

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE

COMMISSION,

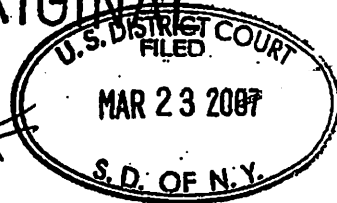
Plaintiff,

-against-

WAMEX HOLDINGS, INC., et al.,

Defendants.

ORIGINAL



01 Civ. 9056
(J. Batts)

#07,0550

**DEFAULT JUDGMENT AND ORDER AS TO DEFENDANTS
WAMEX HOLDINGS, INC., TREVOR KOENIG, ROGER M. DETRANO,
MITCHELL H. CUSHING, HEARTLAND CAPITAL, SCOTT CAMERON,
ROGER H. CHLOWITZ, DAVID WEISS, AND BRUCE M. MILLSTEIN**

The Court having reviewed the Application of Plaintiff Securities and Exchange Commission (the "Commission") for Entry of Judgment by Default Against Wamex Holdings, Inc. ("Wamex"), Trevor Koenig ("Koenig"), Roger M. DeTrano ("DeTrano"), Mitchell H. Cushing ("Cushing"), Heartland Capital ("Heartland"), Scott Cameron ("Cameron"), Roger H. Chlowitz ("Chlowitz"), David Weiss ("Weiss"), and Bruce M. Millstein ("Millstein") (collectively, "Defendants"), and for good cause shown, it is hereby ORDERED ADJUDGED and DECREED that:

1. The Application is GRANTED.
2. Defendants Wamex, Koenig, DeTrano, Cushing, Heartland, Chlowitz, Weiss, and Millstein, and their 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, Sections 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], 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], 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.

3. Defendant Cameron and his 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, directly or indirectly, controlling any person who violates, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [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.

4. Defendants Wamex, DeTrano, and Cushing, and their 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 5 of the Securities Act [15 U.S.C. § 77e] 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;~~

(b) unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or

(c) 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].

5. Defendant Wamex, and its agents, servants, employees, attorneys, and all persons in active concert or participation, who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from, directly or indirectly, violating Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1, 13a-11, and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.13a-1, 240.13a-11, and 240.13a-13], by failing to file with the Commission in accordance with the rules and regulations prescribed by the Commission, such information and documents as the Commission has prescribed.

6. Defendant Cushing and his agents, servants, employees, attorneys, and all persons in active concert or participation, who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from, directly or indirectly controlling any person who violates Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rule 13a-11 promulgated thereunder [17 C.F.R. § 240.13a-11], by failing to file with the Commission in accordance with the rules and regulations prescribed by the Commission, such information and documents as the Commission has prescribed.

7. Defendant DeTrano and his agents, servants, employees, attorneys, and all persons in active concert or participation, who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from, directly or indirectly violating Sections 13(d) and 16(a) of the Exchange Act [15 U.S.C. §§ 78m(d) and 78o(a)] and Rules 13d-1 and 16a-13 promulgated thereunder [17 C.F.R. §§ 240.13d-1 and 240.16a-13], by failing to

register with the Commission in accordance with the rules and regulations prescribed by the Commission, such information and documents as the Commission has prescribed.

8. Defendants Heartland, Chlowitz, Weiss, and Millstein and their agents, servants, employees, attorneys, and all persons in active concert or participation, who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from, directly or indirectly violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o], by failing to register in accordance with the rules and regulations prescribed by the Commission, such information and documents as the Commission has prescribed.

9. Defendant Cameron and his agents, servants, employees, attorneys, and all persons in active concert or participation, who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from, directly or indirectly, controlling any person who violates Section 15(a) of the Exchange Act [15 U.S.C. § 78o], by failing to register in accordance with the rules and regulations prescribed by the Commission, such information and documents as the Commission has prescribed.

10. Pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant Cushing is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to 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)].

11. Within thirty (30) days of the date of this Judgment, Defendants shall disgorge profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon, in the following amounts:

- (a) Wamex is liable for disgorgement of \$762,500, together with prejudgment interest thereon in the amount of \$295,195.80 for a total of \$1,057,695.80.
- (b) DeTrano is liable for disgorgement of \$1,126,242, together with prejudgment interest thereon in the amount of \$436,015.61, for a total of \$1,562,257.61.
- (c) Cushing is liable for disgorgement of \$86,459, together with prejudgment interest thereon in the amount of \$33,471.94, for a total of \$119,930.94.
- (d) Koenig is liable for disgorgement of \$1,169,057.61, together with prejudgment interest thereon in the amount of \$452,591.31, for a total of \$1,621,648.92.
- (e) Heartland and Cameron are joint and severally liable for disgorgement of \$90,195, together with prejudgment interest thereon in the amount of \$34,918.28, for a total of \$125,113.28.
- (f) Chlowitz is liable for disgorgement of \$8,366.33, together with prejudgment interest thereon in the amount of \$3,238.97, for a total of \$11,605.30.
- (g) Weiss is liable for disgorgement of \$13,517.91, together with prejudgment interest thereon in the amount of \$5,233.35, for a total of \$18,751.26
- (h) Millstein is liable for disgorgement of \$6,401, together with prejudgment interest thereon in the amount of \$2,478.10 for a total of \$8,879.10.

12. The Commission may enforce the Court's judgment for disgorgement and prejudgment interest against defendants Wamex, DeTrano, Cushing, Koenig, Heartland, Cameron, Chlowitz, Weiss, and Millstein by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after ten days following entry of this Judgment and Order. In response to any such civil contempt motion by the Commission, the

defendant may assert any legally permissible defense. Payments under paragraph 11 above shall be made to the Clerk of this Court, together with a cover letter identifying the Defendant's name 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 Final Judgment. Defendant shall simultaneously transmit photocopies of each such payment and letter to the Commission's counsel in this action, Teresa A. Rodriguez, 233 Broadway, Suite 1100, New York, New York 10279. Defendant relinquishes all legal and equitable right, title, and interest in such payments, and no part of the funds shall be returned to Defendant. 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. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

13. Within thirty (30) days of the date of this Judgment and pursuant to Sections 20(d) of the Securities Act [15 U.S.C. § 77 t(d)] and 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], Defendants DeTrano, Cushing, Koenig, Heartland, Cameron, Chlowitz, Weiss, and Millstein shall pay the following civil money penalties:

- (a) DeTrano shall pay a civil penalty of \$ 1,126,242
- (b) Cushing shall pay a civil penalty of \$ 100,000.
- (c) Koenig shall pay a civil penalty of \$ 1,169,057.61.
- (d) Heartland and Cameron shall joint and severally pay a civil penalty of \$ 100,000.
- (e) Chlowitz shall pay a civil penalty of \$ 100,000.
- (f) Weiss shall pay a civil penalty of \$ 100,000.
- (g) Millstein shall pay a civil penalty of \$ 100,000.

14. Defendants DeTrano, Cushing, Koenig, Heartland, Cameron, Chlowitz, Weiss, and Millstein shall make payment as indicated in paragraph 13 above 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 Defendant's name 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 Final Judgment. Defendant shall simultaneously transmit photocopies of each such payment and letter to the Commission's counsel in this action, Teresa A. Rodriguez, 233 Broadway, Suite 1100, New York, New York 10279. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

15. This Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment and Order.

16. 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 Final Judgment forthwith and without further notice.

Dated: March 22, 2007

New York, New York

Deborah A. Battis
UNITED STATES DISTRICT JUDGE