

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against-

DAVID LEE, ET AL.,

Defendants.

08 Civ. 9961 (GBD)

**JUDGMENT AS TO DEFENDANT KEVIN P. CASSIDY**

Plaintiff Securities and Exchange Commission ("Commission") having filed a complaint ("Complaint"), and defendant Kevin P. Cassidy ("Cassidy") 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 judgment ("Judgment"), waived findings of fact and conclusions of law, and waived any right to appeal from this Judgment:

**I.**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that defendant Cassidy and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this 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 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 defendant Cassidy and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (“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 HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that defendant Cassidy and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from, directly or indirectly:

- (a) violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by 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)];
- (b) violating Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1] by 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)];
- (c) violating Rule 13b2-2 under the Exchange Act [17 C.F.R. § 240.13b2-2] by making or causing to be made a materially false or misleading statement to an accountant, or omitting to state, or causing another person to omit to state, any material fact necessary in order to make statements made to an accountant, in light of the circumstances under which such statements were made, not misleading, in connection with:
  - (i) any audit, review or examination of the financial statements of an issuer required to be made pursuant to Section 13 of the Exchange Act [15 U.S.C. § 78m]; or

- (ii) the preparation or filing of any document or report required to be filed with the Commission pursuant to Section 13 of the Exchange Act [15 U.S.C. § 78m] or otherwise; and
- (d) violating Rule 13a-14 under the Exchange Act [17 C.F.R. § 240.13a-14] by falsely stating, in any certification of an issuer's report prescribed by that rule, that the report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statement made, in light of the circumstances under which such statement was made, not misleading with respect to the period covered by the report.

#### IV.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that defendant Cassidy and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this 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)] or Rules 12b-20, 13a-1, 13a-13 or 13a-16 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13 or 240.13a-16] by knowingly providing substantial assistance to an issuer, having a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)], that fails to file with or furnish to the Commission any report, information, or document required to be filed with or furnished to the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the rules and regulations promulgated thereunder, or files or furnishes such a report that (1) contains an untrue statement of material fact; or (2) fails to include, in addition to the information required to be stated in such

report, information or document, such further material information as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

V.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that defendant Cassidy and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting violations of Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)] by knowingly providing substantial assistance to an issuer, having a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)], that:

- (a) fails to 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) fails to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that
  - (1) transactions are executed in accordance with management's general or specific authorization;
  - (2) 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;

- (3) access to assets is permitted only in accordance with management's general or specific authorization; and
- (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

**VI.**

**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)] and Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], defendant Cassidy is prohibited 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)].

**VII.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that upon motion of the Commission, the Court shall determine whether it is appropriate to order defendant Cassidy to pay disgorgement of ill-gotten gains and/or a civil monetary penalty 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(d)(3)] and, if so, the amounts of such disgorgement and/or civil penalty. If disgorgement is ordered, defendant Cassidy shall pay prejudgment interest thereon based on the rate of interest used by the Internal Revenue Service for underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or a civil penalty, and at any hearing held on such a motion: (a) defendant Cassidy will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b)

defendant Cassidy may not challenge the validity of the Consent of Defendant Kevin P. Cassidy (“Consent”) or this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission’s motion for disgorgement and/or a civil penalty, the parties may take discovery, including discovery from appropriate non-parties.

**VIII.**

**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 defendant Cassidy shall comply with all of the undertakings and agreements set forth therein.

**IX.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, implementing and enforcing the terms and conditions of this Judgment.

**X.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, 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 Judgment forthwith and without further notice.

**CONSENT OF DEFENDANT KEVIN P. CASSIDY**

1. Defendant Kevin P. Cassidy (“Cassidy”) acknowledges having been served with the complaint in this action (“Complaint”), enters a general appearance, and consents to the Court’s jurisdiction over him and over the subject matter of this action.

2. Cassidy has pleaded guilty to criminal conduct relating to certain matters alleged in the complaint in this action. Specifically, in United States v. Cassidy, 08 Cr. 1101 (TPG) (S.D.N.Y.) (the “Criminal Case”), Cassidy pleaded guilty to violating 18 U.S.C. § 371. In connection with that plea, Cassidy admitted the facts set out in the transcript of his plea allocution that is attached as Exhibit A to this Consent. The Consent shall remain in full force and effect regardless of the existence or outcome of any further proceedings in the Criminal Case.

3. Defendant Cassidy hereby consents to the entry of the judgment in the form attached hereto (the “Judgment”) and incorporated by reference herein, which among other things:

- a. permanently restrains and enjoins defendant Cassidy 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, 13a-14, 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1 and 240.13b2-2], and Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], and from aiding and abetting violations of Sections 13(a) and 13(b)(2) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)] and Rules 12b-20, 13a-1, 13a-13, and 13a-16 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-16]; and



- b. prohibits Cassidy 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)].

