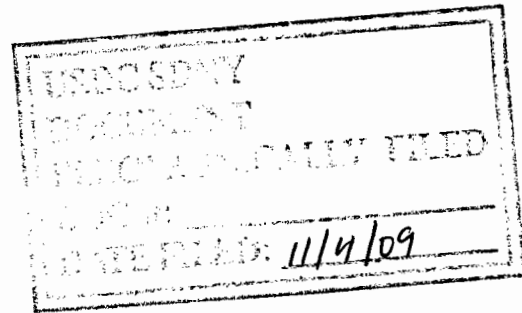


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

DAVID G. FRIEHLING,
FRIEHLING & HOROWITZ, CPA'S, P.C.

Defendants.
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09 Civ. 2467

**PARTIAL JUDGMENT ON CONSENT IMPOSING
PERMANENT INJUNCTION**

The Securities and Exchange Commission ("SEC") having filed a Complaint against David G. Friehling and Friehling & Horowitz, CPA'S, P.C. ("Defendants") in this matter on March 18, 2009; Defendants having entered a general appearance and consented to the Court's jurisdiction over Defendants and the subject matter of this action; and Defendants having consented to entry of this Partial Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction), waived findings of fact and conclusions of law, and waived any right to appeal from this Partial Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants, and each of their partners, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Partial Judgment by personal service, facsimile service, telephonic notice, notice by e-mail or otherwise, are permanently enjoined from, directly or indirectly, singly or in concert, in the offer, purchase or sale of any

security, by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails:

- a. employing any device, scheme or artifice to defraud;
- b. obtaining money or property by means of an untrue statement of material fact or omitting to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and
- c. engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser,

in violation of Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)], and in violation, or aiding and abetting a violation, of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that

Defendants, and each of their partners, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Partial Judgment by personal service, facsimile service, telephonic notice, notice by e-mail or otherwise, are permanently enjoined from, directly or indirectly, singly or in concert, by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails:

- a. employing any device, scheme or artifice to defraud any client or prospective client; or
- b. engaging in any transaction, practice or course of business which operates or

would operate as a fraud or deceit upon any client or prospective client, in violation, or aiding and abetting a violation, of Sections 206(1) and 206(2) of the Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and (2)].

III.

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 Partial Judgment by personal service, facsimile service, telephonic notice, notice by e-mail or otherwise, are permanently enjoined from, directly or indirectly, while acting as a broker or dealer, or in concert with such broker or dealer, by use of the mails or the means or instrumentalities of interstate commerce, from effecting transactions in, or inducing or attempting to induce the purchase or sale of, securities, by means of manipulative, deceptive, or other fraudulent devices or contrivances, including:

- a. acts, practices, and courses of business that operate or would operate as a fraud or deceit upon any person,
- b. untrue statements of material fact and omissions to state a material fact, *to make the statements made,* necessary _λ in light of the circumstances under which they were made, not misleading,

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in violation, or aiding and abetting a violation, of Section 15(c) of the Exchange Act [15 U.S.C. §78o(c)], and Rule 10b-3 thereunder [17 C.F.R. §240.10b-3].

IV.

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 Partial Judgment by personal service, facsimile service, telephonic notice, notice by e-mail or otherwise, are permanently enjoined while operating as a broker or dealer, or in concert with such broker or dealer, from failing to make, maintain on such broker's or dealer's premises, keep accurate, and submit to investors, the Commission and other regulatory bodies books, records, and information required by law, including, but not limited to Parts I, II, and IIA of Form X-17A-5 and an annual audit report in violation, or aiding or abetting a violation, of Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-5 thereunder [17 C.F.R. § 240.17a-5].

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendants shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9]. The Court shall determine the amounts of the disgorgement and civil penalty upon motion of the SEC. Prejudgment interest shall be calculated from the date of the first violation, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the SEC's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendants will be precluded from arguing that they did not violate the federal securities laws as alleged in

the Complaint; (b) Defendants may not challenge the validity of the Consent or this Partial Judgment; and (c) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the SEC's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion, solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court with the exception of, but without prejudice to the SEC's motion, the following: (i) the phrase in paragraph 12 of the Complaint reading "and ^{they} have withdrawn over \$5.5 million from these accounts since 2000 alone"; (ii) the phrase in paragraph 41 of the Complaint reading "These accounts were reported to be worth over \$14 million as of November 30, 2008"; (iii) the phrase in paragraph 42 of the Complaint reading "and Friehling's and his family's accounts exceed \$14 million"; and (iv) the phrase in paragraph 48 of the Complaint reading "Further, Friehling's and his family's BMIS accounts had an accumulated balance at November 30, 2008 of over \$14 million, and withdrawals from the largest of these accounts total over \$5.5 million since 2000". In connection with the SEC's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

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VI.

IT IS FURTHER ORDERED that this Partial Judgment shall be, and is, binding upon Defendants and their partners, agents, servants, employees, attorneys, subsidiaries, affiliates and those persons in active concert or participation with them who receive actual notice of this Partial Judgment by personal service, facsimile service, telephone, e-mail or otherwise.

VII.

IT IS FURTHER ORDERED that the Consent of Defendants David G. Friebling and Friebling & Horowitz, CPA'S, P.C. to a Partial Judgment filed herewith is incorporated herein with the same force and effect as if fully set forth herein, and that Defendants shall comply with all of the undertakings and agreements set forth therein.

Louis L. Stanton

UNITED STATES DISTRICT JUDGE

Issued at : 4:59 p.m.
November 3, 2009
New York, NY