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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELECTRONICALLY FILED
DOC #:
DATE FILED: 9-28-09

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MITCHEL S. GUTTENBERG,
ERIK R. FRANKLIN,
DAVID M. TAVDY,
MARK E. LENOWITZ,
ROBERT D. BABCOCK,
ANDREW A. SREBNIK,
KEN OKADA,
DAVID A. GLASS,
MARC R. JURMAN,
RANDI E. COLLOTTA,
CHRISTOPHER K. COLLOTTA,
Q CAPITAL INVESTMENT PARTNERS, LP,
DSJ INTERNATIONAL RESOURCES LTD. (d/b/a
CHELSEY CAPITAL), and
JASPER CAPITAL LLC,

Defendants.

C.A. No. 07 CV 1774 (*Pkc*)

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**FINAL JUDGMENT AS TO DEFENDANT ERIK R. FRANKLIN AND Q CAPITAL
INVESTMENT PARTNERS, LP**

The Securities and Exchange Commission having filed a Complaint and Defendants Erik R. Franklin ("Franklin") and Q Capital Investment Partners, LP ("Q Capital") (collectively "Defendants") and having entered a general appearance; consented to the Court's jurisdiction over Defendants 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 Defendants and Defendants' 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 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 Defendants and Defendants' 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 Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] 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, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are jointly and severally liable for disgorgement of \$5,400,000. Based on Franklin's sworn representations in his Statement of Financial Condition dated March 24, 2009, and other documents and information submitted to the Commission, however, the Court is not ordering Defendants to pay a civil penalty and payment of all but \$290,000 of the disgorgement is waived. Defendants shall satisfy this disgorgement obligation by (1) paying \$230,000 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; and (2) paying the remainder of this disgorgement obligation, \$60,000, within 1 year 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. Payments for this disgorgement obligation 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 Franklin and Q Capital as the 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 this letter and payment shall also be delivered to or mailed to Christopher Swart, Securities and Exchange Commission, 100 F Street NE, Mail Stop 6041, Washington, DC 20549. Defendants shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

The determination not to impose a civil penalty and to waive all but \$290,000 of the disgorgement is contingent upon the accuracy and completeness of Franklin's Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Franklin'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 Defendants, petition the Court for an order requiring Defendants to pay the unpaid portion of the disgorgement, post-judgment interest thereon, and 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 Franklin 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 Defendants 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. Defendants 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 disgorgement, post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

IV.

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 Defendants shall comply with all of the undertakings and agreements set forth therein.

IV.

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.

V.

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: 9-28-09


THE HONORABLE P. KEVIN CASTEL
UNITED STATES DISTRICT JUDGE