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RECEIVED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
OCT 10 2002

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**CV 02 5466**

**SECURITIES AND EXCHANGE COMMISSION,**

02 Civ. \_\_\_\_\_ ( )

**Plaintiff,**

**SPATT, J.**

**-against-**

**FINAL JUDGEMENT  
OF PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF  
BY CONSENT AGAINST  
LIONEL P. THOTAM**

**LIONEL P. THOTAM,**

**Defendant.**

**LINDSAY, M.J.**

Plaintiff Securities and Exchange Commission (the "Commission") having commenced this action by filing a Complaint ("Complaint") on October 10, 2002 against Defendant Lionel P. Thotam ("Thotam"), for injunctive and other equitable relief charging Thotam with violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and Thotam having executed the Consent of Defendant Lionel P. Thotam to Final Judgment of Permanent Injunctive and Other Equitable Relief ("Consent"), dated October 10, 2002, annexed hereto and incorporated herein, having admitted to the service of the Summons and Complaint on him, having admitted to the jurisdiction of this Court,

having waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and without admitting or denying the allegations contained in the Commission's Complaint, except as to jurisdiction, which are admitted, and having consented to the entry of this Final Judgment of Permanent Injunction and Other Equitable Relief By Consent Against Lionel P. Thotam ("Final Judgment"); without further notice:

**I.**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Thotam be and hereby is 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:

- (A) employing any device, scheme, or artifice to defraud;
- (B) making any untrue statement of a material fact or omitting 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; and
- (C) engaging in any act, 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 promulgated thereunder, 17 C.F.R. § 240.10b-5.

**II.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Thotam shall pay \$77,213.38 representing disgorgement of Thotam's ill-gotten gains of \$77,213.38, plus prejudgment interest thereon of \$22,337.20. All restitution payments made in connection with *United States v.*

*Lionel Thotam*, 02 Cr. 0523M shall be credited against the disgorgement and prejudgment interest to be paid by Thotam pursuant to this paragraph.

**III.**

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

**IV.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the provisions of the annexed Consent be, and the same hereby are, incorporated in this Final Judgment with the same force and effect as if fully set forth herein.

**VII.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this 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.

**VIII.**

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.

**CONSENT OF DEFENDANT LIONEL P. THOTAM TO FINAL JUDGMENT  
OF PERMANENT INJUNCTIVE AND OTHER EQUITABLE RELIEF**

1. Defendant Lionel P. Thotam ("Thotam"), upon the advice of counsel and being fully apprised of his rights, having read and understood the terms of the annexed Final Judgment Of Permanent Injunction and Other Equitable Relief by Consent Against Defendant Lionel P. Thotam ("Final Judgment"), appears and admits to the jurisdiction of this Court, waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure and, without further notice, trial or argument, and without admitting or denying the allegations against him contained in the Complaint of Plaintiff Securities and Exchange Commission ("Commission"), filed on October 12, 2002, except as to jurisdiction, which are admitted, hereby consents to the entry of the annexed Final Judgment.

2. Thotam agrees that this Consent of Defendant Lionel P. Thotam to Final Judgment of Permanent Injunctive and Other Equitable Relief (the "Consent") shall be incorporated by reference in and made part of the Final Judgment to be presented to the Court for signature, filing and entry contemporaneously herewith.

3. Thotam waives any right he may have to appeal from the Final Judgment.

4. Thotam agrees that he will not oppose the enforcement of the Final 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 waives any objection he may have based thereon.

5. Thotam acknowledges that any willful violation of any of the terms of the Final Judgment may place him in contempt of this Court and subject him to civil or criminal sanctions, or both.

6. Thotam agrees and undertakes to pay \$77,213.38, representing disgorgement of Thotam's ill-gotten gains, plus prejudgment interest thereon in the amount of \$22,337.20; provided,

however, that all restitution payments Thotam makes in connection with *United States v. Lionel Thotam*, 02 Cr. 0523M shall be credited against the disgorgement and prejudgment interest to be paid pursuant to this paragraph.

7. Thotam acknowledges that he enters into this Consent voluntarily, and acknowledges that no tender, offer, promise, threat or representation of any kind has been made by plaintiff Commission or any member, officer, attorney, agent or representative, to induce him to enter into this Consent.

