

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

STEPHEN R.B. BINGHAM,
SUSAN MCKENNA GRANT,
WILLIAM J. MCCLINTOCK,

Defendants. :

: Civil Action
: No. 96-10793 (EFH)

**FINAL JUDGMENT OF PERMANENT INJUNCTION,
DISGORGEMENT AND OTHER EQUITABLE RELIEF
AS TO DEFENDANT STEPHEN R.B. BINGHAM**

Plaintiff SECURITIES AND EXCHANGE COMMISSION (“COMMISSION”), having duly commenced this action by filing its Complaint for Injunctive and Other Equitable Relief (“Complaint”), and Defendant STEPHEN R.B. BINGHAM (“BINGHAM”), having entered a general appearance herein and having, in his annexed Consent of Defendant Stephen R.B. Bingham (“Consent”), admitted the jurisdiction of this Court over him and over the subject matter of this action, having withdrawn his Answer and waived the filing of an Answer to the Complaint and the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and without admitting or denying any of the allegations of the Complaint, except as to jurisdiction, which he admits, having consented to the entry of this Final Judgment of Permanent Injunction, Disgorgement and Other Equitable Relief As To Defendant Stephen R.B. Bingham (“Final Judgment”) permanently enjoining and restraining Defendant BINGHAM from

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violating Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), 78m(b)(2)(B) and 78m(b)(5)] and Exchange Act Rules 10b-5, 12b-20, 13a-13, 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-13, 240.13b2-1 and 240.13b2-2]; ordering Defendant BINGHAM to disgorge the sum of \$1,713,000 (one million seven hundred thirteen thousand and no/100 dollars) plus prejudgment interest thereon, provided, however, that payment of such amount is waived based on Defendant BINGHAM's representations to the COMMISSION concerning his assets, liabilities, net worth and income, as described in Defendant BINGHAM's sworn Statement of Financial Condition, dated September 1, 1999, and supplemental affidavits dated September 28, 1999, and November 24, 1999, and submitted to the COMMISSION ("Statement of Financial Condition"); prohibiting Defendant BINGHAM for a period of five years from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and not imposing civil monetary penalties against Defendant BINGHAM in light of Defendant BINGHAM's demonstrated inability to pay; and it further appearing that this Court has jurisdiction over Defendant BINGHAM and the subject matter hereof, and the Court being fully advised in the premises:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant BINGHAM, his agents, servants, employees, attorneys-in-fact, assigns and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal

service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] by, directly or indirectly, in the offer or sale of any security through the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails:

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

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant BINGHAM, his agents, servants, employees, attorneys-in-fact, assigns and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder by, directly or indirectly, using any means or instrumentality of interstate commerce, or the mails, or any facility of any national securities exchange:

- (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, in connection with the purchase or sale of any security.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant BINGHAM, his agents, servants, employees, attorneys-in-fact, assigns and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, violating Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-13 and 12b-20 thereunder [17 C.F.R. §§ 240.13a-13 and 240.12b-20] by allowing any issuer of securities registered under Section 12 of the Exchange Act [15 U.S.C. § 78l] to fail to file, in accordance with such rules and regulations as the COMMISSION may prescribe as necessary or appropriate, such information and documents as the COMMISSION shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act, or such annual and quarterly reports as the COMMISSION may prescribe, including, but not limited to, quarterly reports on Form 10-Q as prescribed by Rule 13a-13 [17 C.F.R. § 240.13a-13] and by failing to include, in addition to the information expressly required to be included in any statement or report filed pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant BINGHAM, his agents, servants, employees, attorneys-in-fact, assigns and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)] by allowing an issuer of securities registered under Section 12 of the Exchange Act, directly or indirectly, to fail to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the issuer or to fail to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the issuer's transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant BINGHAM, his agents, servants, employees, attorneys-in-fact, assigns and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly circumventing or failing to implement a system of internal accounting controls or knowingly falsifying any book, record or account or by, directly or indirectly, falsifying or causing to be falsified any book, record or account of an issuer which has a class of securities registered with the COMMISSION or which is required to file reports with the COMMISSION.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant BINGHAM, his agents, servants, employees, attorneys-in-fact, assigns and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] by, directly or indirectly, falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant BINGHAM, his agents, servants, employees, attorneys-in-fact, assigns and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2] by, directly or indirectly, making or causing to be made materially false or misleading statements or omitting to state, or causing another person to omit to state any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with any audit or examination of the financial statements of an issuer or the preparation or filing of any document or report required to be filed with the COMMISSION.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant BINGHAM pay disgorgement in the amount of \$1,713,000, representing his gains and losses avoided

from the conduct alleged in the Complaint, plus prejudgment interest thereon (calculated at the rate established quarterly by the U.S. Internal Revenue Service for tax underpayment, compounded quarterly). Based upon Defendant BINGHAM's sworn representations in his Statement of Financial Condition, payment of the disgorgement and prejudgment interest thereon is waived, contingent upon the accuracy and completeness of Defendant BINGHAM's Statement of Financial Condition.

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant BINGHAM is prohibited for a period of five years, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based upon Defendant BINGHAM's sworn representations in his Statement of Financial Condition, the Court is not ordering him to pay civil penalties pursuant to the Insider Trading and Securities Fraud Enforcement Act of 1988, Section 21A of the Exchange Act [15 U.S.C. § 78u-1], and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

XI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant BINGHAM shall provide the COMMISSION with copies, when filed, of all income tax forms for the

years 1991 through 1999 and all amendments thereto. Defendant BINGHAM shall transfer to the registry of the Court any tax refund for the years 1991 through 1999.

XII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the determination not to impose civil penalties and to waive payment of the disgorgement and prejudgment interest thereon is contingent upon the accuracy and completeness of Defendant BINGHAM's Statement of Financial Condition. If, at any time following the entry of this Final Judgment, the COMMISSION obtains information indicating that Defendant BINGHAM's representations to the COMMISSION concerning his assets, income, liabilities or net worth were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the COMMISSION may, at its sole discretion and without prior notice to Defendant BINGHAM, petition this Court for an order requiring Defendant BINGHAM to pay disgorgement of \$1,713,000, prejudgment and postjudgment interest thereon, and civil monetary penalties. In connection with any such petition, the only issues shall be whether the financial information provided by Defendant BINGHAM was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, and the amount of civil penalties to be imposed. In any such petition, the COMMISSION may move this Court to consider all available remedies, including, but not limited to, ordering Defendant BINGHAM to pay funds or assets, directing the forfeiture of any assets, or sanctioning Defendant BINGHAM for contempt of this Final Judgment, and the COMMISSION may also request additional discovery. Defendant BINGHAM may not, by way of defense to such petition, challenge the validity of his Consent or the Final Judgment, contest the allegations in the Complaint filed by the

COMMISSION, contest the amount of disgorgement and interest, or assert that disgorgement or payment of civil penalties should not be ordered.

XIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the annexed Consent and Undertakings of Defendant Stephen R.B. Bingham is incorporated by reference herein with the same force and effect as if fully set forth herein.

XIV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over Defendant BINGHAM as a party to this matter for all purposes, including the implementation and enforcement of this Final Judgment.

XV.

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

DONE AND ORDERED at Boston, Massachusetts, this 28 day of

March, 1999.

Edward F. Harrington
UNITED STATES DISTRICT COURT JUDGE