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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

-against-

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MICHAEL BATTERMAN,
RANDALL B. BATTERMAN III, and
DYNASTY FUND, LTD.,

Defendants.
-----X

JUL 21 2003
KW
00 Civ. 4835 (LAP)

#03,1496

ORDER GRANTING SUMMARY JUDGMENT AGAINST DEFENDANTS
MICHAEL BATTERMAN AND RANDALL B. BATTERMAN III

Plaintiff United States Securities and Exchange Commission ("Commission"), having commenced this action on June 29, 2000, by filing a Complaint ("Complaint") for injunctive and other equitable relief, charging defendants Michael Batterman ("Batterman"), Randall B. Batterman III ("R. Batterman"), Dynasty Fund, Ltd. ("Dynasty") with violating Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, as well as charging Batterman with violating Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1) and 80b-6(2) and R. Batterman with aiding and abetting Batterman's violations of the Advisers Act, following the issuance of timely service of a Summons and the Complaint upon Batterman and R. Batterman on

July 20, 2000, and Batterman's and R. Batterman's service of their Answer on August 11, 2000; and the Commission having filed and served upon Batterman and R. Batterman a Notice of Motion for Summary Judgment Against Defendants Michael Batterman and Randall B. Batterman III, and the accompanying papers thereto; and the Court having found that, pursuant to Federal Rule of Civil Procedure 56, there is no genuine issue as to any material fact on liability and that the Commission is entitled to a judgment on liability as a matter of law; and an inquest having been held on November 19, 2002 and at defendants' request, defendants having been given the opportunity to produce additional documents and, having done so, additional depositions having been taken on those documents; and the Court having further found that this Court has jurisdiction over the subject matter of this action and over Batterman and R. Batterman, and the jurisdiction to grant the relief requested by the Commission, and that venue properly lies in this district; and upon all of the prior proceedings had herein and for other good cause shown;

NOW THEREFORE,

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Batterman and R. Batterman be, and hereby are, permanently enjoined and restrained from, directly or indirectly, singly or in concert, in the offer or sale of any security, by use of the mails, or any

means or instrumentality of transportation or communication in interstate commerce:

- (a) employing any device, scheme or artifice to defraud;
 - (b) obtaining money or property by means of an untrue statement of material fact or omitting to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and
 - (c) engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser,
- in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Batterman and R. Batterman be, and hereby are, permanently enjoined and restrained from, directly or indirectly, singly or in concert, in connection with the purchase or sale of any security, by use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- (a) employing any device, scheme or artifice to defraud;
- (b) making any untrue statement of a material fact or omitting 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

(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 Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Batterman and R. Batterman be, and hereby are, permanently enjoined and restrained from, by use of the mails or any means or instrumentalities of interstate commerce, directly or indirectly, singly or in concert:

(a) employing any device, scheme or artifice to defraud any client or prospective client; and

(b) engaging in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client,
in violation of Sections 206(1) and 206(2) of the Advisers Act, §§ 80b-6(1) and 80b-6(2).

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Batterman shall, within 30 days of entry of this Order Granting Summary Judgment Against Defendants Michael Batterman and Randall B. Batterman III (hereafter "this Order"), disgorge \$837,182, consisting of \$475,000 that defendants fraudulently

misappropriated from investors, as alleged in the Complaint, plus prejudgment interest thereon of \$362,182.

(1) The disgorgement shall be paid into the registry of this Court by cashier's check, certified check or U.S. Postal Money Order drawn to the order of "Clerk, United States District Court, S.D.N.Y.," whereupon the Clerk of this Court, or the Financial Deputy Clerk, is hereby directed to deposit said cashier's check, certified check or U.S. Postal Money Order into an account for this case with the Court Registry Investment System (the "C.R.I.S. Account"), administered through the United States District Court for the Southern District of Texas, under cover of a letter that identifies Michael Batterman, the name and civil action number of this litigation, the name of this Court and the Commission case number "NY-6437."

(2) Simultaneously with making payment pursuant to Section IV.1 above, copies of each cashier's check, certified check or U.S. Postal Money Order, front and back, as well as any accompanying correspondence, shall be transmitted to Barry W. Rashkover, Esq., Associate Regional Director, U.S. Securities and Exchange Commission, Northeast Regional Office, 233 Broadway, New York, New York, 10279, under cover of a letter that identifies Michael Batterman, the name and civil action number of this litigation, the name of this Court and the Commission case number "NY-6437."

(3) Funds in the C.R.I.S. Account shall be held until further order of this Court and shall be disbursed in accordance with a plan of distribution to be submitted by Plaintiff Commission and approved by the Court. In no event shall any portion of the C.R.I.S. Account be returned to any defendant or relief defendant in this case, or any of their successors or assigns.

