

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**  
APR 14 2000  
NANCY DOHERTY, CLERK  
By \_\_\_\_\_ Deputy

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

SHARP CAPITAL, INC., et al.

Defendants.

CIVIL ACTION NO.  
3:98-CV-2792-G **M**

ENTERED ON DOCKET

**APR 14 2000**

**FINAL JUDGMENT AS TO SHARP CAPITAL, INC., MAURICIO A. GUTIERREZ, AND EMERGING MARKETS CAPITAL ADVISERS, LTD.** U.S. DISTRICT CLERK'S OFFICE

This matter came before this Court on the application of plaintiff Securities and Exchange Commission ("Commission") by consent of defendants Sharp Capital, Inc. ("Sharp") and Mauricio A. Gutierrez, individually, and as the duly authorized representative of Sharp, for issuance of a Final Judgment in this action, providing the relief set out herein. Sharp and Mr. Gutierrez have provided this Court with a Stipulation and Consent ("Consent") in which, inter alia, they: 1) acknowledge and admit the in personam jurisdiction of this Court over themselves, and the subject matter jurisdiction of this Court over the Commission's claims herein; 2) waive entry of findings of fact and conclusions of law under rule 52, Fed. Rules Civ. Proc., 28 U.S.C.A., with respect to the entry of this Final Judgment; and 3) consent, for purposes of this action only, to the entry of this Final Judgment, without admitting or denying any of the allegations of the Commission's Complaint in this matter, except as to jurisdiction, as set forth herein, and without admitting or denying any violation of the federal securities laws.

This Court has in personam jurisdiction over Sharp and Mr. Gutierrez, and subject matter jurisdiction over the cause of action claimed by the Commission. No further notice or hearing is required prior to entry of this Final Judgment, and there is no just reason for delay. Furthermore, it appears the Court has been fully advised of the premises for entry of this Final Judgment.

IT IS THEREFORE ORDERED:

I.

Sharp and Mr. Gutierrez, and their agents, servants, employees, attorneys-in-fact and all other 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, are permanently restrained and enjoined, directly or indirectly, in connection with the purchase or sale of securities, from making use of any means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange:

- a.) to employ devices, schemes and artifices to defraud;
- b.) to make untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- c.) to engage in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons, in connection with the purchase and sale of securities.

II.

Sharp and Mr. Gutierrez and their agents, servants, employees, attorneys-in-fact and all other 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, are permanently restrained and enjoined, in the offer or sale of securities, from making use of any means or instruments of transportation or communication in interstate commerce, or of the mails, directly or indirectly:

- a.) to employ devices, schemes or artifices to defraud;
- b.) to obtain money or property by means of untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and
- c.) to engage in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

III.

Sharp and Mr. Gutierrez, and their agents, servants, employees, attorneys-in-fact, 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, are permanently restrained and enjoined, while acting as investment advisers in dealing with clients or prospective clients, by use of the mails and other means and instrumentalities of interstate commerce, from, directly or indirectly:

- a.) employing devices, schemes and artifices to defraud clients and prospective clients; or
- b.) engaging in transactions, practices, and courses of business which would operate as a fraud or deceit upon clients and prospective clients.

IV.

A. Within 90 days of the entry of this Final Judgment, Mr. Gutierrez shall pay \$150,000 to the Special Master in this matter. Said amount constitutes a portion of the \$185,797.20 paid to Mr. Gutierrez during the time periods covered by the Commission's Complaint by reason of the activities charged therein. Payment of the balance of this sum, and prejudgment interest thereon, is waived due to Mr. Gutierrez' financial inability to pay. A copy of the check or other instrument used to make such payment shall be sent to Spencer C. Barasch, Assistant District Administrator (Enforcement), Securities and Exchange Commission, Fort Worth District Office, 801 Cherry Street, 19th Floor, Fort Worth, TX 76102. At such time as said monies are paid to the Special Master, Mr. Gutierrez relinquishes all legal and equitable right, title, and interest in those funds, or any of the funds, assets or securities of Sharp or relief-defendant Emerging Markets Capital Advisers, Ltd. ("EMCA"), and no part of such monies shall be returned to Mr. Gutierrez or his affiliates, heirs, successors, or assigns.

B. The funds, assets or securities of Sharp and EMCA shall be disposed of in accordance with the orders of the Court, and the court retains exclusive jurisdiction and possession of such assets.

C. Notwithstanding the above, the Special Master is presently in possession of the account containing the assets of Sharp's 401(k) Plan. These are not Sharp assets and may be returned to the beneficiaries of the Plan.