8. Thotam acknowledges further that no promise or representation has been made by the Commission or its staff with regard to: (a) any criminal liability arising from the facts underlying this action; or (b) immunity from any such criminal liability.

9. Thotam acknowledges that he has been informed and understands that the Commission, at its sole and exclusive discretion, may refer, or grant access to, this matter or any information or evidence gathered in connection therewith or derived therefrom, to any person or entity having appropriate administrative, civil, or criminal jurisdiction, if the Commission has not already done so.

10. Thotam acknowledges and agrees that this civil action and his Consent to the entry of the Final Judgment are for the purposes of resolving this civil action only, in conformity with the provisions of 17 C.F.R. § 202.5(f), and do not resolve, affect or preclude any other proceeding that has been or may be brought against him or anyone else. Consistent with the provisions of 17 C.F.R. § 202.5(f), Thotam waives any claim of Double Jeopardy based on the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Thotam acknowledges that the Court's entry of a permanent injunction 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. Thotam understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings," 17 C.F.R. § 202.5(e). In compliance with this policy, Thotam agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating the impression that the Complaint is without factual basis. If Thotam breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this provision affects Thotam's: (a) testimonial obligations; or (b) right to take legal or factual positions in litigation in which the Commission is not a party.

12. Thotam undertakes to disclose truthfully to the Commission and its representatives all information concerning his own activities and the activities of others on any matters about which the Commission may inquire, and he undertakes further to attend all meetings at which his presence is reasonably requested with respect to the matters about which the Commission may inquire and to appear and testify truthfully at any trial, hearing or court or administrative proceeding with respect to any matters about which the Commission may request his testimony. Thotam undertakes further to provide to the Commission any documents, records, or other tangible evidence in his possession, custody, or control, relating to the matters about which the staff may inquire. Thotam agrees that he will not assert the Fifth Amendment as a bar to providing any of the information required hereunder.

13. Thotam hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996 or any other provision of law to pursue reimbursement of attorney's fees or other fees, expenses or costs expended by Thotam to defend against this action. For these purposes, Thotam agrees that Thotam is not the prevailing party in this action since the parties have reached a good faith settlement.

14. Thotam acknowledges that this Consent embodies the entire understanding of the parties concerning the settlement of this action.

15. Thotam agrees that this Court shall retain jurisdiction of this matter for purposes of implementing and enforcing the terms and conditions of the Final Judgment and for all other purposes.

16. Thotam hereby consents and agrees that the annexed Final Judgment may be presented by the Commission to the Court for signature and entry without further notice or delay.

17. Thotam agrees to execute and provide to the Commission a written declaration pursuant to 28 U.S.C. § 1746 acknowledging his receipt of the Final Judgment no later than ten (10) business days after a copy of the Final Judgment has been forwarded to him.

Dated: New York, New York  
October \_\_\_\_\_, 2002

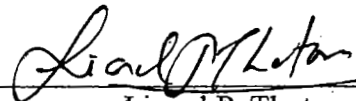
OCT 10 2002

New York

STATE OF ILLINOIS )

COUNTY OF New York )

ss.:



Lionel P. Thotam

The foregoing instrument was acknowledged before me on this OCT 10 2002,  
2002, by Lionel P. Thotam, who is personally known to me or has produced a \_\_\_\_\_  
driver's license as identification and who did take an oath.

F. Alan Pastore  
Notary Public

F. ALAN PASTORE  
Notary Public, State of New York  
No. 31-4806427  
Qualified in New York County  
Commission Expires July 31, 2005

State of \_\_\_\_\_  
Commission No. \_\_\_\_\_  
My commission expires on \_\_\_\_\_.

SO ORDERED:

New York, New York  
\_\_\_\_\_, 2002

*Case closed.  
So ordered.*

Ally Gatt  
UNITED STATES DISTRICT JUDGE  
10/18/02

*Mr. Carlin*  
~~MOVANT'S COUNSEL~~ IS DIRECTED TO SERVE A  
COPY OF THIS ORDER ON ALL PARTIES UPON  
RECEIPT.