(4) Interest earned on the C.R.I.S. Account shall be credited to the C.R.I.S. Account and shall thereafter be treated in the same manner as the principal. Prior to making any disbursements from the C.R.I.S. Account, the Custodian of the C.R.I.S. Account is directed to deduct from the income on the investment a fee, not exceeding that authorized by the Director of the Administrative Office at equal to ten percent (10%) of the income earned for deduction in the investment so held and without further order of the Court.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that R. Batterman shall, within 30 days of entry of this Order, disgorge \$837,182, consisting of \$475,000 that defendants fraudulently misappropriated from investors, as alleged in the Complaint, plus prejudgment interest thereon of \$362,182.

(1) The disgorgement shall be paid into the registry of this Court by cashier's check, certified check or U.S. Postal

Money Order drawn to the order of "Clerk, United States District Court, S.D.N.Y.," whereupon the Clerk of this Court, or the Financial Deputy Clerk, is hereby directed to deposit said cashier's check, certified check or U.S. Postal Money Order into an account for this case with the Court Registry Investment System (the "C.R.I.S. Account"), administered through the United States District Court for the Southern District of Texas, under cover of a letter that identifies Randall B. Batterman III, the name and civil action number of this litigation, the name of this Court and the Commission case number "NY-6437."

(2) Simultaneously with making payment pursuant to Section V.1 above, copies of each cashier's check, certified check or U.S. Postal Money Order, front and back, as well as any accompanying correspondence, shall be transmitted to Barry W. Rashkover, Esq., Associate Regional Director, U.S. Securities and Exchange Commission, Northeast Regional Office, 233 Broadway, New York, New York, 10279, under cover of a letter that identifies Randall B. Batterman III, the name and civil action number of this litigation, the name of this Court and the Commission case number "NY-6437."

(3) Funds in the C.R.I.S. Account shall be held until further order of this Court and shall be disbursed in accordance with a plan of distribution to be submitted by Plaintiff Commission and approved by the Court. In no event shall any

portion of the C.R.I.S. Account be returned to any defendant or relief defendant in this case, or any of their successors or assigns.

(4) Interest earned on the C.R.I.S. Account shall be credited to the C.R.I.S. Account and shall thereafter be treated in the same manner as the principal. Prior to making any disbursements from the C.R.I.S. Account, the Custodian of the C.R.I.S. Account is directed to deduct from the income on the investment a fee, not exceeding that authorized by the Director of the Administrative Office at equal to ten percent (10%) of the income earned for deduction in the investment so held and without further order of the Court.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Batterman shall pay \$250,000 to the United States Treasury ("Treasury") as a civil penalty, pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and 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. § 80-9(e). Payment shall be made within thirty (30) days for the date of the entry of this Order, by U.S. Postal Money Order, certified check, bank check or bank money order made payable to the "United States Securities & Exchange Commission." The payment shall be transmitted to the Comptroller of the Commission, 540 Fifth Street, N.W., Washington D.C. 20549, under

cover of a letter that identifies Michael Batterman, the name and civil action number of this litigation, the name of this Court and the Commission case number "NY-6437." A copy of the cover letter shall be simultaneously transmitted to Barry W. Rashkover, Esq., Associate Regional Director, U.S. Securities and Exchange Commission, Northeast Regional Office, 233 Broadway, New York, New York, 10279.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that R. Batterman shall pay \$250,000 to the United States Treasury ("Treasury") as a civil penalty, pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and 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. § 80-9(e). Payment shall be made within thirty (30) days for the date of the entry of this Order, by U.S. Postal Money Order, certified check, bank check or bank money order made payable to the "United States Securities & Exchange Commission." The payment shall be transmitted to the Comptroller of the Commission, 540 Fifth Street, N.W., Washington, D.C. 20549, under cover of a letter that identifies Randall B. Batterman, the name and civil action number of this litigation, the name of this Court and the Commission case number "NY-6437." A copy of the cover letter shall be simultaneously transmitted to Barry W. Rashkover, Esq., Associate Regional Director, U.S.

Securities and Exchange Commission, Northeast Regional Office,
233 Broadway, New York, New York, 10279.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, this Order shall be, and is, binding upon Dynasty, and each of its officers, agents, servants, employees, and attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, implementing and enforcing the terms and conditions of this Order.

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there being no just reason for delay in the entry of this Order, the Clerk of the Court is hereby directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure to enter this Order forthwith.

SO ORDERED

July 17, 2003

A CERTIFIED COPY
J. MICHAEL McMAHON,

CLERK

BY

Therese Lim
DEPUTY CLERK

Loretta A. Preska
LORETTA A. PRESKA, U.S.D.J.

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON 7/23/03