

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

United States Courts  
Southern District of Texas  
ENTERED

SEP 09 2003

Michael N. Milby, Clerk of Court

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

DAVID ISAAC LAPIN  
and  
JEFFREY CARL WIGGINTON,

Defendants.

CIVIL ACTION NO.: H-03-3342

**FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER LEGAL AND  
EQUITABLE RELIEF AGAINST DAVID ISAAC LAPIN**

Plaintiff Securities and Exchange Commission ("Commission"), having filed its Complaint in this matter, and defendant David Isaac Lapin ("Lapin" or "Defendant"), through his Stipulation and Consent ("Consent," a copy of which is attached hereto), having waived service of the Complaint and the summons, having admitted the jurisdiction of this Court over him, having waived the entry of findings of facts and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, having entered into his Consent voluntarily, no threats, promises of immunity or assurances having been made by the Commission or by any of its members, officers, agents or representatives to induce Lapin to enter into his Consent, having consented, without admitting or denying any of the allegations in the Commission's Complaint, except as to jurisdiction as set forth above, to entry without further notice of this Final Judgment of Permanent Injunction and Other Legal and Equitable Relief ("Final Judgment") enjoining defendant Lapin from engaging in, or aiding and abetting transactions, acts,

practices and courses of business which constitute and would constitute violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder, and Sections 206(1), 206(2), 206(4) and 207 of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-6(1), 80b-6(2), 80b-6(4), and 80b-7] and Rule 206(4)-4(a) [17 C.F.R. § 275.206(4)-4(a)] promulgated thereunder; and it further appearing that this Court has jurisdiction over Defendant Lapin and over the subject matter of this action and that no further notice of hearing for the entry of this Final Judgment need be given; and the Court being fully advised in the premises:

**I.**

**VIOLATIONS OF SECTION 10(b) OF THE  
EXCHANGE ACT AND RULE 10b-5 THEREUNDER**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant, Defendant's agents, servants, employees, attorneys, assigns, 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, 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.

**II.**

**VIOLATIONS OF SECTION 17(a) OF THE SECURITIES ACT**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant, Defendant's agents, servants, employees, attorneys, assigns, 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 17(a) of the Securities Act [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

**III.**

**VIOLATIONS OF SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant, Defendant's agents, servants, employees, attorneys, assigns, 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(a) or 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)] 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].

IV.

**VIOLATIONS OF SECTIONS 206(1), 206(2) and 206(4) OF THE ADVISERS ACT**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant, Defendant's agents, servants, employees, attorneys, assigns, 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, or aiding and abetting violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), 80b-6(2), and 80b-6(4)] and Rule 206(4)-4(a) [17 C.F.R. § 275.206(4)-4(a)] promulgated thereunder, by using the mails or any means or instrumentality of interstate commerce, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud any client or prospective client;
- (b) to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client; or
- (c) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative, as the Commission shall define by rules and regulations, including but not limited to failing to disclose to any client or prospective client all material facts with respect to a legal or disciplinary event that is material to an evaluation of an investment adviser's integrity or ability to meet contractual commitments to clients.

V.

**VIOLATIONS OF SECTION 207 OF THE ADVISERS ACT**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant, Defendant's agents, servants, employees, attorneys, assigns, 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 207 of the Advisers Act [15 U.S.C. § 80b-7] by willfully making any untrue statement of a material fact in any registration application or report filed with the Commission under Section 203 or Section 204 of the Advisers Act [15 U.S.C. § 80b-3 or § 80b-4], or willfully omitting to state in any such application or report any material fact which is required to be stated therein.

**VI.**

**DISGORGEMENT AND PREJUDGMENT INTEREST**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant is liable for disgorgement of profits gained as a result of the conduct alleged in the Complaint, plus prejudgment interest. The Court sets the amount of disgorgement at \$3,235,990, and sets the amount of prejudgment interest thereon at \$282,075, for a total of \$3,518,065. The Commission shall have an allowed claim for those amounts in Defendant's Chapter 13 Bankruptcy Case, captioned In re David Isaac Lapin, Case No. 02-40363-H2-13 (Bankr. S.D. Tex.), and such claim shall be treated in accordance with Defendant's confirmed Chapter 13 Plan. Nothing herein shall prevent the Commission from seeking to enforce the obligations of Defendant to pay disgorgement plus prejudgment interest or civil money penalties in the event Defendant fails to complete his confirmed Chapter 13 Plan in the bankruptcy case captioned In re David Isaac Lapin, Case No. 02-40363-H2-13 (Bankr. S.D. Tex.), or in the event defendant fails to obtain a discharge under 11 U.S.C. § 1328(a) or (b).

