

**ORIGINAL**

**FILED**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

**JUN 19 2001**

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS



**SECURITIES AND EXCHANGE COMMISSION,**

Plaintiff,

vs.

**GREAT WHITE MARINE & RECREATION, INC.,  
and A. COLIN SMITH,**

Defendants,

and

**KENNETH URSERY and LOURDES G. SMITH,**

Relief Defendants.

Case No.  
W-99-CA-230

**AGREED FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER  
EQUITABLE RELIEF AGAINST ALVIS COLIN SMITH, JR.**

Plaintiff Securities and Exchange Commission ("Commission"), having filed its Complaint in this matter, and Defendant Alvis Colin Smith, Jr. ("Smith"), through his Stipulation and Consent ("Consent"), having admitted service of the Summons and of the Complaint, having admitted the jurisdiction of this Court over Smith and over the subject matter of this action, having entered into the Consent voluntarily, no threats, promises of immunity or assurances having been made by the Commission or by any of its members, officers, agents or representatives to induce Smith to enter into the Consent, having consented to jurisdiction and to entry without further notice of this Final Judgment of Permanent Injunction and Other Equitable Relief ("Final Judgment") enjoining Smith from engaging in transactions, acts, practices and courses of business which constitute and would

constitute violations of sections 5(a) and (c) and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§77e(a) and (c) and 77q(a), section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78j(b), and Commission Rule 10b-5, 17 C.F.R. §240.10b-5; it further appearing that this Court has jurisdiction over Smith and the subject matter of this action and that no further notice of hearing for the entry of this Final Judgment need be given; and the Court being fully advised in the premises:

Based on all the files, records and proceedings herein, the Court makes the following:

### **Findings Of Fact**

1. Smith voluntarily agreed to the Consent and to the entry of this Final Judgment.
2. The securities of Great White Marine and Recreation, Inc. ("Great White") were never registered with the Commission.
3. Great White and Smith sold and caused the securities of Great White to be sold throughout the United States by means and instruments of transportation or communication in interstate commerce or of the mails and to be carried through the mails or in interstate commerce for the purpose of sale or for delivery after sale.
4. In offers and sales of the securities of Great White, Great White and Smith made use of means and instruments of transportation or communication in interstate commerce or use of the mails
  - a. to employ devices, schemes and artifices to defraud, or
  - b. to obtain money and property by means or untrue statements of material fact and 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, or

c. to engage in transactions, practices and courses of business which operated or would operate as a fraud and deceit upon purchasers.

5. Great White and Smith acted with scienter in violating section 17(a) of the Securities Act.

6. In connection with sales of the securities of Great White, Great White and Smith used means and instrumentalities of interstate commerce and the mails and the facilities of a national securities exchange to use and employ manipulative and deceptive devices and contrivances in contravention of Commission Rule 10b-5.

7. In connection with sales of the securities of Great White, Great White and Smith, by the use of means and instrumentalities of interstate commerce, of the mails and of facilities of a national securities exchange,

a. employed devices, schemes and artifices to defraud,

b. made untrue statements of material fact and omitted 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, or

c. engaged in acts, practices and courses of business which operated on or would operate as a fraud or deceit upon other persons.

8. Great White and Smith acted with scienter in violating section 10(b) of the Securities Act and Commission Rule 10b-5

9. Smith profited from his actions.

Based on the foregoing Findings of Fact, the Court reaches the following:

#### **Conclusions Of Law**

1. Smith violated section 5(a) and (c) of the Securities Act.

2. Smith violated section 17(a) of the Securities Act.

3. Smith violated section 10(b) of the Exchange Act.

4. Smith violated Commission Rule 10b-5.

5. A permanent injunction against Smith is appropriate.

6. Smith ought to make disgorgement.

7. The above findings of fact and conclusions of law are made and reached solely for the purpose of this proceeding and any other proceeding brought be or on behalf of the Commission and shall be of no force and effect in any proceeding to which the Commission is not a party.

