



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

ADAM SMITH,

Defendant.

11 CV 0535 (JSR)

ECF CASE

FINAL JUDGMENT AS TO DEFENDANT ADAM SMITH

The Securities and Exchange Commission having filed a Complaint and Defendant Adam Smith ("Defendant") having entered a general appearance; agreed that the Court has jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; 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 Defendant and Defendant'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 (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 FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for a total of \$149,706.25, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon. In the event that an order of forfeiture is entered against Defendant in the criminal case before the United States District Court of the Southern District of New York titled United States v. Smith, 11-CR-00079, then Defendant's monetary obligations, including all outstanding pre and post judgment interest, will be credited dollar for dollar by the amount of the forfeiture order. The monetary obligations ordered by this Consent Order shall become due thirty (30) days after entry of the Judgment of Conviction in the criminal case, or two (2) years from the date of the entry of this Consent Order, whichever comes first. Defendant shall pay the monetary obligations ordered by this Consent Order (minus any amount ordered in forfeiture) by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Accounts Receivable, Securities and Exchange Commission, 100 F Street NE, Mail Stop 6042, Washington, DC 20549, and shall be accompanied by a letter identifying Defendant's name as 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. A copy of the letter shall be sent to counsel of record for the Commission in this action. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury. Defendant shall provide counsel of record for the Commission with a copy of the Judgment of Conviction in the criminal action within five (5) days of its entry.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that based on Defendant's agreement to cooperate in a Commission investigation and/or related enforcement action, the Court is not ordering Defendant to pay a civil penalty. If at any time following the entry of the Final Judgment the Commission obtains information indicating that Defendant knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Commission may, at its sole discretion and without prior notice to the Defendant, petition the Court for an order requiring Defendant to pay a civil penalty. In connection with any such petition and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Judgment, this Consent, or any related Undertakings; (c) the allegations of the Complaint, solely for the purposes of such motion, shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion – whether a civil penalty is warranted on the basis that the Defendant knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding and, if so, the amount of the civil penalty – 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. Under these circumstances, the parties may take discovery, including discovery from appropriate non-parties, but only as expressly approved by the Court.

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

V.

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.

Dated: _____

5/28/11



UNITED STATES DISTRICT JUDGE