

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

FILED

AUG 4 1 04 PM '99

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MICHAEL A. HUXLEY and THORNE
CASTLE, LTD.,

Defendants,

FINANCIAL PLANNING CONCEPTS, and
89 CALIBER, INC.,

Relief Defendants.

RECEIVED
BY *AM*

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CIVIL ACTION No. CV F 99-5045 AWI DLB
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CLOSED

DATE: 8/4/99 *Jr*

**FINAL ORDER OF PERMANENT INJUNCTION AS TO DEFENDANTS
MICHAEL A. HUXLEY AND THORNE CASTLE LTD. AND
RELIEF DEFENDANT FINANCIAL PLANNING CONCEPTS**

The Plaintiff Securities and Exchange Commission commenced this action by filing its Complaint. Defendants Michael A. Huxley ("Huxley") and Thorne Castle Ltd. ("Thorne"), and Relief Defendant Financial Planning Concepts ("FPC"), have submitted their Consent, which is incorporated by reference. In the Consent, Huxley, Thorne Castle and FPC waived service of the Complaint upon them, admitted the jurisdiction of this Court over them and the subject matter of this action, waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and waived any right they might have to appeal from the entry of this Final Order. Without admitting or denying any of the allegations of the Complaint, except as to jurisdiction, Huxley,

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Thorne Castle and FPC consent to the entry of this Final Order of Permanent Injunction and Other Relief.

It appearing that this Court has jurisdiction over Huxley, Thorne Castle and FPC, and the subject matter of this case, and the Court being fully advised in the premises and there being no just cause for delay:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Huxley and Thorne Castle, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order 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 of 1933 ("Securities Act") [15 U.S.C. §77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder, by 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 Huxley, Thorne Castle and FPC pay disgorgement in the amount of \$161,200, \$406,449, and \$121,590, respectively, representing proceeds from the conduct alleged in the Complaint, plus prejudgment interest thereon in an amount to be calculated using the underpayment rates contained in 26 C.F.R. § 301.6621. Based upon Huxley, Thorne Castle and FPC's sworn representations in their Statements of Financial Condition, which were submitted to the Commission along with other information, payment of the entire disgorgement and prejudgment interest thereon is waived as to Huxley and Thorne Castle, and payment of \$115,590 is waived as to FPC, contingent upon such Statements of Financial Condition not containing materially fraudulent, misleading or incomplete information.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that based upon Huxley's and Thorne Castle's sworn representations in their Statements of Financial Condition, the Court is not ordering them to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. The determination not to impose civil penalties is contingent upon the accuracy and completeness of such Statements of Financial Condition.

IV.

If at any time following the entry of this Final Order the Commission obtains information indicating that Huxley's, Thorne Castle's or FPC's representations to the Commission concerning their assets, income, liabilities, 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 them, petition this Court for an order requiring payment of disgorgement and imposing a civil penalty. In connection with any such petition, the only issues shall be whether the financial information provided by Huxley, Thorne Castle and FPC was fraudulent, misleading, 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 Huxley, Thorne Castle and FPC to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Order, and the Commission may also request additional discovery. Huxley, Thorne Castle and FPC may not, by way of defense to such petition, challenge the validity of the Consent or the Final Order, contest the allegations in the Complaint filed by the Commission, contest the amount of disgorgement to be ordered, or assert that payment of a civil penalty should not be ordered.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Huxley, Thorne Castle and FPC will testify in all administrative and judicial proceedings at which the Commission or its staff makes requests for their testimony; make themselves available for interviews and to answer questions as may be required by the Commission or its staff; and that Huxley, Thorne Castle and FPC will produce any documents within their possession, custody, or control, domestic or foreign, which are requested by the Commission or its staff in such proceedings; and that Huxley, Thorne Castle and FPC will continue to be

considered parties to this action for purposes of the Right to Financial Privacy Act of 1978 [12 U.S.C. § 3401-22]; provided, however, that Huxley, Thorne Castle and FPC preserve and retain all applicable privileges, including Huxley's privilege against self-incrimination under the Fifth Amendment to the Constitution of the United States; provided, further, that in the event the Commission or its staff request cooperation of any kind hereunder, they shall be obligated to pay the actual costs or expenses incurred by Huxley and/or Thorne Castle and/or FPC in providing such cooperation.

VI.

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

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Huxley, Thorne Castle and FPC, upon entry of this Final Order, shall execute, in a form supplied by the Plaintiff, an acknowledgment of service of this Final Order and promptly return the acknowledgment to Plaintiff's counsel of record.


VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for purposes of enforcing this Final Order.

* * * *

There being no reason for delay, the Clerk of the Court is hereby directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Order forthwith.

SO ORDERED, this 3rd day of August, 1999.



Anthony W. Ishii
United States District Court

Submitted by:

Katherine S. Addleman
Attorney for Plaintiff
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Attorneys for Defendants MICHAEL A. HUXLEY and THORNE CASTLE LTD.
and for Relief Defendant FINANCIAL PLANNING CONCEPTS
555 South Flower Street, Suite 4600
Los Angeles, California 90071

United States District Court
for the
Eastern District of California
August 5, 1999

* * CERTIFICATE OF SERVICE * *

1:99-cv-05045

US Securities

v.

Huxley

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on August 5, 1999, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Michael R MacPhail
US Securities and Exchange Commission
Central Regional Office
1801 California Street
Suite 4800
Denver, CO 80202-2468


AWI

DLB

Robert C Rosen
Rosen and Associates
555 South Flower Street
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Los Angeles, CA 90071

Jack L. Wagner, Clerk

BY:


Deputy Clerk