

ORIGINAL 7

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

FILED

UNITED STATES SECURITIES)
AND EXCHANGE COMMISSION)
Plaintiff,)
vs.)
DONALD F. CHAMBERLIN and)
DAVID N. CHAMBERLIN,)
Defendants.)

JUN 22 2004
CLERK'S OFFICE
U.S. DISTRICT COURT
Civil Action No. 03-cv-74983
JUDGE NANCY G. EDMUND
Magistrate Judge Pepe

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JUN 21 2004
CLERK'S OFFICE
U.S. DISTRICT COURT

**PARTIAL FINAL JUDGMENT AND
ORDER OF PERMANENT INJUNCTION AND OTHER RELIEF**

Plaintiff, U.S. Securities and Exchange Commission ("SEC") filed a complaint in this matter, and Defendants Donald F. Chamberlin ("Defendant Donald Chamberlin") and David N. Chamberlin ("Defendant David Chamberlin") (collectively hereinafter, the "Defendants") have, in their Consents hereto and incorporated herein (attached as Exhibits 1 and 2), acknowledged receipt of the complaint and admitted the personal jurisdiction of the Court over them and over the subject matter thereof, and without admitting or denying the allegations of the complaint, except as to jurisdiction, and without trial, argument or adjudication of any facts or law herein, consented to the entry of this Partial Final Judgment and Order of Permanent Injunction and Other Relief ("Partial Final Judgment"). The SEC and the Defendants have waived the entry of findings of fact and conclusions of law, as provided by Rule 52 of the Federal Rules of Civil Procedure and the Defendants have waived any right to appeal from this Partial Final Judgment. The Court having jurisdiction over the parties and the subject matter hereof, and being fully advised in the premises, hereby states:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Donald Chamberlin, his officers, agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with him who receive actual notice of this Partial Final Judgment by personal service or otherwise, and each of them are permanently restrained and enjoined from violating Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§77c(a) and 77(c)(c)] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any security for the purpose of sale of delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the SEC as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding of examination under Section 8 of the Securities Act [15 U.S.C. §77h].

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Donald Chamberlin, his officers, agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with him who receive actual notice of this Partial Final Judgment by personal service or otherwise, and each of them are permanently restrained and enjoined from, in the offer or sale of any securities, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, employing any device, scheme or artifice to defraud, in violation of Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)].

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Donald Chamberlin, his officers, agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with him who receive actual notice of this Partial Final Judgment by personal service or otherwise, and each of them are permanently restrained and enjoined from, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or engaging any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, in violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§77q(a)(2) and 77q(a)(3)].

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants, their officers, agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Partial Final Judgment by personal service or otherwise, and each of them are permanently restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce, or of the mails, or any facility of any national securities exchange:

- (a) employing any device, scheme or artifice to defraud; or
- (b) making any untrue statement of material fact or omitting 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) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in violation of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F. R. §240.10b-5].

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants, their officers, agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Partial Final Judgment by personal service or otherwise, and each of them are permanently restrained and enjoined from violating, directly or indirectly, as an investment adviser, Section 206(1) of the Investment Advisers Act of

1940 ("Advisers Act") [15 U.S.C. §80b-6(1)] by using the mails or means or instrumentalities of interstate commerce, directly or indirectly, to employ any device, scheme, or artifice to defraud any client or prospective client.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants, their officers, agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Partial Final Judgment by personal service or otherwise, and each of them are permanently restrained and enjoined from violating, directly or indirectly, as an investment adviser, Section 206(2) of the Advisers Act [15 U.S.C. §80b-6(2)], by using any means or instrumentality of interstate commerce, directly or indirectly to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants disgorge all ill-gotten gains received by each of them as a result of the conduct alleged in the complaint, plus prejudgment interest on those amounts. The Court will set the specific amounts of disgorgement and will also determine whether to impose civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)] on the Defendants, and in what amount, at a separate hearing upon due notice and motion by the SEC. At that hearing, the issues will be limited to determining: (a) the amounts of disgorgement to be ordered; and (b) whether civil penalties should be imposed on the Defendants, and the amounts of any such

penalties. At that hearing, the Defendants will be precluded from arguing that they did not violate, directly or indirectly, the federal securities laws in the manner set out in the complaint, but will not be precluded from presenting evidence as to what amounts of disgorgement, prejudgment interest and whether and what civil penalties are appropriate. Nothing herein affects the Defendants': (a) testimonial obligations; or (b) right to take legal or factual positions in litigation or other legal proceedings in which the SEC is not a party.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants' Consents are incorporated herein with the same force and effect as if fully set forth herein, and that the Defendants shall comply with all of the undertakings and agreements set forth therein.

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the SEC is expressly authorized to engage in continued discovery regarding any unresolved issue in this case with respect to the Defendants, including, but not limited to, discovery for the purposes of determining the amount of ill-gotten gains and civil penalties, if any.

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, enforcement of the Partial Final Judgment.

XI.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is hereby directed to enter this Partial Final Judgment.



NANCY G. EDMUNDS, JUDGE
United States District Court
Eastern District of Michigan

So Ordered.

Dated: JUN 22 2004 2004