

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

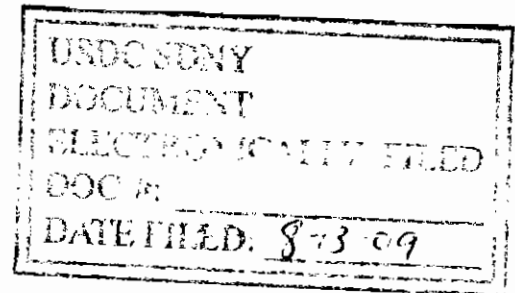
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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

FRANK DIPASCALI, JR.,

Defendant.
-----X



09 Civ. 7685

**PARTIAL JUDGMENT ON CONSENT IMPOSING
PERMANENT INJUNCTION**

The Securities and Exchange Commission ("SEC") having filed a Complaint against Frank DiPascali, Jr. ("Defendant") in this matter on August 11, 2009; Defendant having entered a general appearance and consented to the Court's jurisdiction over Defendant and the subject matter of this action; and Defendant 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 Defendant, and each of his 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 Defendant, and each of his 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 Defendant and Defendant's 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, 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, necessary, in light of the circumstances under which they were made, not misleading,

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 Defendant and Defendant's 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, or keep accurate, books and records required by law, including, but not limited to, account statements, ledgers, blotters and journals 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-3 thereunder [17 C.F.R. § 240.17a-3].

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant's 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 an investment adviser, or acting in concert with such an investment adviser, and making use of the mails or of any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser, from failing to make, maintain on such investment adviser's premises, or keep accurate, books and records required by law, including, but not limited to, account statements, ledgers, blotters and journals, in violation, or aiding and abetting a violation, of Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rule 204-2 thereunder [17 C.F.R. § 275.204-2].

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that

Defendant 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) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Consent or this Partial Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) 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, the parties may take discovery, including discovery from appropriate non-parties.

VII.

IT IS FURTHER ORDERED that this Partial Judgment shall be, and is, binding upon Defendant and his partners, agents, servants, employees, attorneys, subsidiaries, affiliates and

Partial Judgment
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those persons in active concert or participation with them who receive actual notice of this ~~Order~~
by personal service, facsimile service, telephone, e-mail or otherwise.

VIII.

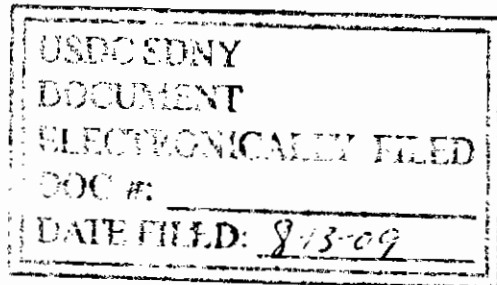
IT IS FURTHER ORDERED that the Consent of Defendant Frank DiPascali, Jr. to a Partial Judgment filed herewith is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

Louis L. Stanton

UNITED STATES DISTRICT JUDGE

Issued at : 1:17 P.m.
August 12, 2009
New York, NY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

FRANK DIPASCALI, JR.,

Defendant.

09 Civ. 7085

**CONSENT OF DEFENDANT FRANK DIPASCALI, JR.
TO PARTIAL JUDGMENT**

1. Defendant Frank DiPascali, Jr. ("Defendant") acknowledges having been served with the summons and complaint in this action, enters a general appearance, waives filing an answer, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the proposed Partial Judgment On Consent Imposing Permanent Injunction in the form attached hereto (the "Partial Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)], and violating, or aiding and abetting violations of, Sections 10(b), (15)(c) and 17(a) of the Securities Exchange Act of 1934 (the "Exchange Act")

[15 U.S.C. §§ 78j(b), 78o(c) and 78q(a)] and Rules 10b-3, 10b-5 and 17a-3 thereunder [17 C.F.R. §§ 240.10b-3, 240.10b-5 and 240.17a-3], and Sections 204, 206(1) and 206(2) of the Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-4 and 80b-6(1) and (2)] and Rule 204-2 thereunder [17 C.F.R. § 275.204-2]; and

(b) directs the issues of disgorgement and civil penalty to be decided at a later time in this action.

3. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rules 52 and 65 of the Federal Rules of Civil Procedure.

4. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the proposed Partial Judgment.

5. Defendant agrees that the Court shall order 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]. Defendant further agrees that the amounts of the disgorgement and civil penalty shall be determined by the Court upon motion of the SEC, and that 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). Defendant further agrees that in connection with the SEC’s motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of this Consent or the Partial Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) 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, the parties may take discovery, including discovery from appropriate non-parties.

6. Defendant enters into this Consent voluntarily and represent that no threats, offers, promises, or inducements of any kind have been made by the SEC or any member, officer, employee, agent, or representative of the SEC to induce Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Partial Judgment with the same force and effect as if fully set forth therein.

8. Defendant will not oppose the enforcement of the Partial Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waive any objection based thereon.

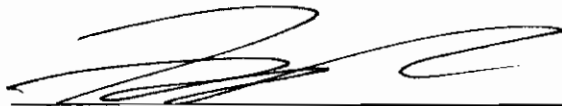
9. Defendant waives service of the Partial Judgment and agrees that entry of the Partial Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions.

10. Defendant acknowledges that no promise or representation has been made by the SEC or any member, officer, employee, agent, or representative of the SEC with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant further acknowledges that the Court's entry of a Partial Judgment may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory

disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding.

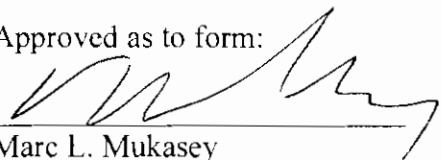
11. Defendant agrees that the SEC may present the proposed Partial Judgment to the Court for signature and entry without further notice.

Dated: 8/11/09


Frank DiPascali, Jr.

On 8/11, 2009, Frank DiPascali, Jr., a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.


Notary Public
Commission expires:

Approved as to form:

Marc L. Mukasey
Bracewell & Giuliani
1177 Avenue of the Americas
19th Floor
New York, New York
10036-2714 F
T: 212-508-6134
Attorney for Defendant Frank DiPascali, Jr.

**RACHEL GOLDMAN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02GO6114775
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES AUGUST 23, 2012**