephen J. Messina 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. The Clerk shall deposit the funds into an 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 propose a plan to distribute the Fund subject to the Court's approval.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$154,167.88 pursuant to Exchange Act Section 21A [15 U.S.C. § 78u-1]. Defendant shall make this payment pursuant to the terms of the payment schedule set forth in paragraph IV below 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 Stephen J. Messina 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.

IV.

Defendant shall pay \$481,418.25 in four installments, satisfying first the disgorgement and prejudgment interest identified in paragraph II above, according to the following schedule:  
(1) \$150,000 within 10 days of entry of this Final Judgment; (2) \$115,000 within 90 days of entry

of this Final Judgment plus post-judgment interest pursuant to 28 U.S.C. § 1961; (3) \$130,000 within 180 days of entry of this Final Judgment plus post-judgment interest pursuant to 28 U.S.C. § 1961; and (4) the balance of \$86,418.25 within 365 days of entry of this Final Judgment plus post-judgment interest pursuant to 28 U.S.C. § 1961.

If Defendant fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Final Judgment, including post-judgment interest, minus any payments made, shall become due and payable immediately without further application to the Court.

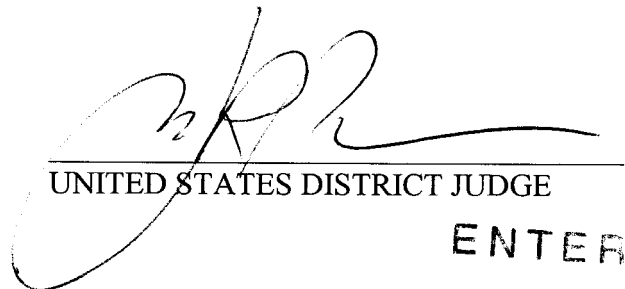
V.

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.

VI.

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.

Dated: 5/16/2006

  
UNITED STATES DISTRICT JUDGE

ENTERED

MAY 16 2006

CLERK OF COURT

5/16/06 *mb*  
William Uehimoto  
Baudreault