

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

LEON G. COOPERMAN  
and OMEGA ADVISORS, INC.,

Defendants.

Civil Action No. 2:16-cv-05043-JS

**FILED**

**MAY 22 2017**

KATE BARKMAN, Clerk  
By \_\_\_\_\_ Dep. Clerk

**FINAL JUDGMENT AS TO DEFENDANT LEON G. COOPERMAN**

The Securities and Exchange Commission having filed a complaint and Defendant Leon G. Cooperman (“Defendant”) having entered a general appearance; consented to the Court’s jurisdiction over Defendant 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 and except as otherwise provided herein in paragraph VI); 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 is 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) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 13(d) of the Exchange Act [15 U.S.C. § 78m(d)] and Rules 13d-1 and 13d-2 promulgated thereunder [17 C.F.R. §§ 240.13d-1 and 240.13d-2], by failing to file, or to file timely, statements, information, documents, and reports, or amendments thereto, as required pursuant to Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2, in the absence of any applicable exemption, after Defendant has acquired, directly or indirectly, the beneficial ownership of any equity security of a class which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l], and is directly or indirectly the beneficial owner of more than 5 percent of such class.

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) Defendant's

officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rule 16a-3 promulgated thereunder [17 C.F.R. § 240.16a-3], by failing to file, or to file timely, statements, information, documents, and reports as required pursuant to Section 16(a) of the Exchange Act and Rule 16a-3, in the absence of any applicable exemption, when Defendant is, directly or indirectly, the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l], or is a director or an officer of the issuer of such security.

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) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, with respect to Claim I of the complaint, Defendant is liable, jointly and severally with Defendant Omega Advisors, Inc. ("Omega"), for disgorgement of \$1,759,049, together with prejudgment interest thereon in the amount of \$429,041, and a civil penalty in the amount of \$1,759,049 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. With respect to Claims II and III of the

complaint, pursuant to Sections 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], Defendant is liable for an additional civil penalty of \$1,000,000. Defendant shall satisfy these obligations by paying \$4,947,139 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center  
Accounts Receivable Branch  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Leon G. Cooperman as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post

judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

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 Defendant shall comply with all of the undertakings and agreements set forth therein, including, but not limited to, the following undertakings:

1. Defendant and Omega shall retain, within thirty (30) days after entry of the Final Judgment, at Defendant's and/or Omega's expense, an Independent Compliance Consultant (the "Compliance Consultant") not unacceptable to the Commission's staff for a period of engagement that will last either until May 1, 2022 or until such time as Omega ceases to be a registered investment adviser, whichever occurs first (the "Period of Engagement"). For the avoidance of doubt, all of the undertakings and obligations set forth in paragraphs V.1 through V.5 shall continue for the Period of Engagement. The Compliance Consultant, Defendant, and Omega shall perform the following tasks:
  - a. Within thirty (30) days after retention of the Compliance Consultant, the Compliance Consultant, Omega and Defendant shall implement a system that requires that Defendant, Omega and/or any of their agents or employees who make a decision to trade or otherwise commit capital to any security and/ or direct a trade of any security (the "Trader") certify in writing that, prior to execution of such trade, the Trader was not aware of any material nonpublic information regarding the traded security such that the trade, or direction of

the trade, violated Section 10(b) of the Exchange Act of 1934. This certification shall be made on a monthly basis.

- b. The Compliance Consultant shall conduct a review of Omega's training, policies and procedures, and Defendant's practices, with respect to compliance with the prohibitions on insider trading and tipping, including as they relate to the obtention or use of material nonpublic information, with appropriate consideration given to Omega's and Defendant's practice of communicating directly with senior executives of publicly-traded companies.
- c. Within forty-five (45) days after the end of the Compliance Consultant's review, which in no event shall be more than two hundred seventy (270) days after the date of the Compliance Consultant's retention, the Compliance Consultant shall submit a written and dated report of the findings of its review to Omega, Defendant and the Commission staff (the "Report"). Omega and Defendant shall require that the Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, any recommendations for changes in or improvements to Omega's policies and procedures and/or Defendant's practices, and a procedure for implementing the recommended changes in or improvements to Omega's policies and procedures and/or Defendant's practices.
- d. The Report shall include a recommendation for implementing a method to review Omega's and Defendant's trades during the Period of Engagement to ensure that there was no trading in violation of Section 10(b) of the Exchange Act of 1934. In order to facilitate this review, the Compliance Consultant



shall have access, without prior notice (except to Omega's General Counsel, to permit him reasonable time to determine whether privilege attaches to any such documents), to the non-privileged electronic communications of Defendant and any relevant Omega employees, consultants or agents. The Compliance Consultant also shall have access to all of Omega's and Defendant's trading records and research.

- e. The Compliance Consultant shall be on-site at Omega's principal office a minimum of one day per month to ensure compliance with the terms set forth in the Final Judgment.
- f. The Compliance Consultant shall conduct, or Omega and Defendant shall retain a nationally recognized law firm not unacceptable to the Commission staff to conduct, at least two trainings per year relating to compliance with the prohibitions on insider trading and tipping, including the obtention or use of material nonpublic information, with appropriate consideration given to Omega's and Defendant's practice of communicating directly with senior executives of publicly-traded companies.
- g. Among the issues the Compliance Consultant shall consider in formulating its recommendations are whether to empower and require Omega compliance personnel (i) to monitor telephonic and electronic communications of Omega personnel involved in securities trading decisions or execution, and (ii) to conduct internal investigations of securities trading that meets certain profitability (including loss avoidance) thresholds or is done in close proximity to certain public disclosures.

