

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

RMR Asset Management Company,
Bruce A. Broekhuizen, Douglas J.
Derryberry, David R. Frost, Richard C.
Gounaud, Neil P. Kelly, John M.
Kirschenbaum, David S. Luttbeg,
Timothy J. McAloon, Jocelyn M.
Murphy, Michael Sean Murphy, Ralph
M. Riccardi, Dewey T. Tran, and
Philip A. Weiner,

Defendants.

Case No. 3:18-cv-01895-AJB-JMA

**ORDER GRANTING CONSENT
JUDGMENT**

(Doc. No. 10)

**FINAL JUDGMENT AS TO DEFENDANTS RALPH M. RICCARDI
AND RMR ASSET MANAGEMENT COMPANY**

The Securities and Exchange Commission (“Commission”) having filed a Complaint and Defendants Ralph M. Riccardi (“Riccardi”) and RMR Asset Management Company (“RMR”) (together, “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 without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VII); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

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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 ORDERED, ADJUDGED, AND DECREED that Defendants are permanently restrained and enjoined from violating, directly or indirectly, Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)], by making use of the mails or the means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, a security without being registered in accordance with Section 15(a)(1) of the Exchange Act while engaged in the business of effecting transactions in securities for the account of others.

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

7 III.

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants
9 are permanently restrained and enjoined from violating, directly or indirectly, Rule
10 G-17 of the Municipal Securities Rulemaking Board by not dealing fairly with all
11 persons and/or by engaging in any deceptive, dishonest, or unfair practice.

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

18 IV.

19 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants
20 are permanently restrained and enjoined from, directly or indirectly, opening or
21 maintaining any brokerage account(s) without providing the relevant brokerage
22 firm(s) a copy of the Complaint and a copy of this Final Judgment.

23 V.

24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that: (i)
25 Defendants are liable, jointly and severally, for disgorgement of \$1,108,519,
26 representing profits gained as a result of the conduct alleged in the Complaint,
27 together with prejudgment interest thereon in the amount of \$107,536; and (ii)
28 Defendant Riccardi is liable for a civil penalty in the amount of \$150,000 pursuant to

1 Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendants shall
2 satisfy this obligation pursuant to the terms of the payment schedule set forth in
3 paragraph VI below.

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

10 Enterprise Services Center
11 Accounts Receivable Branch
12 6500 South MacArthur Boulevard
13 Oklahoma City, OK 73169

14 and shall be accompanied by a letter identifying the case title, civil action number,
15 and name of this Court; RMR Asset Management Company and/or Ralph M.
16 Riccardi, as appropriate, as Defendants in this action; and specifying that payment is
17 made pursuant to this Final Judgment.

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

24 The Commission may enforce the Court's judgment for disgorgement and
25 prejudgment interest by moving for civil contempt (and/or through other collection
26 procedures authorized by law) at any time after 14 days following entry of this Final
27 Judgment. Defendants shall pay post judgment interest on any delinquent amounts
28 pursuant to 28 U.S.C. § 1961.

1 VI.

2 Defendants shall pay the total of disgorgement and prejudgment interest of
3 \$1,216,055 in four (4) installments to the Commission according to the following
4 schedule: (1) \$304,013.75 within 14 days of entry of this Final Judgment; (2)
5 \$304,013.75 within four months of entry of this Final Judgment; (3) \$304,013.75
6 within eight months of entry of this Final Judgment; and (4) \$304,013.75 within 364
7 days of entry of this Final Judgment.

8 Defendant Riccardi shall pay the penalty of \$150,000 in four (4) installments to
9 the Commission according to the following schedule: (1) \$37,500 within 14 days of
10 entry of this Final Judgment; (2) \$37,500 within four months of entry of this Final
11 Judgment; (3) \$37,500 within eight months of entry of this Final Judgment; and (4)
12 \$37,500 within 364 days of entry of this Final Judgment.

13 Payments shall be deemed made on the date they are received by the
14 Commission and shall be applied first to post judgment interest, which accrues
15 pursuant to 28 U.S.C. § 1961 on any unpaid amounts due after 14 days of the entry of
16 Final Judgment. Prior to making the final payment set forth herein, Defendants shall
17 contact the staff of the Commission for the amount due for the final payment.

18 If Defendants fail to make any payment by the date agreed and/or in the
19 amount agreed according to the schedule set forth above, all outstanding payments
20 under this Final Judgment, including post-judgment interest, minus any payments
21 made, shall become due and payable immediately at the discretion of the staff of the
22 Commission without further application to the Court.

23 VII.

24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for
25 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code,
26 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by
27 Defendants, and further, any debt for disgorgement, prejudgment interest, civil
28 penalty or other amounts due by Defendants under this Final Judgment or any other

1 judgment, order, consent order, decree or settlement agreement entered in connection
2 with this proceeding, is a debt for the violation by Defendants of the federal securities
3 laws or any regulation or order issued under such laws, as set forth in Section
4 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

5 VIII.


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

9 IX.

10 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules
11 of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and
12 without further notice.

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14 IT IS SO ORDERED.

15 Dated: August 17, 2018

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17 Hon. Anthony J. Battaglia
18 United States District Judge
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