



TKL 10/22/03 9:00

3:03-CV-01958 SECURITIES V. FRASIER

5

JGM.

FILED

03 OCT 21 PM 2:51

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

FILED

03 OCT 21 PM 2:51

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

OCT - 2 2003

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

B. ROLAND FRASIER, III AND
RICHARD A. MAY,

Defendants.

'03 CV 1958 BTM JFS

Docket Number:

FINAL JUDGMENT AS
TO DEFENDANT
B. ROLAND FRASIER, III

The Securities and Exchange Commission having filed a Complaint and Defendant B. Roland Frasier, III ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

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

ENTERED ON 10/21/03 ORIGINAL

CR

5

dw's

1 receive actual notice of this Final Judgment by personal service
 2 or otherwise are permanently restrained and enjoined from
 3 violating, directly or indirectly, Section 10(b) of the
 4 Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §
 5 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R.
 6 § 240.10b-5], by using any means or instrumentality of interstate
 7 commerce, or of the mails, or of any facility of any national
 8 securities exchange, in connection with the purchase or sale of
 9 any security:

- 10 (a) to employ any device, scheme, or artifice to defraud;
- 11 (b) to make any untrue statement of a material fact or to
- 12 omit to state a material fact necessary in order to
- 13 make the statements made, in the light of the circumstances
- 14 under which they were made, not misleading; or
- 15 (c) to engage in any act, practice, or course of business
- 16 which operates or would operate as a fraud or deceit upon
- 17 any person.

18
 19 II.

20 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
 21 Defendant is permanently barred from participating in an offering
 22 of penny stock, including engaging in activities with a broker,
 23 dealer, or issuer for purposes of issuing, trading, or inducing
 24 or attempting to induce the purchase or sale of any penny stock.
 25 A penny stock is any equity security that has a price of less
 26

1 than five dollars, except as provided in Rule 3a51-1 under the
2 Exchange Act [17 C.F.R. 240.3a51-1].

3
4 III.

5 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
6 Defendant is liable for disgorgement of \$280,000, representing
7 profits gained as a result of the conduct alleged in the
8 Complaint, together with prejudgment interest thereon in the
9 amount of \$65,898.43, for a total of \$345,898.43. Defendant
10 shall satisfy this obligation by paying \$345,898.43, and a civil
11 penalty of \$110,000 pursuant to Section 21(d)(3) of the Exchange
12 Act [15 U.S.C. §§ 78u(d)(3)]. Defendant shall satisfy this
13 obligation by paying \$455,898.43 within ten business days to the
14 Clerk of this Court, together with a cover letter identifying B.
15 Roland Frasier, III as a defendant in this action; setting forth
16 the title and civil action number of this action and the name of
17 this Court; and specifying that payment is made pursuant to this
18 Final Judgment. Defendant shall simultaneously transmit
19 photocopies of such payment and letter to the SEC's counsel in
20 this action. By making this payment, Defendant relinquishes all
21 legal and equitable right, title, and interest in such funds, and
22 no part of the funds shall be returned to Defendant. The Clerk
23 shall deposit the funds into an interest bearing account with the
24 Court Registry Investment System ("CRIS"). These funds, together
25 with any interest and income earned thereon (collectively, the
26 "Fund"), shall be held by the CRIS until further order of the

1 Court. In accordance with the guidelines set by the Director of
 2 the Administrative Office of the United States Courts, the Clerk
 3 is directed, without further order of this Court, to deduct from
 4 the income earned on the money in the Fund a fee equal to ten
 5 percent of the income earned on the Fund. Such fee shall not
 6 exceed that authorized by the Judicial Conference of the United
 7 States. The Commission may by motion propose a plan to
 8 distribute the Fund subject to the Court's approval. Such a plan
 9 may provide that Fund shall be distributed pursuant to the Fair
 10 Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of
 11 2002.

IV.

12
 13 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the
 14 Consent is incorporated herein with the same force and effect as
 15 if fully set forth herein, and that Defendant shall comply with
 16 all of the undertakings and agreements set forth therein.

V.

17
 18
 19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court
 20 shall retain jurisdiction of this matter for the purposes of
 21 enforcing the terms of this Final Judgment.

22
 23
 24
 25
 26

VI.

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: October 20, 2003

Samuel Moskowitz

UNITED STATES DISTRICT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 ROBERT M. FUSFELD
KURT L. GOTTSCHALL
2 Securities and Exchange Commission
1801 California Street, Suite 1500
3 Denver, Colorado 80202
Telephone: (303) 844-1000
4 Facsimile: (303) 844-1068

5 THOMAS A. ZACCARO (Ca. Bar No. 183241)
Securities and Exchange Commission
6 5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036-3648
7 Telephone: (323) 965-3812

8 Attorneys for United States
Securities and Exchange Commission

9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12
13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 v.

