

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ DEC 13 2010 ★

BROOKLYN OFFICE



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GRYPHON HOLDINGS, INC. d/b/a GRYPHON
FINANCIAL and GRYPHON DAILY,
KENNETH E. MARSH A/K/A "KENNETH
MASEKA," "MICHAEL WARREN," and
"MARCUS THORN," BALDWIN ANDERSON
A/K/A "BOLTON ANDERSON," ROBERT
ANTHONY BUDION A/K/A "BOBBY BUDION"
AND "ROBERT ANTHONY," JEANNE M. LADA
A/K/A "JEANNE GRECCO," and JAMES T.
LEVIER,

Defendants,

and

RICHARD BORRELLO, NICOLE MARSH,
GINNA MUNGIOVI, MICHAEL SCARPACI,
DOMINIC SPINELLI, and PAUL STOKES,

Relief Defendants.

No. 10 Civ. 1742 (JBW) (JO)
ECF Case

JUDGMENT AS TO DEFENDANT JAMES T. LEVIER

The Securities and Exchange Commission having filed a Complaint and Defendant James T. Levier having entered a general appearance; consented to the Court's jurisdiction over him and the subject matter of this action; consented to entry of this Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Levier and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from directly or indirectly violating, or aiding and abetting another person's violations of, 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 Levier and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from directly or indirectly violating, or aiding and abetting another person's violations of, Sections 206(1) or 206(2) of the Investment Advisers Act of 1940

("Advisers Act") [15 U.S.C. § 80b-6(1), (2)], by singly or in concert with others, while acting as an investment adviser or associated person of an investment adviser, by use of any means or instrument of transportation or communication in, or any instrumentality of, interstate commerce, or of the mails:

- (a) employing any device, scheme or artifice to defraud any advisory client or prospective client; or
- (b) engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any advisory client or prospective client.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon motion of the Commission, which motion shall be made by no later than March 31, 2011, the Court shall determine whether it is appropriate to order Defendant Levier to pay disgorgement of ill-gotten gains and/or a civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e)(1) of the Advisers Act [15 U.S.C. § 80b-9(e)(1)] and, if so, the amount(s) of the disgorgement and/or civil penalty. If disgorgement is ordered, Defendant Levier shall pay prejudgment interest thereon, calculated from May 1, 2008, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant Levier will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant Levier may not challenge the validity of the Consent or this Judgment;

(c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion 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. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the annexed Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant Levier 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 Judgment.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

CONSENT OF DEFENDANT JAMES T. LEVIER

1. Defendant James T. Levier (“Defendant”) acknowledges having been served with the summons and the complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over him and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the Judgment in the form attached hereto (the “Judgment”) and incorporated by reference herein, which, among other things, permanently restrains and enjoins Defendant from violating, or aiding and abetting violations of, Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)], Rule 10b-5 thereunder [17 C.F.R. 240.10b-5], and Sections 206(1) and (2) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-6(1), (2)].

3. Defendant agrees that, upon motion of the Commission, the Court shall determine whether it is appropriate to order him to pay disgorgement of ill-gotten gains and/or a civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e)(1) of the Advisers Act [15 U.S.C. § 80b-9(e)(1)] and, if so, the amount(s) of the disgorgement and/or civil penalty. The Defendant further understands that, if disgorgement is ordered, Defendant shall pay prejudgment interest thereon, calculated from May, 1, 2008, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). Defendant further agrees that in connection with the Commission’s motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the

9. Defendant waives service of the Judgment and agrees that entry of the Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Judgment.

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

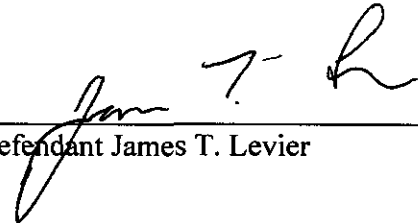
11. Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant agrees: (i) not to take any action or to 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; and (ii) that upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (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. Defendant hereby waives 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 Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

13. Defendant agrees that the Commission may present the Judgment to the Court for signature and entry without further notice.

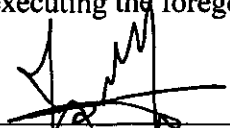
14. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Judgment.

Dated: November 16, 2010




Defendant James T. Levier

On November 16, 2010, James T. Levier, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.



Notary Public
Commission expires: May 9, 2013

Approved as to form:



Steven Kartagener, Esq.
Attorney for Defendant James T. Levier

JASON TSU-HSIN YANG
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02YA6126730
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MAY 9TH, 2013

SO ORDERED.

Dated: 12/6, 2010



UNITED STATES DISTRICT JUDGE