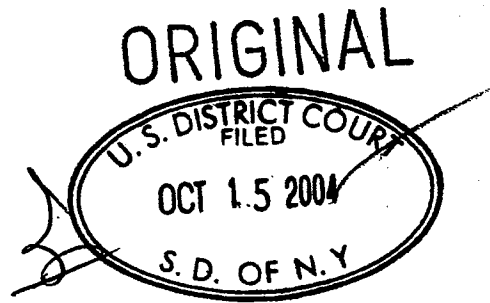


Doc #59

Linda B. Bridgman (LB 9567)  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

ABSOLUTEFUTURE.COM, et al.

Defendants and Relief Defendants.

#04, 1884

Civil Action No. 01-9058 (DAB)

FINAL JUDGMENT OF DEFAULT AGAINST GRAHAM ANDREWS

WHEREAS, on October 11, 2001, Plaintiff Securities and Exchange Commission (the "Commission"), commenced this action by filing a Complaint against Graham Andrews ("Andrews") and a summons was issued on that date to the same;

WHEREAS, in accordance with Rule 4(h)(1) of the Federal Rules of Civil Procedure, the Commission served a copy of the summons and complaint on Andrews on October 25, 2001;

WHEREAS, Andrews failed to appear for a properly noticed deposition on May 1, 2003 and notified the Court through counsel during a status conference on October 24, 2003 and later by letter dated November 24, 2003 to Commission counsel, of his refusal to travel to the United States to submit to a deposition as a result of a pending arrest warrant against him or to agree to a settlement involving the payment of disgorgement or civil monetary penalties;

WHEREAS, The Court ordered Andrews to notify the Commission within thirty days of

the status conference whether he would participate in discovery and defense of this action or agree to a settlement involving the payment of disgorgement and civil monetary penalties and stated that Andrews would be declared in default if he failed to do so;

**WHEREAS** on January 21, 2003, the Court declared Andrews in default and directed the Commission to file a motion for default judgment against Andrews within sixty days of the Court order;

**WHEREAS**, the Court accepts as true the following factual allegations in the complaint against Andrews, who has defaulted, and finds:

1. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act of 1933 ("Securities Act"), [15 U.S.C. § 77v(a)], and Sections 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), [15 U.S.C. §§ 78u(e) and 78aa].
2. Andrews employed the means or instrumentalities of interstate commerce, the mails, or facilities of national securities exchanges to engage in the conduct alleged in the Complaint.
3. From July 1999 through May 2000, Andrews, the Chief Executive Officer ("CEO") of AbsoluteFuture.com ("AFTI"), engaged in a fraudulent scheme to manipulate the public market for AFTI's stock. As part of the scheme, Andrews caused AFTI to issue four press releases in July and August 1999 which contained false and misleading statements about AFTI's relationships with third parties and the potential business prospects that would result from those relationships. Starting in November 1999, Andrews conspired with defendants Edward A. Durante ("Durante") and Roger M. DeTrano ("DeTrano") to use two false Form S-8 registrations to place 4.1 million unrestricted shares under the control of Durante and DeTrano control for use

in the manipulative trading. Andrews caused AFTI to purportedly register and issue the in December 1999 and January 2000 to entities controlled by Durante and DeTrano (Berkshire Capital Partners, Inc. ("Berkshire"), Commonwealth Partners NY LLC ("Commonwealth Partners"), Dottenhoff Financial, Ltd. ("Dottenhoff"), Galton Scott & Golett, Inc. ("Galton"), and Zimenn Importing and Exporting, Inc. ("Zimenn") purportedly in exchange for consulting services. Andrews caused AFTI to issue the shares even though the shares were not eligible for registration on Form S-8 because Durante and DeTrano did not intend to provide bona fide consulting services in exchange for them. Three million of the 4.1 million shares were issued to Berkshire, Dottenhoff, Galton, and Zimenn but were not eligible for registration because those shares were not issued in exchange for bona fide services. The additional 1.1 million shares issued to Commonwealth Partners were not eligible for registration because those shares were issued explicitly in exchange for the promotion and manipulation of AFTI's stock and the raising of capital for AFTI by creating the appearance of an active market for AFTI shares. In addition, in each case, the shares were issued to corporate entities, not natural persons. As such, the Form S-8 registration statements that Andrews caused AFTI to file were invalid and therefore no registration was in effect for the shares. Durante and DeTrano used the entities to which the shares were issued to sell the unregistered stock to the public. Andrews participated in Durante's manipulative use of the S-8 shares by causing AFTI to issue at least two press releases during January and March 2000, one of which was false, that were timed to coincide with Durante's trading. As part of the scheme, AFTI received a total of \$850,000 from Durante and DeTrano, and Andrews personally received at least \$65,000 of those proceeds in February 2000.

4. Through the foregoing conduct, Andrews violated Section 17(a) of the Securities Act,

[15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act, [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder, [17 C.F.R. § 240.10b-5].

5. Through the foregoing conduct, Andrews violated Sections 5(a) and 5(c) of the Securities Act, [15 U.S.C. §§ 77e(a), 77e(c)].

