

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
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

U. S. SECURITIES AND EXCHANGE)
COMMISSION,)

Plaintiff,)

v.)

STEPHEN P. GARDNER,)
DOUGLAS S. POWANDA,)
GARY L. LENZ,)
BERDJ J. RASSAM,)
JOSEPH G. REICHNER,)
PETER J. O'BRIEN,)
DANIEL F. STULAC,)
LARRY A. RODDA, and)
MICHAEL D. WHITT,)

Defendants.)

Case No. 04 CV 2002 (JAH) (RBB)

**FINAL JUDGMENT AS TO
STEPHEN P. GARDNER**

The Securities and Exchange Commission having filed a Complaint and Defendant Stephen P. Gardner 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.

1
2 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and
3 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
4 participation with them who receive actual notice of this Final Judgment by personal service or
5 otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities
6 Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the
7 use of any means or instruments of transportation or communication in interstate commerce or by
8 use of the mails, directly or indirectly:
9

10 (a) to employ any device, scheme, or artifice to defraud;

11 (b) to obtain money or property by means of any untrue statement of a material fact
12 or any omission of a material fact necessary in order to make the statements
13 made, in light of the circumstances under which they were made, not misleading;

14 or

15 (c) to engage in any transaction, practice, or course of business which operates or
16 would operate as a fraud or deceit upon the purchaser.
17

18 II.

19 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
20 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
21 participation with them who receive actual notice of this Final Judgment by personal service or
22 otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section
23 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule
24 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of
25 interstate commerce, or of the mails, or of any facility of any national securities exchange, in
26 connection with the purchase or sale of any security:
27

28 (a) to employ any device, scheme, or artifice to defraud;

1 (b) to make any untrue statement of a material fact or to omit to state a material fact
2 necessary in order to make the statements made, in the light of the circumstances
3 under which they were made, not misleading; or

4 (c) to engage in any act, practice, or course of business which operates or would
5 operate as a fraud or deceit upon any person.
6

7 III.

8 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
9 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
10 participation with him who receive actual notice of this Final Judgment by personal service or
11 otherwise, are permanently restrained and enjoined from knowingly circumventing or knowingly
12 failing to implement a system of internal accounting controls or knowingly falsifying, or causing
13 to be falsified, any book, record, or account described in Section 13(b)(2) of the Exchange Act [15
14 U.S.C. § 78m(b)(2)], in violation of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]
15 and Exchange Act Rule 13b2-1 and 13b2-2 [17 C.F.R. § 240.13b2-1 and 240.13b2-2].
16

17 IV.

18 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
19 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
20 participation with him who receive actual notice of this Final Judgment by personal service or
21 otherwise, are permanently enjoined from aiding and abetting any violation of Sections 13(a),
22 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and
23 78m(b)(2)(B)], and Exchange Act Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20,
24 240.13a-1, and 240.13a-13], by knowingly providing substantial assistance to an issuer that has a
25 class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or any
26 issuer which is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. §
27 780(d)], and that:
28

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
27
28

- (A) fails to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; or
- (B) fails to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management’s general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles (“GAAP”) or any other criteria applicable to such statements and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences;
- (C) files or causes to be filed with the Commission any report required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the Exchange Act’s rules and regulations that includes financial statements that are not presented in conformity with GAAP, or is otherwise materially inaccurate; or
- (D) fails to include, in statements or reports, further material information as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], Defendant is prohibited from acting as an officer or director of any issuer

1 that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C.
2 § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C.
3 § 78o(d)].

4 VI.

5 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is
6 liable for disgorgement of \$5,732,869, representing profits gained as a result of the conduct
7 alleged in the Complaint, together with prejudgment interest thereon in the amount of \$6,203,597,
8 for a total of \$11,936,466. Based on Defendant's sworn bankruptcy petition, schedules and filings
9 made in *In re Stephen P. Gardner*, Case No. 09-10039 (Bankr. D. Maine) dated January 9, 2009
10 and February 2, 2009, and other documents and information submitted to the Commission,
11 however, payment of all of the disgorgement and pre-judgment interest thereon is waived. The
12 determination to waive payment of all the disgorgement and pre-judgment interest is contingent
13 upon the accuracy and completeness of Defendant's representations to the United States
14 Bankruptcy Court for the District of Maine. If at any time following the entry of this Final
15 Judgment the Commission obtains information indicating that Defendant's representations to the
16 bankruptcy court concerning his assets, income, liabilities, or net worth were fraudulent,
17 misleading, inaccurate, or incomplete in any material respect as of the time such representations
18 were made, the Commission may, at its sole discretion and without prior notice to Defendant,
19 petition the Court for an order requiring Defendant to pay the unpaid portion of the disgorgement,
20 pre-judgment and post-judgment interest thereon. In connection with any such petition, the only
21 issue shall be whether the financial information provided by Defendant was fraudulent,
22 misleading, inaccurate, or incomplete in any material respect as of the time such representations
23 were made. In its petition, the Commission may move this Court to consider all available
24 remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the
25 forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may
26
27
28

1 also request additional discovery. Defendant may not, by way of defense to such petition: (1)
2 challenge the validity of the Consent or this Final Judgment; (2) contest the allegations in the
3 Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment and
4 post-judgment interest should not be ordered; (4) contest the amount of disgorgement and pre-
5 judgment and post-judgment interest; or (5) assert any defense to liability or remedy, including,
6 but not limited to, any statute of limitations defense.
7

8 VII.

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

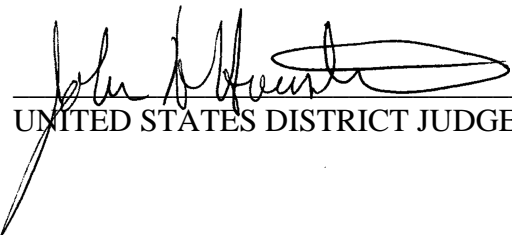
13 VIII.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain
15 jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.
16

17 IX.

18 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil
19 Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.
20

21 Dated: September 16, 2009
22

23 
24 _____
25 UNITED STATES DISTRICT JUDGE
26
27
28