V.

No civil money penalty shall be imposed upon Mr. Gutierrez by reason of his financial inability to pay.

VI.

The Commission waives its claims for disgorgement against Sharp and EMCA by reason that both of these entities have surrendered all of their assets to the Special Master. Furthermore, for this same reason, the Commission's claims for civil money penalties against Sharp and EMCA are dismissed.

VII.

A. As to Mr. Gutierrez, the Court's determination not to impose a civil penalty, and the Commission's waiver of payment of full disgorgement and prejudgment interest thereon, are contingent upon the accuracy and completeness in all material respects of his Statement of Financial Condition, dated August 15, 1999. As to Sharp and EMCA, the Court's determination not to impose a civil penalty and the Commission's waiver of payment of full disgorgement and prejudgment interest thereon, are contingent upon these companies' surrender of all their assets to the Special Master, as described in the Special Master's First Report, filed January 25, 1999, and Second Report, filed June 18, 1999, and upon Mr. Gutierrez' representation that such assets, as described in these reports, constitute all material assets of Sharp or EMCA actually known to him.

B. If at any time within three (3) years after the date this Final Judgment is entered the Commission obtains information that Mr. Gutierrez' representations to the Court and the Commission, as described above, 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, petition the Court for an order requiring Mr. Gutierrez to pay the balance of his disgorgement,

prejudgment and post-judgment interest thereon, and a civil penalty. In connection with any such petition, the allegations set out in the petition shall be limited exclusively to whether the financial information provided by Mr. Gutierrez was fraudulent, misleading, or, to his knowledge, inaccurate or incomplete in any material respect as of the time such representations were made, and the amount of civil penalty to be imposed. In any such petition, the Commission may move the Court to consider all available remedies, including, but not limited to, ordering payment of funds or assets, directing the forfeiture of any assets, or sanctions for contempt of the Court's Final Judgment, and the Commission may also request additional discovery. Mr. Gutierrez may not, by way of defense to such petition, challenge the validity of this Consent or the Final Judgment, contest the allegations in the Complaint filed by the Commission or assert that payment of a civil penalty should not be ordered.

C. If at any time within three (3) years after the date this Final Judgment is entered the Commission obtains information that Sharp or EMCA did not transfer or deliver assets, the Commission may, at its sole discretion and without prior notice, petition the Court for an order requiring either or both of them to pay disgorgement, prejudgment and post-judgment interest thereon, and a civil penalty. In connection with any such petition, the allegations set out in the petition shall be limited exclusively to whether Sharp or EMCA did not transfer or deliver assets subject to this Court's orders, and the amount of civil penalty to be imposed. In any such petition, the Commission may move the Court to consider all available remedies, including, but not limited to, ordering payment of funds or assets, directing the forfeiture of any Sharp or EMCA assets, or sanctions for contempt of the Court's Final Judgment, and the Commission

may also request additional discovery. Sharp and/or EMCA may not, by way of defense to such petition, challenge the validity of this Consent or the Final Judgment, contest the allegations in the Complaint filed by the Commission or assert that payment of a civil penalty should not be ordered.

VIII.

The Stipulation filed herein is hereby incorporated in this Final Judgment, with the same force and effect as if fully set forth herein.

IX.

This Court shall retain jurisdiction over this matter and over Sharp and Mr. Gutierrez for purposes of enforcing the terms of this Final Judgment and for all other purposes. Mr. Gutierrez is relieved from his obligation to provide information to the Special Master under previously issued orders, but is not prohibited from doing so on a voluntary basis, and may be compelled to do so by issuance of additional process, including, but not by way of limitation, a lawfully issued subpoena, or valid Court order.

X.

This Final Judgment may be served upon Sharp by delivery to the Special Master, and may be served on Mr. Gutierrez in person or by mail either by the United States marshal, by the Clerk of the Court or by any member of the staff of the Commission.

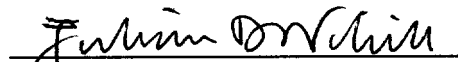
XI.

There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Final Judgment pursuant to rules 58 and 79, Fed. Rules Civ. Proc., 28 U.S.C.A.

DATED and SIGNED this 14 day of April, 1999. <sup>2000 MFC</sup>

  
UNITED STATES DISTRICT JUDGE

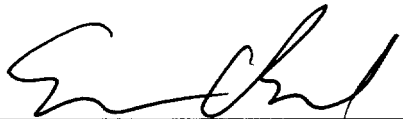
Agreed as to Form and Substance:



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