

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

STEVEN WEVODAU,

Defendant.

SDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/30/08

08 Civ. 8398 (EBD)

FINAL JUDGMENT
ON CONSENT
AGAINST DEFENDANT
STEVEN WEVODAU

#08/175

FILED IN COURT
SEP 30 2008
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

The Securities and Exchange Commission having filed a Complaint and Defendant Steven Wevodau (“Wevodau”) 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 jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment,

NOW THEREFORE:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Wevodau and Wevodau’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 (“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 the mails, or 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 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 FURTHER ORDERED, ADJUDGED AND DECREED that Wevodau and Wevodau'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, knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record or account described in Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)] in violation of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Wevodau and Wevodau'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, falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the

Exchange Act [15 U.S.C. §78m(b)(2)(A)] in violation of Rule 13b2-1 of the Exchange Act [17 C.F.R. §240.13b2-1].

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Wevodau and Wevodau'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, while an officer or director of an issuer:

- (a) making or causing to be made a materially false or misleading statement, or
- (b) 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 are made, not misleading, to an accountant in connection with (i) any audit, review or examination of the financial statements of such issuer required to be made pursuant to the rules and regulations of the Exchange Act, 17 C.F.R. §§ 240.0-1 et seq., or (ii) the preparation or filing of any document or report required to be filed with the Commission,

in violation of Rule 13b2-2 of the Exchange Act [17 C.F.R. § 240.13b2-2].

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Wevodau and Wevodau'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) of the Exchange Act [15 U.S.C. §§ 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13], by knowingly providing substantial assistance to an issuer that:

- (a) fails to file with the Commission in accordance with the rules and regulations prescribed by the Commission, such information and documents as the Commission has prescribed;
- (b) files with the Commission information and documents, including the amendments thereto, which contain false and materially misleading statements or omissions of material fact; or
- (c) fails to file such further material information as is necessary to make the required statements made therein, in light of the circumstances in which they were made, not misleading,

unless Wevodau acts in good faith and does not directly or indirectly induce the act or acts constituting the violation.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Wevodau and Wevodau'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, aiding and abetting the violation of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)] by knowingly providing substantial assistance to an issuer that fails to:

- (a) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; or
- (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences,

unless Wevodau acts in good faith and does not directly or indirectly induce the act or acts constituting the violation.

VII.

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)], Wevodau 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)].

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Wevodau is liable for disgorgement of \$72,485.84, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest in the amount of \$27,514.16, and a civil penalty in the amount of \$125,000 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(c)]. Wevodau shall satisfy this obligation by paying \$225,000 pursuant to the terms of the payment schedule set forth in paragraph IX., below, to the Clerk of this Court, together with a cover letter identifying Steven Wevodau 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. Wevodau shall simultaneously transmit photocopies of such payment and letter to:

Leslie Kazon, Esq.
Assistant Regional Director
Securities and Exchange Commission
New York Regional Office
3 World Financial Center
New York, New York 10281
Facsimile: (212) 336-1332.

By making these payments, Wevodau relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Wevodau. Wevodau shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS"). These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the CRIS 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 by motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Wevodau shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Wevodau's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Wevodau's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Wevodau shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Wevodau by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

IX.

Wevodau shall pay \$225,000 in three installments according to the following schedule: (1) \$75,000 within 10 days of the entry of this Final Judgment; (2) \$75,000, plus post-judgment interest pursuant to 28 U.S.C. § 1961, within six months of the entry of this Final Judgment; and (3) \$75,000, plus post-judgment interest pursuant to 28 U.S.C. § 1961, within twelve months of the entry of this Final Judgment. In the event Wevodau pays any of the second or third installments before the due date under the foregoing schedule, post-judgment interest shall be reduced accordingly.

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

X.

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

XI.

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

XII.

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.

CONSENT OF DEFENDANT
STEVEN WEVODAU

1. Defendant Steven Wevodau (“Wevodau”) waives service of a summons and the Complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over him and over the subject matter of this action.

2. Without admitting or denying the allegations of the Complaint (except as to personal and subject matter jurisdiction, which Wevodau admits), Wevodau hereby consents to the entry of the Final Judgment in the form attached hereto (the “Final Judgment”) and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Wevodau from violating Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13b2-1 and 13b2-2 promulgated thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1 and 240.13b2-2];
- (b) permanently restrains and enjoins Wevodau from aiding and abetting any violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13];
- (c) orders Wevodau to pay disgorgement in the amount of \$72,485.84 plus prejudgment interest in the amount of \$27,514.16;

- (d) orders Wevodau to pay a civil penalty in the amount of \$125,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(c)];
- (e) provides that payment of the foregoing disgorgement, prejudgment interest and civil penalty shall be made in three installments according to the following payment schedule: (1) \$75,000 within 10 days of the entry of the Final Judgment; (2) \$75,000, plus post-judgment interest pursuant to 28 U.S.C. § 1961, within six months of the entry of the Final Judgment; and (3) \$75,000, plus post-judgment interest pursuant to 28 U.S.C. § 1961, within twelve months of the entry of the Final Judgment, with all outstanding payments, including post-judgment interest, becoming due and payable immediately without further application to the Court in the event Wevodau fails to make any of the scheduled payments on the date or in the amount required under the foregoing schedule; and further provides that in the event Wevodau pays any of the second or third installments before the due date under the foregoing schedule, post-judgment interest shall be reduced accordingly.
- (f) prohibits Wevodau for five years following the date of entry of this Final Judgment, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], 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. § 781], or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

3. Wevodau acknowledges that the civil penalty paid pursuant to the Final Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, the civil penalty shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Wevodau agrees that he shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Wevodau's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Wevodau's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Wevodau agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this action. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Wevodau by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

4. Wevodau agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Wevodau pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof

are added to a distribution fund or otherwise used for the benefit of investors. Wevodau further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Wevodau pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

5. Wevodau waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6. Wevodau waives the right, if any, to appeal from the entry of the Final Judgment.

