

D/F

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.
★ JAN 5 1 2005 ★
BROOKLYN OFFICE

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GRANT R. CURTIS, et al.,

Defendants.

99 Civ. 7357 (NG)

DEFAULT JUDGMENT AS TO TIMOTHY H. MASLEY

Plaintiff Securities and Exchange Commission ("Commission") having commenced this action by filing a complaint (the "Complaint") charging, among others, defendant Timothy H. Masley ("Masley") with violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)], Sections 10(b) and 13(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78m(d)], and Rules 10b-5 and 13d-1 thereunder [17 C.F.R. §§ 240.10b-5 and 240.13d-1], and Rules 13b2-1 and 13b2-2 promulgated under Section 13(b) of the Exchange Act [17 C.F.R. §§ 240.13b2-1 and 240.13b2-2], and with violations pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] of Sections 13(a) and 13(b) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)], and Rules 12b-20, 13a-1 and 13a-13, thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13], and following the issuance and timely service of a summons and Complaint upon Masley, and the Commission having filed a motion pursuant to Fed. R. Civ. P. 55(b) for a default judgment against Masley for his failure to answer or otherwise respond to the Commission's Complaint, and the Court having approved that part of the Magistrate Judge's October 28, 2004 Report and Recommendation finding Masley in default, and the Court having found that it has

jurisdiction over Masley and over the subject matter of this action and the jurisdiction to grant the relief requested by the Commission, and good cause appearing for the entry of this order, the Court orders the following:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Masley, his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Default Judgment as to Timothy H. Masley (“Default Judgment”) by personal service or otherwise are permanently restrained and enjoined from future violations of Section 10(b) of the Securities Exchange [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (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.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Masley, his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Default Judgment by personal service or otherwise are permanently restrained and enjoined from future violations of Section 17(a) of the Securities Act

[15 U.S.C. §§ 77q(a)] 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 use 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 of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Masley and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Default Judgment by personal service or otherwise 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) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or
- (b) 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 any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement 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 Masley and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Default Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 13(d) of the Exchange Act [15 U.S.C. § 78m(d)] and Rule 13d-1 promulgated thereunder [17 C.F.R. § 240.13d-1] by acquiring, directly or indirectly, the beneficial ownership of more than five percent of any equity security of a class which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in Section 12(g)(2)(G) of the Exchange Act [15 U.S.C. § 78l(g)(2)(G)], or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. § 80a-1 et seq.], and failing, within ten days after such acquisition, to send to the issuer of the security, to each exchange where the security is traded, and to file with the Commission, a statement containing the information required by Schedule 13D [17 C.F.R. § 240.13d-101].

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Masley and his agents, servants, employees, attorneys, and all persons in active concert or participation with

them who receive actual notice of this Default Judgment by personal service or otherwise are permanently restrained and enjoined from, directly and indirectly, controlling any person who violates Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] or Rules 12b-20, 13a-1 or 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1 or 240.13a-13] by:

- (A) failing to file with the Commission any report required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the rules and regulations promulgated thereunder; or
- (B) filing with the Commission a report required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the rules and regulations promulgated thereunder that (1) contains an untrue statement of material fact; (2) fails to include, in addition to the information required to be stated in such report, such further material information as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading; or (3) fails to disclose any information required to be disclosed therein,

unless Masley acts in good faith and does not directly or indirectly induce the act or acts constituting the violation.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Masley and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Default Judgment by personal service or otherwise are permanently restrained and enjoined from, directly and indirectly, controlling any person who violates Section 13(b) of the Exchange Act [15 U.S.C. § 78m(b)] by:

- (A) failing to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; or
- (B) failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:
 - i. transactions are executed in accordance with management's general or specific authorization;
 - ii. transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
 - iii. access to assets is permitted only in accordance with management's general or specific authorization; or
 - iv. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; or
- (C) 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)],

unless Masley acts in good faith and does not directly or indirectly induce the act or acts constituting the violation.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Masley and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Default Judgment by personal service or otherwise are permanently enjoined and restrained from, directly or indirectly, singly or in concert, falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] in violation of Rule 13b2-1 [17 C.F.R. § 240.13b2-1] promulgated under Section 13(b) of the Exchange Act [15 U.S.C. § 78m(b)].

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Masley, his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Default Judgment by personal service or otherwise are permanently restrained and enjoined from, directly or indirectly, singly or in concert, while an officer or director of an issuer,

- (A) making or causing to be made a materially false or misleading statement, or
- (B) omitting to state, or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements are made, not misleading,

to an accountant in connection with (1) any audit or examination of the financial statements of such issuer required to be made pursuant to the rules and regulations of the Exchange Act [17 C.F.R. §§ 240.0-1 et seq.] or (2) the preparation or filing of any document or report required to be filed with the Commission, in violation of Rule 13b2-2 [17 C.F.R. § 240.13b2-2], promulgated under Section 13(b) of the Exchange Act [15 U.S.C. § 78m(b)].

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that 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)], Masley is prohibited from acting as an officer or director of any issuer which has a class of securities registered under 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.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Masley is liable for disgorgement of \$8,697,314.44, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$6,893,982.39, for a total of \$15,591,296.83. Masley shall satisfy this obligation by paying \$15,591,296.83 within ten (10) business days to the Clerk of this Court, together with a cover letter identifying Masley as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Default Judgment. Masley shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Masley relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Masley. The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS"). These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the CRIS until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further

order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Commission may propose a plan to distribute the Fund subject to the Court's approval. Masley shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

XI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Masley shall pay a civil penalty in the amount of \$500,000 pursuant to 20(d) of the Securities Act and 21(d)(3) of the Exchange Act [15 U.S.C. §§ 77t(d) and 78u(d)(3)]. Masley shall make this payment within ten (10) business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Masley as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Default Judgment. Masley shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

XII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Default Judgment.

XIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Default Judgment forthwith and without further notice.

Dated: January 21, 2005
Brooklyn, New York

/s/(NG)

HON. NINA GERSHON
United States District Judge