

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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SECURITIES AND EXCHANGE COMMISSION,		)	
		)	
	Plaintiff,	)	
		)	CIVIL ACTION NO.
v.		)	98cv11904-NG
		)	
TERRY V. KOONTZ, et al.,		)	
		)	
	Defendants and Relief Defendants.	)	
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FINAL JUDGMENT AGAINST DEFENDANT RICHARD J. FULCHER

Plaintiff Securities and Exchange Commission ("Commission"), having filed a Complaint and First Amended Complaint ("Complaint"); and Defendant Richard J. Fulcher ("Fulcher"), in the annexed Consent of Defendant Richard J. Fulcher ("Consent"), having entered a general appearance, having admitted to the jurisdiction of this Court over him and over the subject matter of this action, having waived the entry of findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure with respect to this Final Judgment Against Defendant Richard J. Fulcher ("Final Judgment"), and, without admitting or denying the allegations of the Complaint, except as to jurisdiction and service, which he admits, having consented to the entry of this Final Judgment: permanently restraining and enjoining him from violating Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], Rule 10b-

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5 promulgated thereunder [17 C.F.R. § 240.10b-5], Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)], and Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)]; ordering disgorgement of his ill-gotten gains plus prejudgment interest thereon; and imposing a civil monetary 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)]; and it further appearing that this Court has jurisdiction over Defendant Fulcher and the subject matter hereof, and the Court being fully advised in the premises:

I.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant Fulcher, his officers, agents, servants, employees, attorneys-in-fact, successors and 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 thereunder [17 C.F.R. § 240.10b-5] by, directly or indirectly, using any means or instrumentality of interstate commerce, or of the mails, or of 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.

II.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Fulcher, his officers, agents, servants, employees, attorneys-in-fact, successors and 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 by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the

mails, or of any facility of any national securities exchange:

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

**III.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Fulcher, his officers, agents, servants, employees, attorneys-in-fact, successors and 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 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)], by, directly or indirectly, in the absence of any applicable exemption:

- (a) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell securities through the use or medium of a prospectus or otherwise, unless a registration statement is in effect as to such security;
- (b) carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any security for the purpose of sale or for delivery after sale, unless a registration statement is in effect as to such security; or
- (c) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of a prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while a registration statement as to such security is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

IV.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Fulcher, his agents, servants, employees, attorneys-in-fact, successors and 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 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] by, directly or indirectly, effecting securities transactions for the account of others or engaging in business as a dealer without being registered as a broker-dealer or being associated with a registered broker-dealer for purposes of those transactions or that business.

V.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Fulcher pay disgorgement in the amount of \$660,553.00, representing his gains 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 underpayments, compounded quarterly, which totals \$71,845.18 through November 30, 1999. To satisfy this disgorgement obligation, Defendant Fulcher shall make payment into the Registry of this Court, by cashier's check, certified check, or postal money order,

under cover of a letter that identifies the Defendant, the name and number of this action and the name of this Court, with a copy to counsel for the SEC in its Boston District Office. The disgorgement payment shall be made within thirty days of entry of this Final Judgment. The disgorged funds and prejudgment interest shall be held by the Registry of this Court in an interest bearing account pending further order of the Court.

**VI.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Fulcher pay a civil monetary penalty in the amount of \$75,000 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)]. Payment shall be made within thirty days of entry of this Final Judgment, by cashier's check, certified check or postal money order, payable to the U.S. Treasury, under cover of a letter that identifies the Defendant, the name and number of this action and name of this Court, with a copy to counsel for the SEC in its Boston District Office.

**VII.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Fulcher shall not make or cause to be made on his behalf any claim against any disgorgement fund created from assets disgorged by, or otherwise obtained from, any of the

Defendants or Relief Defendants in this action, for distribution to investors who suffer or have suffered losses from the offer and sale of securities by any of the Defendants as alleged in this action.

**VIII.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the annexed Consent be, and hereby is, incorporated by reference herein with the same force and effect as if fully set forth herein.

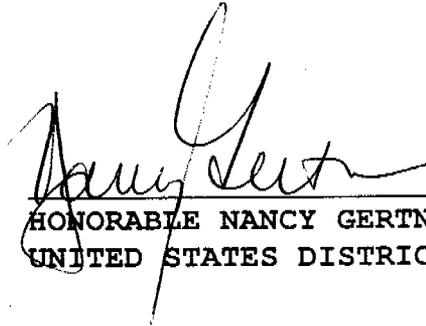
**IX.**

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

**X.**

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 12  
day of June, <sup>2000</sup>~~1999~~.

  
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HONORABLE NANCY GERTNER  
UNITED STATES DISTRICT JUDGE