

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 2:15 cv 03883 (KM-JBC)

NICHOLAS LATTANZIO,
BLACK DIAMOND INVESTMENTS, LP,
BLACK DIAMOND GP, LLC,
BLACK DIAMOND INVESTMENTS LLC,
and BLACK DIAMOND CAPITAL
APPRECIATION FUND, L.P.,

Defendants.

**FINAL CONSENT JUDGMENT AS TO DEFENDANTS NICHOLAS LATTANZIO,
BLACK DIAMOND INVESTMENTS, LP, BLACK DIAMOND GP, LLC,
BLACK DIAMOND INVESTMENTS LLC, AND
BLACK DIAMOND CAPITAL APPRECIATION FUND, L.P.**

The Securities and Exchange Commission having filed a Complaint and Defendants Nicholas Lattanzio (“Lattanzio”), Black Diamond Investments, LP (“Black Diamond Investments”), Black Diamond GP, LLC (“Black Diamond GP”), Black Diamond Investments LLC (“Black Diamond LLC”) and Black Diamond Capital Appreciation Fund, L.P. (“Black Diamond Fund” or “the Fund”) (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; 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 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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are permanently restrained and enjoined from violating, directly or indirectly, 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:

- (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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Lattanzio, Black Diamond Investments, Black Diamond GP, and Black Diamond LLC are permanently restrained and enjoined from violating, directly or indirectly, Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-6(1-2, 4)] and Rule 206(4)-8 promulgated thereunder [17 C.F.R. § 206(4)-8] by using any means or instrumentality of interstate commerce, or the mails to: (a) employ any device, scheme, or artifice to defraud any client or prospective client; (b) engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; or (c) engage in any act, practice, or course of business which is fraudulent, deceptive or

manipulative, including, while acting as an investment adviser to a pooled investment vehicle, to (i) 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 to any investor or prospective investor in the pooled investment vehicle; or (ii) otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) officers, agents, servants, employees, and attorneys of Defendants Lattanzio, Black Diamond Investments, Black Diamond GP, and Black Diamond LLC; and (b) other persons in active concert or participation with Defendants Lattanzio, Black Diamond Investments, Black Diamond GP, and Black Diamond LLC or with anyone described in (a).

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are liable for disgorgement of \$3,929,600.00, representing profits gained as a result of the conduct alleged in the Complaint, provided, however, that Defendants' obligation to pay disgorgement is deemed satisfied by the order of restitution of \$3,929,600.00 entered against Defendant Lattanzio in the parallel criminal case titled United States v. Lattanzio, 2:15cr00446 (D.N.J.) (KM) ("Parallel Criminal Action").

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that based on the prison sentence of 72 months that Defendant Lattanzio received pursuant to his conviction in the Parallel Criminal Action, the Court is not imposing a civil monetary penalty against Defendants.

VI.

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.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant Lattanzio, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant Lattanzio under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant Lattanzio of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

VIII.

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.

**CONSENT OF DEFENDANTS DEFENDANTS NICHOLAS LATTANZIO,
BLACK DIAMOND INVESTMENTS, LP, BLACK DIAMOND GP, LLC,
BLACK DIAMOND INVESTMENTS LLC, AND
BLACK DIAMOND CAPITAL APPRECIATION FUND, L.P.**

1. Defendants Nicholas Lattanzio ("Lattanzio"), Black Diamond Investments, LP ("Black Diamond Investments"), Black Diamond GP, LLC ("Black Diamond GP"), Black Diamond Investments LLC ("Black Diamond LLC") and Black Diamond Capital Appreciation Fund, L.P. ("Black Diamond Fund" or "the Fund") (collectively, "Defendants") acknowledge having been served with the complaint in this action, enter a general appearance, and admit the Court's jurisdiction over Defendants and over the subject matter of this action.

2. Defendant Lattanzio has been convicted after trial of criminal conduct relating to the matters alleged in the Complaint. Specifically, in United States v. Lattanzio, 2:15cr00446 (D.N.J.) (KM), Defendant Lattanzio was convicted of two counts of securities fraud, violating 15 U.S.C. §§ 78j(b) & 78ff; and two counts of wire fraud, violating 18 U.S.C. § 1343. This Consent shall remain in full force and effect regardless of the existence or outcome of any further proceedings in United States v. Lattanzio.

3. Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein.

4. Defendants waive the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendants waive the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

6. Defendants enter 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 Defendants to

enter into this Consent.

7. Defendants agree that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Defendants 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.

9. Defendants waive 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 Defendants of its terms and conditions. Defendants further agree 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 Defendants have received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendants in this civil proceeding. Defendants acknowledge 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. Defendants waive any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendants further acknowledge 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, Defendants understand that they shall not be permitted to contest the factual allegations of the complaint in this action.

11. Defendants understand and agree to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is 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." As part of Defendants' agreement to comply with the terms of Section 202.5(e), Defendants acknowledge the conviction of Defendant Lattanzio for related conduct described in paragraph 2 above, and: (i) will not take any action or 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; (ii) will not make or permit to be made any public statement to the effect that Defendants do not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendants hereby withdraw any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant Lattanzio under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant Lattanzio of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If Defendants breach 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 Defendants': (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.

12. Defendants hereby waive 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 Defendants to defend against this action. For these purposes, Defendants agree that Defendants are not the prevailing parties in this action since the parties have reached a good faith settlement.

13. Defendants agree that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

14. Defendants agree that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 10/2/19



Nicholas Lattanzio

On _____, 201_, _____, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Notary Public
Commission expires:

Black Diamond Investments, LP

By:
Dated:
Name:
Title:
Address:

[Handwritten Signature]
9/19/19

On _____, 201_____, a person known to me,
personally appeared before me and acknowledged executing the foregoing Consent with full
authority to do so on behalf of Black Diamond Investments, LP as its _____.

Notary Public
Commission expires:

Black Diamond GP, LLC

By:
Dated:
Name:
Title:
Address:

[Handwritten Signature]
9/19/19

On _____, 201_____, a person known to me,
personally appeared before me and acknowledged executing the foregoing Consent with full
authority to do so on behalf of Black Diamond GP, LLC as its _____.

Notary Public
Commission expires:

Black Diamond Investments LLC

By:
Dated:
Name:
Title:
Address:

[Handwritten signature]
9/19/19

On _____, 201_, _____, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent with full authority to do so on behalf of Black Diamond Investments LLC as its _____.

Notary Public
Commission expires:

Black Diamond Capital Appreciation Fund, L.P.

By:
Dated:
Name:
Title:
Address:

[Handwritten signature]
9/19/19

On _____, 201_, _____, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent with full authority to do so on behalf of Black Diamond Capital Appreciation Fund, L.P. as its _____.

Notary Public
Commission expires:

Dated: 1/30/2020

[Handwritten signature: Kevin McNulty]
UNITED STATES DISTRICT JUDGE
Hon. Kevin McNulty