7. Wevodau enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Wevodau to enter into this Consent.

8. Wevodau agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

9. Wevodau will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Wevodau waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Wevodau of its terms and conditions. Wevodau further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Wevodau has received and read a copy of the Final Judgment.

11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Wevodau in this civil proceeding. Wevodau acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Wevodau waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Wevodau further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Wevodau understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

12. Wevodau understands and agrees to comply with the Commission's policy "not to permit a Wevodau or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Wevodau agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Wevodau hereby withdraws any papers filed in this action to the extent that they

deny any allegation in the complaint. If Wevodau breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Wevodau's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Wevodau hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Wevodau to defend against this action. For these purposes, Wevodau agrees that Wevodau is not the prevailing party in this action since the parties have reached a good faith settlement..

14. Wevodau agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

Date:

In Re:

-v-

Case #: ()

Dear Litigant,

Enclosed is a copy of the judgment entered in your case.

Your attention is directed to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, which requires that if you wish to appeal the judgment in your case, you must file a notice of appeal within 30 days of the date of entry of the judgment (60 days if the United States or an officer or agency of the United States is a party).

If you wish to appeal the judgment but for any reason you are unable to file your notice of appeal within the required time, you may make a motion for an extension of time in accordance with the provision of Fed. R. App. P. 4(a)(5). That rule requires you to show "excusable neglect" or "good cause" for your failure to file your notice of appeal within the time allowed. Any such motion must first be served upon the other parties and then filed with the Pro Se Office no later than 60 days from the date of entry of the judgment (90 days if the United States or an officer or agency of the United States is a party).

The enclosed Forms 1, 2 and 3 cover some common situations, and you may choose to use one of them if appropriate to your circumstances.

The Filing fee for a notice of appeal is \$5.00 and the appellate docketing fee is \$250.00 payable to the "Clerk of the Court, USDC, SDNY" by certified check, money order or cash. **No personal checks are accepted.**

J. Michael McMahon, Clerk of Court

by: _____

, Deputy Clerk

APPEAL FORMS

Docket Support Unit

Revised: March 4, 2003

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-----X
|
-V- |
|
-----X

NOTICE OF APPEAL

civ. ()

Notice is hereby given that _____
(party)
hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment [describe it]

entered in this action on the _____ day of _____, _____.
(day) (month) (year)

(Signature)

(Address)

(City, State and Zip Code)

Date: _____ () _____ - _____
(Telephone Number)

Note: You may use this form to take an appeal provided that it is received by the office of the Clerk of the District Court within 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 1

APPEAL FORMS

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-----X
|
-V- |
|
-----X

MOTION FOR EXTENSION OF TIME
TO FILE A NOTICE OF APPEAL

civ. ()

Pursuant to Fed. R. App. P. 4(a)(5), _____ respectfully
(party)
requests leave to file the within notice of appeal out of time. _____
(party)
desires to appeal the judgment in this action entered on _____ but failed to file a
(day)
notice of appeal within the required number of days because:

[Explain here the "excusable neglect" or "good cause" which led to your failure to file a notice of appeal within the required number of days.]

(Signature)

(Address)

(City, State and Zip Code)

Date: _____ () _____ - _____
(Telephone Number)

Note: You may use this form, together with a copy of Form 1, if you are seeking to appeal a judgment and did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be received in the office of the Clerk of the District Court no later than 60 days of the date which the judgment was entered (90 days if the United States or an officer or agency of the United States is a party).

FORM 2

APPEAL FORMS

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-----X
|
-V- |
|
-----X

NOTICE OF APPEAL
AND
MOTION FOR EXTENSION OF TIME

civ. ()

1. Notice is hereby given that _____ hereby appeals to
(party)
the United States Court of Appeals for the Second Circuit from the judgment entered on _____.
[Give a description of the judgment]

2. In the event that this form was not received in the Clerk's office within the required time
_____ respectfully requests the court to grant an extension of time in
(party)
accordance with Fed. R. App. P. 4(a)(5).

a. In support of this request, _____ states that
(party)
this Court's judgment was received on _____ and that this form was mailed to the
(date)
court on _____ .
(date)

(Signature)

(Address)

(City, State and Zip Code)

Date: _____ () _____ - _____
(Telephone Number)

Note: You may use this form if you are mailing your notice of appeal and are not sure the Clerk of the District Court will receive it within the 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 3

APPEAL FORMS

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-----X
|
-V-
|
-----X

AFFIRMATION OF SERVICE

civ. ()

I, _____, declare under penalty of perjury that I have
served a copy of the attached _____

_____ upon _____

_____ whose address is: _____

Date: _____
New York, New York

(Signature)

(Address)

(City, State and Zip Code)

FORM 4

APPEAL FORMS