Based on the foregoing Findings of Fact and Conclusions of Law,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED That Smith and his agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with him who receive actual notice of this order by personal service or otherwise, be and hereby are permanently restrained and enjoined, directly or indirectly,

(a) from making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell a security through the use or medium of a prospectus or otherwise; or

(b) from carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, a security for the purpose of sale or for delivery after sale,

unless a registration statement has been filed and is in effect as to the security.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That Smith and his agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with him who receive actual notice of this order by personal service or otherwise, and each of them,

be and hereby 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 any device, scheme or artifice to defraud;

(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; and/or

(c) to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any purchaser.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That Smith and his agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with him who receive actual notice of this order by personal service or otherwise, be and hereby are permanently restrained and enjoined, directly or indirectly, in connection with the purchase or sale of securities from making use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange:

(a) to use or employ any manipulative or deceptive device, scheme or contrivance;

(b) to employ any artifice to defraud;

(c) to make any untrue statement of a material fact or 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; and/or

(d) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That Smith be and hereby is permanently enjoined and restrained from acting as a director or officer of any issuer having a class of securities registered with the Commission 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).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That Smith shall disgorge to Clark B. Will, Esq. ("Will"), Clark B. Will, PC, 2001 Bryan Street, Suite 1800, Dallas, Texas 75201-2802, Telephone: (214) 880-1818, Facsimile: (214) 871-2111, as an agent of the Court for the purpose of collecting, maintaining and preserving, liquidating and disbursing the following:

(a) the following vehicles of which he is the legal and/or beneficial owner:

Description	VIN	Texas Plate
1998 Ford Expedition	1FMRU17L5WLB48567	B09NZZ
1999 Chevrolet Camaro	2G1FP22G4X2120610	F19BHR
2000 Jaguar X200	SAJDA01D6YGL08455	F81KMF

(b) any legal and/or beneficial interest he may have in the following vehicles:

1999 Pero Trailer	4PTU61629XM011594	56WGLV
1997 Ford Motorhome	3FCMF53G2VJA24957	ZYY84F
1999 MAGN Trailer	1V5AA2128X1344291	86WLWL
1998 Chrysler Sebring	4C3AU52NOWE118711	B96JIL

(c) the following described real estate in which he has a legal and/or beneficial interest:


Rustling Oaks Phase III, Block A, Lots 12, 13 and 14, Navarro County, Texas,

and

Lot 141, Block One (1), THE FAIRWAYS OF SONTERRA, Unit 2 (Planned United Development), Bexar County, Texas, according to plat recorded in Volume 9534, Page 136, Deed and Plat Records, Bexar County, Texas;<sup>1</sup>

- (d) Three Million and no/100 (\$3,000,000.00) Dollars;
- (e) all securities and monies in accounts with broker-dealers anywhere in the United States;
- (f) One Hundred Thousand and no/100 (\$100,000.00) posted as a bond in the United States District Court for the Western District of Texas;
- (g) any and all legal and beneficial interests in real estate located in Mexico;
- (h) any and all legal and beneficial interest in yachts in the territorial waters of Mexico; and
- (i) any and all legal and beneficial interest in securities of Great White Marine & Recreation, Inc. ("Great White") and of Great White Marine SA de CV and its affiliates (collectively "Great White - Mexico")

as receipts from the conduct alleged in the Complaint and in the Amended Complaint, together with prejudgment interest thereon.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That, based upon Smith's sworn representations in its Sworn Statement of Financial Condition dated ~~October 1,~~ <sup>AUGUST 1,</sup> 2000,  submitted to the Commission, if Smith shall make disgorgement to Will, as an agent of the Court for the purpose of collecting, maintaining and preserving, liquidating and disbursing the following:

- (a) the following vehicles of which he is the legal and/or beneficial owner:

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<sup>1</sup> If Lourdes G. Smith disgorges \$381,000.00 to Will in order to retain an interest in this real estate and if she is satisfied with Smith retaining an interest in the real estate, the Commission shall not require Smith to disgorge his legal and beneficial interest in the real estate and if Smith satisfies the balance of his obligation to make disgorgement under the Final Judgment, this obligation to make disgorgement shall be satisfied, and Smith shall be entitled to retain an interest in this real estate without any requirement that he make disgorgement of that interest.

