

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

GERALD H. LEVINE, et al.,

Defendants.

Civil Action 99-2568 (HHK)

ORDER OF JUDGMENT

WHEREAS, plaintiff, the U.S. Securities and Exchange Commission (“Commission”) filed its amended complaint in this action on August 5, 2003 [#139];

WHEREAS, defendants Gerald H. Levine and Marie A. Levine (the “Levines”), filed their answer to that amended complaint on August 15, 2003 [#143];

WHEREAS, between September 30, 2003 through October 16, 2003, the Court held a jury trial in this matter;

WHEREAS, the jury returned a verdict finding that each of the Levines had violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, Section 17(a) of the Securities Act of 1933, and Section 13(b)(5) of the Securities Exchange Act of 1934 and Rule 13b-2-1 thereunder [#169];

WHEREAS, on December 4, 2006 the court held a hearing on remedies in this action;
and

WHEREAS, on May 8, 2007, the court entered a judgment in favor of plaintiff [#221] and an accompanying memorandum of findings of fact and conclusions of law [#222]; and

WHEREAS, by its May 8, 2007 order, the court directed plaintiff to submit a proposed order calculating the amount of prejudgment interest due on the disgorgement that the court ordered and the terms of that order, and plaintiff has done so, and defendants have submitted no comments nor objections to that proposed order, it is this 6th day of June, 2007, hereby

I.

ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of plaintiffs and against defendants; and it is further

II.

ORDERED, ADJUDGED AND DECREED that, for a period of ten (10) years from May 8, 2007, Defendants, Gerald H. Levine and Marie A. Levine, their agents, servants, employees, attorneys-in-fact and all those persons having active concert and participation with them who receive actual notice of this final judgment by personal service or otherwise, and each of them, are restrained and enjoined from violating Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, directly or indirectly, through the use of any means or instrumentality of interstate commerce or of the mails, or of the facilities of a national securities exchange, by:

- (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 light of the circumstances under which they were made, not misleading, or

(3) engaging in any transaction, act, practice, or course of business which operates or would operate as a fraud or deceit on any person, in connection with the purchase or sale of any security.

III.

It is further **ORDERED, ADJUDGED AND DECREED** that, for a period of ten (10) years from May 8, 2007, Defendants, Gerald H. Levine and Marie A. Levine, their agents, servants, employees, attorneys-in-fact and all those persons having active concert and participation with them who receive actual notice of this final judgment by personal service or otherwise, and each of them, be and they hereby are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)], directly or indirectly, through the use of any means or instrumentality of transportation or communication in interstate commerce, or use of the mails, to:

- (1) employ any device, scheme, or artifice to defraud;
- (2) 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
- (3) engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser, in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. §77q(a).

IV.

It is further **ORDERED, ADJUDGED AND DECREED** that, for a period of ten (10) years from May 8, 2007, Defendants, Gerald H. Levine and Marie A. Levine, their agents,

servants, employees, attorneys, assigns, and all persons in active concert or participation with any of them, who receive actual notice of this Final Judgment, by personal service or otherwise, are permanently restrained and enjoined from violating, directly or indirectly, Section 13(b)(5) of the Exchange Act, 15 U.S.C. § 78m(b)(5), and Exchange Rule 13b2-1, 17 C.F.R. § 240.13b2-1, by knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account described in Section 13(b)(2) of the Exchange Act, 15 U.S.C. § 78m(b)(2), or by directly or indirectly, falsifying, or causing to be falsified, any book, record, or account described in Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

V.

It is further **ORDERED, ADJUDGED AND DECREED** that defendants Gerald H. Levine and Marie A. Levine, pay a total of \$647,684.28 consisting of:

- (a) \$217,358.69, representing disgorgement of profits predicated on the acts alleged in the complaint and as found in the court's May 8, 2007 memorandum,
- (b) prejudgment interest of \$230,325.59 thereon; and
- (c) \$200,000, representing a penalty pursuant to Section 21A of the Exchange Act, 15 U.S.C. §78u-1, predicated on the acts alleged in the Complaint and as found in the court's May 8, 2007 memorandum.