- h. Omega and Defendant shall adopt all recommendations contained in the Report within ninety (90) days after delivery of the Report; provided, however, that within thirty (30) days after delivery of the Report, Omega and Defendant shall in writing advise the Compliance Consultant and the Commission staff of any recommendations that Omega or Defendant considers to be unduly burdensome, impractical, or inappropriate. Omega or Defendant need not adopt that recommendation at that time but shall simultaneously propose in writing an alternative mechanism designed to achieve substantially the same objective or purpose.
- i. As to any recommendation on which Omega, Defendant and the Compliance Consultant do not agree, Omega, Defendant and the Compliance Consultant shall attempt in good faith to reach an agreement within sixty (60) days after delivery of the Report. Within fifteen (15) days thereafter, Omega and Defendant shall require that the Compliance Consultant inform Omega and Defendant in writing of the Compliance Consultant's final determination concerning any recommendation that Omega or Defendant considers to be unduly burdensome, impractical or inappropriate. Within fifteen (15) days after Omega's and Defendant's receipt of this written communication from the Compliance Consultant, Omega or Defendant may seek approval from the Commission staff not to adopt recommendations that Omega or Defendant can demonstrate to be unduly burdensome, impractical or inappropriate. Should the Commission staff agree that any such proposed recommendations are



unduly burdensome, impractical or inappropriate, Omega or Defendant shall not be required to abide by, adopt, or implement those recommendations.

- j. Subject to the limitations contained in paragraph V.1.d, Omega and Defendant shall cooperate fully with the Compliance Consultant and shall provide access to such of their files, books, records, and personnel as are reasonably requested by the Compliance Consultant for review.
- k. To ensure independence of the Compliance Consultant, Omega and Defendant shall not have the authority to terminate the Compliance Consultant or substitute another independent compliance consultant without the prior written approval of the Commission staff (which approval shall not be unreasonably withheld), and shall compensate the Compliance Consultant for services rendered pursuant to this undertaking at reasonable and customary rates.
- l. Omega and Defendant shall require the Compliance Consultant to enter into an agreement that provides that, during the Period of Engagement and for a period of two (2) years thereafter, the Compliance Consultant shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Omega, Defendant, or any of Omega's present or former (if they occupied that capacity at any time during the Period of Engagement) affiliates, directors, officers, employees, or agents. The agreement shall also provide that the Compliance Consultant shall require that any firm with which the Compliance Consultant is affiliated, and any person engaged to assist the Compliance Consultant's performance of its duties in respect of the

engagement contemplated hereby, shall not, without written prior consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Omega, Defendant, or any of Omega's present or former (if they occupied that capacity at any time during the Period of Engagement) affiliates, directors, officers, employees, or agents, during the Period of Engagement and for a period of two (2) years thereafter.

- m. Omega and Defendant shall preserve for a period of not less than six (6) years from its creation, and for the first two (2) years in a reasonably accessible location and format, any record of Omega's or Defendant's compliance with the requirements set forth herein.
  - n. For good cause shown, the Commission staff may extend any of the procedural dates set forth above (other than the duration of the Period of Engagement). Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.
2. Omega and Defendant shall provide to the Commission staff, within thirty (30) days after retaining the Compliance Consultant, a copy of an engagement letter detailing the Compliance Consultant's responsibilities, which shall include the tasks set forth above.
  3. In addition to the initial Report, for the Period of Engagement, the Compliance Consultant shall provide an additional annual report to Defendant, Omega and the Commission staff detailing the Compliance Consultant's activity during the previous year, the names of the individuals who performed the relevant tasks

and/or review, the conclusions reached, and any recommendations for improvements to Omega's and/or Defendant's policies and procedures.

4. Omega and Defendant shall retain, within sixty (60) days after entry of the Final Judgment, at Defendant's expense, a nationally recognized law firm (the "Law Firm"), not unacceptable to the Commission's staff, to file beneficial ownership reports and amendments thereto required under Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1, 13d-2 and 16a-3 thereunder, on behalf of Defendant, for the Period of Engagement. In addition to filing such beneficial ownership reports and amendments, during the Period of Engagement, the Law Firm will conduct an annual review of, and training regarding, Omega's and Defendant's policies and procedures, and Defendant's practices, insofar as they relate to the filing, on behalf of Defendant, Omega, and Omega's clients, of beneficial ownership reports and amendments thereto required under Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1, 13d-2 and 16a-3 thereunder. In addition, during the Period of Engagement, the Law Firm shall provide an annual certification to the Commission staff regarding the compliance of Defendant's beneficial ownership reporting with the requirements of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1, 13d-2 and 16a-3 thereunder.
5. Omega and Defendant shall certify, in writing, compliance with the undertakings set forth above on an annual basis during the Period of Engagement. Each certification shall be provided by February 1 of the new calendar year. Each certification shall identify the relevant provisions of the Final Judgment, provide

written evidence of compliance in the form of a narrative, and be supported by exhibits reasonably sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Omega and Defendant agree to provide such evidence. Omega and Defendant shall submit the certification and supporting material on an annual basis to Brendan P. McGlynn, Assistant Regional Director, with a copy to the Office of Chief Counsel of the Enforcement Division.

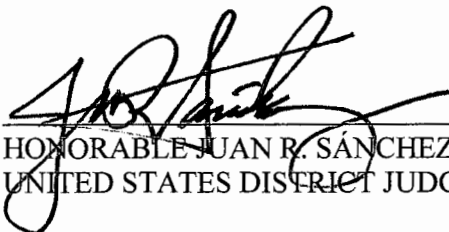
VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely 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, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant 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 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).

VII.

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: May 22, 2017

  
HONORABLE JUAN R. SANCHEZ  
UNITED STATES DISTRICT JUDGE