Description	VIN	Texas Plate
2000 Jaguar X200	SAJDA01D6YGL08455	F81KMF

(b) any legal and/or beneficial interest he may have in the following vehicles:

1999 Pero Trailer	4PTU61629XM011594	56WGLV
1997 Ford Motorhome	3FCMF53G2VJA24957	ZYY84F
1999 MAGN Trailer	1V5AA2128X1344291	86WLWL
1998 Chrysler Sebring	4C3AU52NOWE118711	B96JLL

(c) the following described real estate in which he has a legal and/or beneficial interest:

Rustling Oaks Phase III, Block A, Lots 12, 13 and 14, Navarro County, Texas,

and

Lot 141, Block One (1), THE FAIRWAYS OF SONTERRA, Unit 2 (Planned United Development), Bexar County, Texas, according to plat recorded in Volume 9534, Page 136, Deed and Plat Records, Bexar County, Texas;<sup>2</sup>

(d) all securities and monies in accounts with broker-dealers anywhere in the United States;

(e) One Hundred Thousand and no/100 (\$100,000.00) posted as a bond in the United States District Court for the Western District of Texas;

(f) any and all legal and beneficial interests in real estate located in Mexico;

(g) any and all legal and beneficial interest in yachts in the territorial waters of Mexico; and

<sup>2</sup> If Lourdes G. Smith disgorges \$381,000.00 to Will in order to retain an interest in this real estate and if she is satisfied with Smith retaining an interest in the real estate, the Commission shall not require Smith to disgorge his legal and beneficial interest in the real estate and if Smith satisfies the balance of his obligation to make disgorgement under the Final Judgment, this obligation to make disgorgement shall be satisfied, and Smith shall be entitled to retain an interest in this real estate without any requirement that he make disgorgement of that interest.





(h) any and all legal and beneficial interest in the securities of Great White and of Great White - Mexico

within twenty (20) days of the entry of this Final Judgment and if Smith shall make disgorgement of One Million Five Hundred Thousand and no/100 (\$1,500,000.00) Dollars to Will, as an agent of the Court, within ninety (90) days of the entry of this Final Judgment, the balance which Smith is to disgorge, together with interest, shall be waived.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That Smith shall surrender all of his right, title and interest in all shares of the common stock of Great White Marine and Recreation, Inc., in which he has a legal and/or beneficial interest. Smith shall deliver a stock certificate or certificates for those shares of the common stock of Great White Marine and Recreation, Inc., to Will, together with an executed "stock power" with the signature(s) guaranteed by a bank or by a registered broker-dealer and Will shall cause those shares to be cancelled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That Smith shall not share in any distribution of funds from any disgorgement made in this matter.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That, based upon Smith's sworn representations in its Sworn Statement of Financial Condition dated ~~October 1,~~ <sup>AUGUST 1,</sup> 2000,  submitted to the Commission, the Court is not ordering him to pay a civil money penalty pursuant to the provisions of 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).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That the determination not to impose a civil penalty and to waive payment of a portion of the disgorgement amount and prejudgment interest thereon is expressly contingent upon the material accuracy and completeness of Smith's Sworn Statement of Financial Condition dated ~~October 1,~~ <sup>AUGUST 1,</sup> 2000, submitted to the 

Commission and that, if at any time following the entry of this Final Judgment, the Commission obtains credible information indicating that Smith's representations to the Commission concerning his assets, income, liabilities and/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 Smith, petition this Court for an order requiring Smith to pay disgorgement, prejudgment and post-judgment interest thereon, less the amount and value of all disgorgement previously made by Smith, and a civil penalty. In connection with any such petition, the only issues shall be whether the financial information provided by Smith was fraudulent, misleading, 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 its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Smith to turn over funds and assets, directing the forfeiture of any assets and imposing sanctions for contempt of this Final Judgment, and the Commission may also request additional discovery. Smith may not, by way of defense to such petition, challenge the validity of its Stipulation and Consent or this Final Judgment, contest the allegations in the Complaint filed by the Commission on July 28, 1999, or in the Amended Complaint filed by the Commission on September 8, 1999, or the amount of disgorgement and interest.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That the Stipulation and Consent filed herein be, and the same is hereby, incorporated in this Final Judgment with the same force and effect as if fully set forth herein.

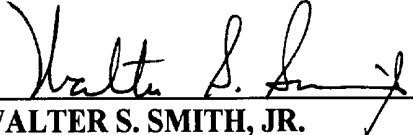
IT IS FURTHER ORDERED, ADJUDGED AND DECREED That this Court shall retain jurisdiction of this action for all purposes, including for purposes of entertaining any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court,

including but not limited to the relief requested by the Commission in its complaint in this action.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that this Final Judgment may be served upon Smith 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.

**IT IS FINALLY ORDERED** that, based on an express determination that there is no just reason for delay, the Clerk of the Court shall enter judgment accordingly.

**SIGNED** this 19<sup>th</sup> day of June, 2001.

  
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**WALTER S. SMITH, JR.**  
**UNITED STATES DISTRICT JUDGE**