

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MICHAEL PALOMA,
MATTHEW BARDASIAN and
DESERT WINDS ENTERTAINMENT CORP.

Defendants.

CIVIL ACTION NO. 02-6010

FILED

JUN - 6 2002

DEBORA M. HARRIS, CLERK
U.S. DISTRICT COURT

JUDGMENT AS TO DEFENDANT MICHAEL PALOMA

Defendant Michael Paloma ("Defendant") having (i) entered a general appearance; (ii) consented to the Court's jurisdiction over Defendant and the subject matter of this action; (iii) without admitting or denying the allegations of the Complaint, consented to entry of this Judgment without further notice; (iv) waived findings of fact and conclusions of law; and (v) waived any right to appeal from this Judgment, it is now:

I

ORDERED, ADJUDGED AND DECREED that Defendant, and Defendant's agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of this Judgment, are permanently restrained and enjoined from:

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(a) violating Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] (“Exchange Act”) and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5] by, directly or indirectly, by the use of 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, (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 statements made, in the light of the circumstances under which they were made, not misleading, or (3) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person;

(b) violating Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)] (“Securities Act”) by, directly or indirectly, 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, (1) employing any device, scheme, or artifice to defraud; (2) obtaining money or property by means of any untrue statement of a material fact or any omission 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 (3) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser; and

(c) violating Section 5(a) of the Securities Act [15 U.S.C. § 77e(a)] by, directly or indirectly, in the absence of any applicable exemption, (1) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell the securities of any issuer, through the use or medium of any prospectus or otherwise, unless and until a registration statement is in effect as to such securities; or (2) carrying or causing to be

carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or for delivery after sale, the securities of any issuer, unless and until a registration statement is in effect as to such securities.

(d) violating Section 5(c) of the Securities Act [15 U.S.C. § 77e(c)] by, directly or indirectly, in the absence of any applicable exemption, 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 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 of examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

II

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant shall pay disgorgement of \$442,319 as a result of the conduct alleged in the Complaint, together with prejudgment interest in the amount of \$27,070.64. Defendant shall satisfy this obligation by paying to the Clerk of this Court, by U.S. Postal money order, certified check, bank cashiers check or bank money order, the sum of \$469,389.64 within ten days after the date of this Final Judgment, together with a letter accompanying such payment specifying that payment is made pursuant to this Judgment. A copy of the accompanying letter and payment shall be transmitted simultaneously to Jena T. Martin, Esq., counsel for the Plaintiff Commission, at the following address: Securities and Exchange Commission, Division of Enforcement, 450 Fifth Street, N.W., Washington, DC 20549-0803. The Clerk shall hold these funds in the Registry, in an interest-bearing account, pending further order. By making this payment, Defendant relinquishes

all legal and equitable right, title and interest in such funds, and no part of the funds shall be returned to Defendant.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant shall pay a civil penalty pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act in the amount of \$65,000. Such payment shall be made by U.S. Postal money order, certified check, bank cashiers check or bank money order bearing on its face “SEC V. MICHAEL PALOMA ET. AL./HO-07499,” payable to the order of the United States Treasury, and shall be delivered within ten days after the date of this Final Judgment to the Office of the Comptroller, Securities and Exchange Commission, 6432 General Green Way, Alexandria, VA 22312, under cover of a letter that identifies the defendant, the name and civil action number of this litigation, and the court in which it was brought. A copy of the cover letter and payment shall be transmitted simultaneously to Jena T. Martin, Esq., counsel for the Plaintiff Commission, at the following address: Securities and Exchange Commission, Division of Enforcement, 450 Fifth Street, N.W., Washington, DC 20549-0803.

III

IT IS FURTHER ORDERED, ADJUGED AND DECREED that, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is permanently 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)].

IV

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant shall comply with his undertaking that, in connection with this action or any related judicial or administrative action or investigation undertaken by or on behalf of, or authorized by, the Commission or to which the Commission is a party, Defendant will (a) upon reasonable notice, produce documents and be available for interviews upon the request of the Commission or its staff; and (b) accept service by mail of subpoenas for any depositions, trials or hearings, and hereby waives the territorial limits on service set forth in Rule 45 of the Federal Rules of Civil Procedure.

V

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant shall comply with the annexed Consent, which is incorporated herein by reference, with the same force as if fully set forth in this Final Judgment.

VI

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VII

There being no just reason for delay, pursuant to Fed. R. Civ. P. 54(b), the Clerk is ordered to enter this Judgment forthwith and without further notice.

Dated: 6/3/02



UNITED STATES DISTRICT JUDGE