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BRUCE S. JENKINS

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

v.

THOMPSON CONSULTING, INC., a Utah corporation,
KYLE J. THOMPSON, E. SHERMAN WARNER and
DAVID C. CONDIE

DEFENDANTS, and

APEX EQUITY OPTIONS FUND, LP, a Delaware limited
partnership, PREMIER PORTFOLIO, LP, an Anguilla
limited partnership, M & K HOLDINGS, LLC, a Utah
limited liability company, WILLOWBEND PROPERTY
COMPANY, LLC, a Utah limited liability company,
MICHAEL T. MORLEY and KRYSTIN P. MORLEY,

RELIEF DEFENDANTS.

Civil No. 2:08CV00171

Judge Bruce S. Jenkins

**FINAL JUDGMENT AS TO DEFENDANTS THOMPSON CONSULTING, INC. AND
KYLE J. THOMPSON**

The Securities and Exchange Commission (“Commission”) having filed a Complaint and Defendants Thompson Consulting, Inc. (“TCI”) and Kyle J. Thompson (“Thompson”) (collectively “Defendants”) 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 TCI and Thompson and their 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)(2) and (3) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)(2) and (3)] 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 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
- (b) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant TCI and its agents, servants, employees, attorneys, and all persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 206(2) of the

Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. §§ 80b-6(2)] 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:

- (1) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant TCI is liable for disgorgement of \$3,617,328 representing funds received as a result of the conduct alleged in the Complaint together with prejudgment interest thereon in the amount of \$761,225.27 for a total of \$4,378,553.27. Based on TCI's sworn representations in its Statement of Financial Condition dated April 6, 2010, and other documents and information submitted to the Commission, however, the Court is not ordering TCI to pay a civil penalty and payment of all but \$400,000 of the disgorgement and pre-judgment interest thereon is waived.

TCI shall satisfy this obligation by paying \$400,000 within 14 days after entry of this Final Judgment to the Clerk of this Court, together with a cover letter identifying TCI 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. TCI shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, TCI relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to TCI. TCI shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS") or any other type of 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 determination not to impose a civil penalty and to waive payment of all but \$400,000 of the disgorgement is contingent upon the accuracy and completeness of TCI’s Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that TCI’s representations to the Commission concerning its 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 TCI petition the Court for an order requiring TCI to pay the unpaid portion of the disgorgement, pre-judgment and 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 TCI 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 TCI 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. TCI 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, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment 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 HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Kyle J. Thompson is liable for disgorgement of \$522,159, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$109,882.38, for a total of \$632,041.38. Based on Thompson's sworn representations in his Statement of Financial Condition dated April 6, 2010, and other documents and information submitted to the Commission, however, the Court is not ordering Thompson to pay a civil penalty and payment of all of the disgorgement and pre-judgment interest thereon is waived. The determination not to impose a civil penalty and to waive payment of all of the disgorgement and pre-judgment interest is contingent upon the accuracy and completeness of Thompson's Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Thompson'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 Thompson, petition the Court for an order requiring Thompson to pay the unpaid portion of the disgorgement, pre-judgment and 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 Thompson 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 Thompson 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. Thompson 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, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment 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.

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 Defendants and Relief Defendants 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.

VII.

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 this ^{7th} 16 day of August 2010.


UNITED STATES DISTRICT JUDGE