

**MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

-vs-

Case No. 2:07-cv-488-FtM-29SPC

DAVID E. TETHER,

Defendant.

JUDGMENT IN A CIVIL CASE

Decision by Court.

IT IS ORDERED AND ADJUDGED that pursuant to the Court's order entered on January 27, 2009, attached is the Final Judgment of Permanent Injunction and other relief as to Defendant David E. Tether.

Date: February 6, 2009

SHERYL L. LOESCH, CLERK

By: /s/ Janet Skipper, Deputy Clerk

c: All parties and counsel of record

CIVIL APPEALS JURISDICTION CHECKLIST

1. **Appealable Orders:** Courts of Appeals have jurisdiction conferred and strictly limited by statute:
 - (a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291:** Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Pitney Bowes, Inc. v. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge's report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).
 - (b) **In cases involving multiple parties or multiple claims,** a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys' fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy's Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).
 - (c) **Appeals pursuant to 28 U.S.C. Section 1292(a):** Appeals are permitted from orders "granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions..." and from "[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed." Interlocutory appeals from orders denying temporary restraining orders are not permitted.
 - (d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court's denial of a motion for certification is not itself appealable.
 - (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541,546,69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass'n v. Blythe Eastman Paine Webber, Inc., 890 F. 2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).
2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:
 - (a) **Fed.R.App.P. 4(a)(1):** A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.
 - (b) **Fed.R.App.P. 4(a)(3):** "If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later."
 - (c) **Fed.R.App.P.4(a)(4):** If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.
 - (d) **Fed.R.App.P.4(a)(5) and 4(a)(6):** Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.
 - (e) **Fed.R.App.P.4(c):** If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.
3. **Format of the notice of appeal:** Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant
4. **Effect of a notice of appeal:** A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

SECURITIES AND EXCHANGE COMMISSION,)	
)	CASE NO. 2:07-cv-488-FtM-29SPC
)	
Plaintiff,)	
)	
v.)	
)	
DAVID E. TETHER,)	
)	
Defendant.)	
)	

**FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AS TO
DEFENDANT DAVID E. TETHER**

The Securities and Exchange Commission having filed a Complaint, and Defendant David E. Tether having: entered a general appearance; consented to the Court’s jurisdiction over him 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 subject matter and personal jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

SECTION 10(b) and RULE 10b-5 OF THE SECURITIES EXCHANGE ACT OF 1934

IT IS ORDERED AND ADJUDGED that Tether, his officers, agents, servants, representatives, 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) and Rule 10b-5 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b) and 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 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.

SECTION 13(g) AND RULES 13d-1(d) AND 13d-2(b)
OF THE EXCHANGE ACT

IT IS FURTHER ORDERED AND ADJUDGED that Tether, his officers, agents, servants, representatives, 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(g) of the Exchange Act [15 U.S.C. § 78m(g)] and Rules 13a-14, 13d-1(d), and 13d-2(b) [17 C.F.R. §§ 240.13a-14, 240.13d-1(d), 240.13d-2(b)] thereunder, by, after becoming directly or indirectly the beneficial owner of more than 5% of any security of a class of registered with the Commission pursuant to Section 12 of the Exchange Act, failing:

- (a) either to send the issuer of such securities and to file with the Commission a statement setting forth such person's identity, residence, citizenship, and the number and description of the share in which such person has an interest and the nature of such interest, or to transmit to the issuer and file with the Commission an amendment if any material change occurs in the facts set forth in such statement, as set forth in Section 13(g) of the Exchange Act; or

(b) to file with the Commission statements containing information required by Schedule 13D or Schedule 13G, including, but not limited to, the number of shares of such security as are beneficially owned, as set forth in Rule 13d-1 and 13d-2 of the Exchange Act.

III.

SECTION 13(a) AND RULES 13(a)-1 AND 13(a)-14 OF THE EXCHANGE ACT

IT IS FURTHER ORDERED AND ADJUDGED that Tether and Tether'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 directly or indirectly, violating Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1 and 13a-14 [17 C.F.R. §§ 240.13a-1 and 240.13a-14] thereunder, by failing to file reports with the Commission that accurately and fairly reflect financial information, include the information expressly required to be included in a statement or report, and such further material information as may be necessary to make the required statements, in the light of the circumstances under which they were made, not misleading, or by directly or indirectly, or by aiding and abetting, filing or causing to be filed with the Commission any annual or quarterly report on behalf of any issuer required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the rules and regulations promulgated thereunder, which contains a certification required by Rule 13a-14 under the Exchange Act [17 C.F.R. § 240.13a-14] which contains any untrue statement of material fact, which omits to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or which omits to disclose any information required to be disclosed.

IV.

SECTION 16(A) AND RULE 16A-3 OF THE EXCHANGE ACT

IT IS FURTHER ORDERED AND ADJUDGED that Tether, his officers, agents, servants, representatives, 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 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rule 16a-3 [17 C.F.R. § 240.16a-3] thereunder, by failing to file reports with the Commission that accurately and fairly reflect his beneficial ownership of any equity security of a class which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] and any changes in such beneficial ownership.

V.

OFFICER AND DIRECTOR BAR

IT IS FURTHER ORDERED AND ADJUDGED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Tether 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. § 78] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VI.

DISGORGEMENT

IT IS FURTHER ORDERED AND ADJUDGED that the disgorgement claim against Tether is dismissed.

VII.

CIVIL PENALTY

IT IS FURTHER ORDERED AND ADJUDGED that based on Defendant's sworn representations in his Statement of Financial Condition dated November 13, 2008, and other documents and information submitted to the Commission, the Court is not ordering Tether to pay a civil penalty. The determination not to impose a civil penalty is contingent upon the accuracy and completeness of Tether's Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Tether'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 Tether, petition the Court for an order requiring Tether 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 Tether was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Tether to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Tether 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 civil penalty allowable under the law; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

VIII.

INCORPORATION OF TETHER'S CONSENT

IT IS FURTHER ORDERED AND ADJUDGED that the Consent of Tether is incorporated herein with the same force and effect as if fully set forth herein, and that Tether shall comply with all of the undertakings and agreements set forth herein.

IX.

RETENTION OF JURISDICTION

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

X.

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 directed to enter Judgment forthwith and without further notice by attaching a copy of this Final Judgment of Permanent Injunction and Other Relief As To Defendant David E. Tether to the judgment, terminating all pending deadlines, and closing the case.

DONE AND ORDERED this 27th day of January, 2009 at Fort Myers, Florida.



JOHN E. STEELE
United States District Judge

Copies to all counsel of record