17 B. ROLAND FRASIER, III AND
RICHARD A. MAY,

18 Defendants.
19
20
21

Docket Number:

CONSENT OF
B. ROLAND FRASIER, III

22
23 1. Defendant B. Roland Frasier, III ("Defendant")
24 acknowledges having been served with the complaint in this
25 action, enters a general appearance, and admits the Court's
26

1 jurisdiction over Defendant and over the subject matter of this
2 action.

3 2. Without admitting or denying the allegations of the
4 complaint (except as to personal and subject matter jurisdiction,
5 which Defendant admits), Defendant hereby consents to the entry
6 of the Final Judgment in the form attached hereto and
7 incorporated by reference herein, which, among other things:

8 (a) permanently restrains and enjoins Defendant from
9 violation of Section 10(b) of the Securities
10 Exchange Act of 1934 ("Exchange Act")

11 [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17
12 C.F.R. § 240.10b-5];

13 (b) orders Defendant to pay disgorgement in the amount
14 of \$280,000 plus prejudgment interest thereon in
15 the amount of \$65,898.43; and

16 (c) orders Defendant to pay a civil penalty in the
17 amount of \$110,000 under Section 21(d)(3) of the
18 Exchange Act [15 U.S.C. §§ 78u(d)(3)].

19 3. Defendant waives the entry of findings of fact and
20 conclusions of law pursuant to Rule 52 of the Federal Rules of
21 Civil Procedure.

22 4. Defendant waives the right, if any, to appeal from the
23 entry of the Final Judgment.

24 5. Defendant enters into this Consent voluntarily and
25 represents that no threats, offers, promises, or inducements of
26 any kind have been made by the Commission or any member, officer,

1 employee, agent, or representative of the Commission to induce
2 Defendant to enter into this Consent.

3 6. Defendant agrees that this Consent shall be
4 incorporated into the Final Judgment with the same force and
5 effect as if fully set forth therein.

6 7. Defendant will not oppose the enforcement of the Final
7 Judgment on the ground, if any exists, that it fails to comply
8 with Rule 65(d) of the Federal Rules of Civil Procedure, and
9 hereby waives any objection based thereon.

10 8. Defendant waives service of the Final Judgment and
11 agrees that entry of the Final Judgment by the Court and filing
12 with the Clerk of the Court will constitute notice to Defendant
13 of its terms and conditions. Defendant further agrees to provide
14 counsel for the Commission, within thirty days after the Final
15 Judgment is filed with the Clerk of the Court, with an affidavit
16 or declaration stating that Defendant has received and read a
17 copy of the Final Judgment.

18 9. Consistent with 17 C.F.R. 202.5(f), this Consent
19 resolves only the claims asserted against Defendant in this civil
20 proceeding. Defendant waives any claim of Double Jeopardy based
21 upon the settlement of this proceeding, including the imposition
22 of any remedy or civil penalty herein. Defendant further
23 acknowledges that the Court's entry of a permanent injunction may
24 have collateral consequences under federal or state law and the
25 rules and regulations of self-regulatory organizations, licensing
26 boards, and other regulatory organizations. Such collateral

1 consequences include, but are not limited to, a statutory
2 disqualification with respect to membership or participation in,
3 or association with a member of, a self-regulatory organization.

4 This statutory disqualification has consequences that are
5 separate from any sanction imposed in an administrative
6 proceeding.

7 10. Defendant understands and agrees to comply with the
8 Commission's policy "not to permit a defendant or respondent to
9 consent to a judgment or order that imposes a sanction while
10 denying the allegation in the complaint or order for
11 proceedings." 17 C.F.R. § 202.5. In compliance with this
12 policy, Defendant agrees: (i) not to take any action or to make
13 or permit to be made any public statement denying, directly or
14 indirectly, any allegation in the complaint or creating the
15 impression that the complaint is without factual basis; and (ii)
16 that upon the filing of this Consent, Defendant hereby withdraws
17 any papers filed in this action to the extent that they deny any
18 allegation in the complaint. If Defendant breaches this
19 agreement, the Commission may petition the Court to vacate the
20 Final Judgment and restore this action to its active docket.
21 Nothing in this paragraph affects Defendant's: (i) testimonial
22 obligations; or (ii) right to take legal or factual positions in
23 litigation in which the Commission is not a party.