4. Defendant Cassidy agrees that, upon motion of the Commission, the Court shall determine whether it is appropriate to order him to pay disgorgement of ill-gotten gains and/or such civil penalty 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(d)(3)] and, if so, the amount(s) of the disgorgement and/or civil penalty. Defendant Cassidy further understands that, if disgorgement is ordered, he shall pay prejudgment interest thereon based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). Defendant Cassidy further agrees that in connection with the Commission's motion for disgorgement and/or a civil penalty, and at any hearing held on such a motion: (a) he will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) he may not challenge the validity of this Consent or the Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or a civil penalty, the parties may take discovery, including discovery from appropriate non-parties.

5. Defendant Cassidy 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 defendant Cassidy may pay pursuant to the Judgment or any future judgments in this action, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant Cassidy 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 defendant Cassidy may pay pursuant to the Judgment or any future judgments in this action, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

6. Defendant Cassidy waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

7. Defendant Cassidy waives the right, if any, to a jury trial and to appeal from the entry of the Judgment.

8. Defendant Cassidy 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 defendant Cassidy to enter into this Consent.

9. Defendant Cassidy agrees that this Consent shall be incorporated into the Judgment with the same force and effect as if fully set forth therein.

10. Defendant Cassidy will not oppose the enforcement of the 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.

11. Defendant Cassidy waives service of the Judgment and agrees that entry of the Judgment by the Court and filing with the Clerk of the Court will constitute notice to defendant Cassidy of its terms and conditions. Defendant Cassidy further agrees to provide counsel for the

Commission, within thirty days after the Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that defendant Cassidy has received and read a copy of the Judgment.

12. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against defendant Cassidy in this proceeding. Defendant Cassidy 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. Defendant Cassidy waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant Cassidy 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, defendant Cassidy understands that he shall not be permitted to contest the factual allegations of the Complaint.

13. Defendant Cassidy understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," 17 C.F.R. § 202.5(e). In compliance with this policy, defendant Cassidy acknowledges the guilty plea for related criminal conduct described in paragraph 2 above, and 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, defendant Cassidy hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If defendant Cassidy breaches this agreement, the Commission may petition the Court to vacate the Judgment and restore this action to its active docket. Nothing in this paragraph affects defendant Cassidy's: (a) testimonial obligations; or (b) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

14. Defendant Cassidy 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 defendant Cassidy to defend against this action. For these purposes, Defendant Cassidy agrees that he is not the prevailing party in this action since the parties have reached a good faith settlement.

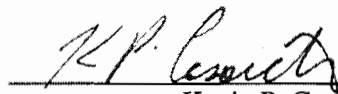
15. Defendant Cassidy agrees that the Commission may present the Judgment to the Court for signature and entry without further notice.

16. Defendant Cassidy agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Judgment and for all other purposes.

17. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, defendant Cassidy (i) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (ii) appoints his

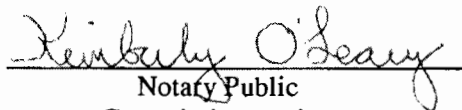
attorney, Lawrence R. Gelber, Esq., Attorney at Law, The Vanderbilt Plaza, 34 Plaza Street, Suite 1107, Brooklyn, New York 11238, as agent to receive service of such notices and subpoenas; (iii) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses defendant Cassidy's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (iv) consents to personal jurisdiction over him in any United States District Court for purposes of enforcing any such subpoena.

Dated: April 13, 2012

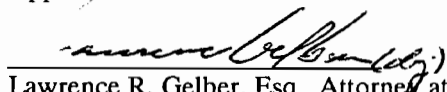
  
\_\_\_\_\_  
Kevin P. Cassidy

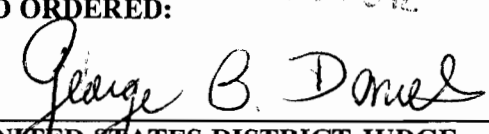
On April 13, 2012, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

KIMBERLY O'LEARY  
NOTARY PUBLIC, State of New York  
No. 01OL6190213  
Qualified in Westchester County  
Term Expires July 21, 2012

  
\_\_\_\_\_  
Notary Public  
Commission expires:

Approved as to form:

  
\_\_\_\_\_  
Lawrence R. Gelber, Esq., Attorney at Law  
The Vanderbilt Plaza, 34 Plaza Street, Suite 1107  
Brooklyn, New York 11238  
(718) 638-2383  
Attorney for Defendant

SO ORDERED: **APR 18 2012**  
  
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

GEORGE B. DANIELS