6. On April 14, 2000, Andrews caused AFTI to file a Form 10-KSB with the Commission that contained false and misleading statements about the shares registered pursuant to Form S-8, and the consulting services purportedly received by the company for those shares. Accordingly, AFTI's violated Exchange Act Section 13(a), [15 U.S.C. § 17(m)(a)], and Rules 12b-20 and 13a-1 [17 C.F.R. §§ 240.12b-20, 240.13a-1], thereunder, and Andrews, as a control person, is liable for AFTI's violations of these provisions.

**WHEREAS**, the Commission has applied, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure and the Court's January 21, 2004 Order, for the entry of this Final Default Judgment, and the Court having considered the *prima facie* case for relief shown by the Commission in this matter which is supported by the full record and the Declaration of LeeAnn G. Gaunt filed with the Commission's motion for entry of this Final Judgment, and the exhibits thereto, which showing has not been rebutted by Andrews;

**NOW THEREFORE, BASED ON THE FOREGOING:**

**I.**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Commission's application for entry of this Final Judgment by Default is **GRANTED**.

**II.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Andrews and his

agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment be and hereby are permanently enjoined and restrained, directly or indirectly, singly or in concert, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, from:

- (1) employing any device, scheme, or artifice to defraud;
- (2) obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (3) 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, [15 U.S.C. § 77q(a)].

### **III.**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Andrews and his agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment be and hereby are permanently enjoined and restrained from, directly or indirectly, singly or in concert, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange:

- (1) employing any device, scheme, or artifice to defraud;
- (2) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement made, in the light of the circumstances under

which it was made, not misleading; and

- (3) engaging in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person,

in violation of Section 10(b) of the Exchange Act, [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder, [17 C.F.R. § 240.10b-5].

#### IV.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Andrews and his agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment be and hereby are permanently enjoined and restrained from, directly or indirectly, unless a registration statement is in effect as to a security:

- (1) use any means or instrumentality of interstate commerce or the mails to sell such security; or
- (2) carry or cause to be carried through the mails or in interstate commerce, by any means or instrumentality of interstate commerce, any such security for the purpose of sale or for delivery after sale;

in violation of Section 5(a) of the Securities Act, [15 U.S.C. § 77e(a)].

#### V.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Andrews and his agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment be and hereby are permanently enjoined and restrained from, directly or indirectly, unless a registration statement is in

effect as to a security, or while the registration statement is the subject of a refusal order or stop order or any public proceeding or examination under Section 8 of the Securities Act, [15 U.S.C. § 77h], use any means or instrumentality of interstate commerce or the mails to offer to sell or offer to buy through the use or medium or any prospectus or otherwise any security in violation of Section 5(c) of the Securities Act, [15 U.S.C. § 77e(c)].

**VI.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Andrews and his agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment hereby be and hereby are permanently enjoined and restrained from directly or indirectly violating Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20 and 13a-1 thereunder [17 C.F.R. §§240.12b-20 and 240.13a-1] by participating with any issuer of securities registered under Section 12 of the Exchange Act [15 U.S.C. §78l] in the failure to file, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate, such information and documents as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act, or such annual reports and quarterly reports as the Commission may prescribe, including but not limited to, in addition to the information expressly required to be included in any statement or report filed pursuant to Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)], such material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

**VII.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Andrews shall pay disgorgement in the amount of \$65,000, representing his ill-gotten gains from the conduct alleged in this proceeding, plus prejudgment interest thereon in the amount of \$19,601.41, for a total disgorgement amount of \$84,601.41. Payment shall be made within thirty days of entry of this judgment to the Registry of the Court, by cashier's check, certified check, or U.S. postal money order, made payable to "Clerk, United States District Court", under cover of a letter that identifies Andrews as the defendant, the name and number of this action and the name of this Court, with a copy to SEC counsel at the Commission's Boston District Office located at Tremont Street, Suite 600, Boston, MA 02108. The disgorged funds and prejudgment interest shall be held by the Registry of this Court in an interest bearing account pending further order of the Court.

**VIII.**

**IT IS FURTHER ORDERED THAT** Andrews shall pay the maximum third tier civil money penalty authorized by Section 20(d)(2) of the Securities Act, 15 U.S.C. §77t(d)(2), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. §78u(d)(3); and 17 C.F.R. § 201.1002, setting inflation adjustment calculation. The Commission will submit for the Court's consideration a proposed order setting forth the proper amount Andrews shall pay and setting forth the proper disposition of such funds.

**IX.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. §78u(d)(2)], Andrews is barred from acting as an officer or director of any issuer which has a class of securities registered pursuant to Section 12 of the



Exchange Act [15 U.S.C. §78I] or which is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. §78o(d)].

X.

**IT IS FURTHER ORDERED** that the Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, implementing and enforcing the terms and conditions of this Final Judgment.

XI.

**IT IS FURTHER ORDERED** that the Court expressly determines that there is no just reason for delay in the entry of this Final Judgment. The Clerk of the Court is hereby directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure to enter this Final Judgment forthwith.

XII.

**IT IS FURTHER ORDERED** that pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, this Final Judgment is binding upon Andrews, his agents, servants, employees, partners, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

Dated: New York, New York  
July 28, 2004<sup>1</sup>



DEBORAH A. BATTIS  
UNITED STATES DISTRICT JUDGE

10/14/04 - nunc pro tunc.

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<sup>1</sup> This judgment is issued *nunc pro tunc* to correct two clerical mistakes in the original judgment entered on July 28, 2004.

THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON 10/15/04