Defendants shall pay that \$647,684.28 within thirty (30) days of the entry of this final judgment by following the instructions in paragraphs VI and VII, below.

VI.

It is further **ORDERED, ADJUDGED AND DECREED** that, within thirty (30) days of entry of this Final Judgment, Defendants Gerald H. Levine and Marie A. Levine shall pay \$447,684.28 of the amount described in paragraph V, representing disgorgement and prejudgment interest, into the registry of this Court by certified check or money order payable to the order of "Clerk, United States District Court, District of the District of Columbia." Defendants Gerald H. Levine and Marie A. Levine shall accompany this payment with a letter explaining that they are making this deposit in partial satisfaction of this final judgment and noting that this payment pertains to this action, Civil Action No., 99-2568, to which the Commission has assigned its internal case number, HO-03351. Defendants shall send that payment to the Clerk at the following address:

Clerk, U.S. District Court,
District of Columbia
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W.
Washington, DC 20001
Attn: Office of the Judgments/Orders

At the same time they remit this payment, Defendants shall send a photocopy of their check or money order and letter to the Commission's counsel of record:

James M. McHale, Esq.
Assistant Chief Litigation Counsel, Enforcement Division
U.S. Securities and Exchange Commission
100 F Street, N.E., Mail Stop 4030
Washington, D.C. 20549-4030

VII.

It is further **ORDERED, ADJUDGED AND DECREED** that, within thirty (30) days of entry of this Final Judgment, Defendants Gerald H. Levine and Marie A. Levine shall pay the remaining \$200,000 of the amount described in paragraph V, representing payment of a penalty, to the Commission's Office of Financial Management, which will forward that amount to the United States Treasury. Defendants shall make such payment by certified check or money order payable to the order of "Office of Financial Management, U.S. Securities and Exchange Commission," accompanied by a letter explaining that the deposit is made in partial satisfaction of this judgment and noting that the payment pertains to this action, Civil Action No., 99-2568 to which the Commission has assigned its internal case number HO-03351. Defendants shall send this payment to the following address:

Office of Financial Management
U.S. Securities and Exchange Commission
6432 General Green Way, Mail Stop 0-3
Alexandria, VA 22312

At the same time they remit this payment, Defendants shall send a photocopy of their check or money order and this letter to the Commission's counsel of record:

James M. McHale, Esq.
Assistant Chief Litigation Counsel, Enforcement Division
U.S. Securities and Exchange Commission
100 F Street, N.E., Mail Stop 4030
Washington, D.C. 20549-4030

VIII.

It is further **ORDERED, ADJUDGED AND DECREED** that upon receipt of any monies paid into the registry of this Court pursuant to Paragraph VI., above, the Financial Deputy

Clerk shall deposit such checks or money orders into an interest bearing account, with interest earned on the money credited to the account. The Financial Deputy Clerk may deduct such costs and fees that this account may incur in accordance with the guidelines that the Director, Administrative Office of the U.S. Courts has prescribed. The Commission may prepare and submit a plan to distribute any such funds for the court's consideration. Such plan may provide for the appointment of a fund administrator to conserve the funds in the account and to oversee a court-approved plan of distribution to persons having valid claims under the federal securities laws arising out of the activities alleged in the complaint or may call for payment of the funds to the Treasury of the United States. At such time as a fund administrator may be appointed, the Clerk of the Court shall transfer the funds from the registry of the court to the control of the fund administrator upon the Commission's request. Whether or not the Commission submits to the court a plan of distribution or seeks the appointment of a fund administrator, it may move the court to appoint a tax accountant to prepare and file appropriate tax returns for the fund.

IX.

It is further **ORDERED, ADJUDGED AND DECREED** that, for a period of ten (10) years from May 8, 2007, 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), Defendants Gerald H. Levine and Marie A. Levine shall be barred from acting as officers or directors 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.

This court shall retain jurisdiction of this action for all purposes, including the implementation and enforcement of this final judgment, for a period of 180 days, at which time, unless good cause exists for retaining said jurisdiction, the court will enter an order terminating the case.

SO ORDERED.

Henry H. Kennedy, Jr.
United States District Judge