

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MICHAEL LIPKIN, et al.,

Defendants.

99 Civ. 7357 (NG) (VVP)

**FINAL JUDGMENT AS TO DEFENDANTS
MICHAEL LIPKIN AND JOSHUA SHAINBERG**

The United States Securities and Exchange Commission ("Commission"), having filed an Amended Complaint on November 15, 2002, and defendants Michael Lipkin and Joshua Shainberg (collectively "Defendants") having answered the Amended Complaint; a jury trial having been held in this matter; and the jury having found unanimously that:

- Defendant Lipkin knowingly participated in a scheme to defraud investors, which involved the receipt of undisclosed payment in exchange for recommending Alter Sales Inc. ("Alter Sales") stock to investors;
- defendant Shainberg knowingly participated in a scheme to defraud investors, which involved the receipt of undisclosed payment in exchange for recommending Alter Sales stock to investors;
- defendant Lipkin knowingly participated in a scheme to defraud investors in connection with Alter Sales stock, and that he knew or recklessly disregarded that Alter Sales stock was not a sound investment;

- defendant Lipkin knew that brokers under his supervision were making false and misleading statements to customers to the effect that Alter Sales stock was a good or sound investment, and he participated in the brokers' false statements to their customers either by encouraging or instructing them to make such statements or in some other manner; and
- that those false statements were material,

the Court finds that Defendants' conduct constitutes violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], and Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)], and accordingly:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with 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 10(b) of the Exchange Act [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 Defendants and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating 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 Defendants are jointly and severally liable for disgorgement of \$277,382.45, representing unjust enrichment as a result of the conduct alleged in the Complaint, together with prejudgment interest in the amount of \$300,277.36, for a total of \$577,659.81. The Commission may enforce the Court's

judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after ten days following entry of this Final Judgment. In response to any such civil contempt motion by the Commission, Defendants may assert any legally permissible defense. Defendants shall satisfy their obligation by paying \$577,659.81 within ten business days to the Clerk of this Court, together with a cover letter identifying Michael Lipkin and Joshua Shainberg as defendants 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 Final Judgment. Defendants shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Defendants relinquish all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendants. The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS") or any other type of interest bearing account that is utilized by the Court. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held in the interest bearing account 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, in its discretion, may propose a plan to distribute the Fund subject to the Court's approval, or may send the Fund to the U.S. Treasury. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Shainberg shall pay a civil penalty in the amount of \$200,000 pursuant to 15 U.S.C. §§ 77t(d) and 78u(d)(3). Defendant Shainberg 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 Joshua Shainberg as 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 Final Judgment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Lipkin shall pay a civil penalty in the amount of \$200,000 pursuant to 15 U.S.C. §§ 77t(d) and 78u(d)(3). Lipkin 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 Michael Lipkin 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