24 11. Defendant hereby waives any rights under the Equal
25 Access to Justice Act, the Small Business Regulatory Enforcement
26 Fairness Act of 1996, or any other provision of law to pursue

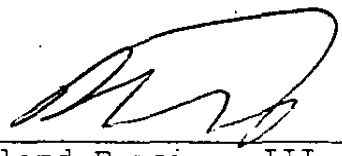
1 reimbursement of attorney's fees or other fees, expenses, or
2 costs expended by Defendant to defend against this action. For
3 these purposes, Defendant agrees that Defendant is not the
4 prevailing party in this action since the parties have reached a
5 good faith settlement.

6 12. In connection with this action and any related judicial
7 or administrative proceeding or investigation commenced by the
8 Commission or to which the Commission is a party, Defendant (i)
9 agrees to appear and be interviewed by Commission staff at such
10 times and places as the staff requests upon reasonable notice;
11 (ii) will accept service by mail or facsimile transmission of
12 notices or subpoenas for documents or testimony at depositions,
13 hearings, or trials, or in connection with any related
14 investigation by Commission staff; (iii) appoints Defendant's
15 undersigned attorney as agent to receive service of such notices
16 and subpoenas; (iv) with respect to such notices and subpoenas,
17 waives the territorial limits on service contained in Rule 45 of
18 the Federal Rules of Civil Procedure and any applicable local
19 rules, provided that the party requesting the testimony reimburses
20 Defendant's travel, lodging, and subsistence expenses at the then-
21 prevailing U.S. Government per diem rates; and (v) consents to
22 personal jurisdiction over Defendant in any United States
23 District Court for purposes of enforcing any such subpoena.

24 13. Defendant agrees that the Commission may present the
25 Final Judgment to the Court for signature and entry without
26 further notice.

1 14. Defendant agrees that this Court shall retain
2 jurisdiction over this matter for the purpose of enforcing the
3 terms of the Final Judgment.

4 Dated: September 25 2003



5 B. Roland Frasier, III

6 On _____, 2003, _____, a person
7 known to me, personally appeared before me and acknowledged
8 executing the foregoing Consent.

9 SEE ATTACHMENT

10 Notary Public
11 Commission expires:

12 Approved as to form:

13 JL Handjeh
14 Jan Lawrence Hadzlik, Esq.
15 Kirkland & Ellis
16 777 South Figueroa Street
17 Los Angeles, California 90017
18 Attorney for Defendant
19
20
21
22
23
24
25
26

21.582

Türkiye Cumhuriyeti

Y. No. :

T.C.

BEYOĞLU

24. NOTERİ

ERDAL ÖZADLI

Cumhuriyet Cad. Zambak
Apt. No: 193 Elmadağ-İST.Tel.: 241 31 46 - 241 22 68
248 18 07

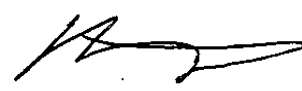
Fax: 248 17 83

İMZA BEYANNAMESİ

25 Eylül 2003

Benim şahsi olarak, gerçek ve tüzel kişiler, bankalar ve diğer kuruluşlar, gerçek ve tüzel kişilerin, bankalar ile yapacağım tüm işlemlerde kullanacağımdan, bu imzayı taşıyan belgelerin beni her bakımdan sorumlu kıladığını beyan eder, onaylanmasını dilerim.

Beyan Eden.....: BARNEY ROLAND FRASIER III

Adres.....: Four Seasons Oteli
Sultanahmet İSTANBUL adresinde
mukimI II III 

İşbu İMZA BEYANNAMESİ altındaki imzanın Şahıs ve kimliği ibraz ettiği Sanfransizco Pasaport dairelerinden verilme 25.09.2003 tarihli ve 056999639 seri nolu resimli tasdikli pasapotruna göre, Virgin USA doğumlu 02.04.1964 doğumlu BARNEY ROLAND FRASIER III 'e ait olup ilgilinin Türkçe okur yazar olmadığından dairemiz yeminli tercümanı EGEMEN DEMİRCİOĞLU' tarafından ilgiliye İngilizce tercümesi yapılarak ilgilinin dairede huzurunda imzaladığını onaylarım. İkibinüç Yılı Eylül Ayının yirmibeş'inci Günü. 25/09/2003

BEYOĞLU 24. NOTERİ
ERDAL ÖZADLIYEMİNLİ TERÇÜMAN
EGEMEN DEMİRCİOĞLUEGEMEN DEMİRCİOĞLU
Yeminli TercümanHarç, Damga Vergisi ve
Değerli Kâğıt Bedeli
Nakden Tahsil edilmiştir.