**VII.**

**CIVIL MONEY PENALTY**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant is liable for a civil money penalty, and the Court sets the amount of the civil money penalty at \$120,000. The Commission shall have an allowed claim for that amount in Defendant's Chapter 13 Bankruptcy Case, captioned In re David Isaac Lapin, Case No. 02-40363-H2-13 (Bankr. S.D. Tex.), and such claim shall be treated in accordance with Defendant's confirmed Chapter 13 Plan. Nothing herein shall prevent the Commission from seeking to enforce the obligations of Defendant to pay disgorgement plus prejudgment interest or civil money penalties in the event Defendant fails to complete his confirmed Chapter 13 Plan in the bankruptcy case captioned In re David Isaac Lapin, Case No. 02-40363-H2-13 (Bankr. S.D. Tex.), or in the event defendant fails to obtain a discharge under 11 U.S.C. § 1328(a) or (b).

**VIII.**

**INCORPORATION OF CONSENT**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant shall comply with the provisions of the Consent attached hereto, and that such Consent is incorporated herein by reference as if fully set forth herein.

**IX.**

**NOTICES**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that, in the event Defendant is no longer represented by counsel in this action, Defendant shall provide the Commission, at all times during the pendency of this action, with his current address for purposes of service of filings and other communications. Such notice shall be provided in writing to: Steven J. Korotash, District Trial Counsel, Securities and Exchange Commission, 801 Cherry Street, 19<sup>th</sup> Floor, Fort Worth, Texas 76102. Should Defendant fail to provide such notice, service by mail at the Defendant's last known address shall be deemed proper service.

**X.**

**SERVICE OF FINAL JUDGMENT**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that this Final Judgment may be served upon Defendant in person or by mail either by the United States marshal, by the Clerk of the Court or by any member of the staff of the Commission.

**XI.**

**RETENTION OF JURISDICTION**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court shall retain jurisdiction of this matter for all purposes, including for purposes of entertaining any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court, including but not limited to the relief requested by the Commission in its Complaint in this action.



**XII.**

**ENTRY OF FINAL JUDGMENT**

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: \_\_\_\_\_, 2003

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan J. Berkeley, Esq.  
Stavroula E. Lambrakopoulos, Esq.  
Kirkpatrick & Lockhart LLP  
1800 Massachusetts Avenue, NW  
Suite 200  
Washington, DC 20036-1221  
Attorney for Defendant Lapin



\_\_\_\_\_  
Steven J. Korotash  
District Trial Counsel  
U.S. Securities and Exchange Commission  
801 Cherry Street, Unit #18  
Fort Worth, TX 76210  
(817) 978-3821  
Attorney for Plaintiff Securities and  
Exchange Commission

**XII.**

**ENTRY OF FINAL JUDGMENT**

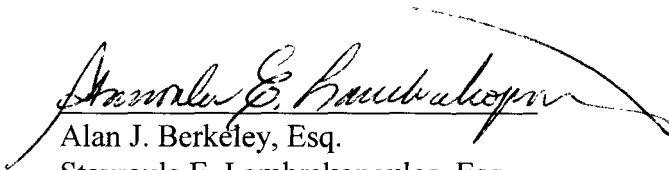
There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: September 8, 2003



UNITED STATES DISTRICT JUDGE

**APPROVED AS TO FORM:**



Alan J. Berkeley, Esq.  
Stavroula E. Lambrakopoulos, Esq.  
Kirkpatrick & Lockhart LLP  
1800 Massachusetts Avenue, NW  
Suite 200  
Washington, DC 20036-1221  
Attorney for Defendant Lapin

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Steven J. Korotash  
District Trial Counsel  
U.S. Securities and Exchange Commission  
801 Cherry Street, Unit #18  
Fort Worth, TX 76210  
(817) 978-3821  
Attorney for Plaintiff Securities and  
Exchange Commission