

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

FILED

JUL 15 1998

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF;

v.

RAYMOND F. SIMMONS a/k/a
DAVID SIMMONS,

DEFENDANT.

CIVIL ACTION No.
98-689

**FINAL JUDGMENT AGAINST DEFENDANT
RAYMOND F. SIMMONS**

Plaintiff Securities and Exchange Commission filed this action on March 19, 1998. On May 3, 1998, defendant Raymond F. Simmons, a/k/a David Simmons ("Simmons") was served with the summons and complaint, and thereafter failed to respond to the complaint. Based on Simmons' default and the Commission's Application for Entry of Final Judgment by Default as to defendant Simmons and the supporting documentation, and it appearing that this Court has jurisdiction over Simmons and the subject matter hereof, and the Court being fully advised in the premises, **IT IS HEREBY:**

I.

ORDERED, ADJUDGED AND DECREED that Simmons and his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them, and each of them, who receive actual notice of this Final Judgment by personal service or

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otherwise, be and hereby are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] by,

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 --

- (1) employing any device, scheme, or artifice to defraud; or
- (2) 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 the light of the circumstances under which they were made, not misleading; or
- (3) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

II.

FURTHER ORDERED, ADJUDGED AND DECREED that Simmons and his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them, and each of them, who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined from violating 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], by:

directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

- (1) employing any device, scheme, or artifice to defraud;
- (2) making any untrue statement of a 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
- (3) engaging 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.

FURTHER ORDERED, ADJUDGED AND DECREED that Simmons and his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them, and each of them, who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined from directly or indirectly violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)], or Rule 13b2-1 thereunder [17 C.F.R. 240.13b2-1], by

- (1) knowingly circumventing or knowingly failing to implement a system of internal accounting controls, or knowingly falsifying any book, record, or account described in 15 U.S.C. § 13(b)(2) [as prohibited by 15 U.S.C. § 13(b)(5)]; or
- (2) directly or indirectly falsifying or causing to be falsified, any book, record or account subject to 15 U.S.C. § 13(b)(2)(A) [as prohibited by 17 C.F.R. § 240.13b2-1].

IV.

FURTHER ORDERED, ADJUDGED AND DECREED that **Simmons shall prepare and present to this Court and to the Commission a sworn accounting ("Accounting") of all cash, securities and other things of value received from any source in connection with the activities alleged in the complaint.** For all securities received, the Accounting shall identify the number of shares, the issuer, the present location of any certificates, the name and number of each account into which such securities were deposited, the name and address of the broker-dealer or other institution at which the account was located, the type and percentage of interest that Simmons has or had in the account or a description of the authority that Simmons has or had over the account, and, if any such securities were sold, pledged or otherwise used in any transaction, the date of the transaction, and the sales price or other amount paid in connection with the transaction. For all cash received, the Accounting shall identify the date on which the funds were received, the form in which the funds were paid (currency, check, wire transfer or otherwise), and for any account into which such funds were deposited the name and number of the account and the name and address of the institution at which the account is held. For any other thing of value the Accounting shall fully describe what was received. This Accounting shall be submitted to this Court and served on counsel for the Commission within thirty (30) days from the date of entry of this judgment.

V.

FURTHER ORDERED, ADJUDGED AND DECREED that, **within ten (10) days of the date for the filing of his Accounting, Simmons shall disgorge an amount equivalent to the**

value of the cash, securities or other things of value described in the Accounting, plus prejudgment interest thereon, as calculated using the IRS underpayment rate. 17 C.F.R. § 201.600; 26 U.S.C. § 6621(a)(2). The funds disgorged by Simmons shall be in the form of a cashier's check, certified check or postal money order, payable to the Registry of the Court, that identifies Simmons, the caption and case number of this action, and the name of this Court. A copy of such cashier's check, certified check or postal money order and accompanying cover letter shall be simultaneously transmitted to Erich T. Schwartz, Esq., Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 7-6, Washington, D.C. 20549. Such payments shall thereafter be distributed pursuant to a plan for distribution of disgorgement funds to be filed by the Commission with the Court, but in no event shall any of the funds paid into the Registry of the Court be returned, directly or indirectly, to Simmons.

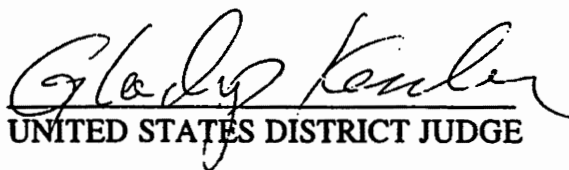
VI.

FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this action for all purposes, including implementation and enforcement of this Final Judgment.

VII.

There being no just reason for delay, the Clerk of the Court is hereby directed, pursuant to Rule 55(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment forthwith.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

Dated: July 15, 1998
Washington, D.C.