

LD

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ANTHONY P. POSTIGLIONE, JR.,
WILLIAM J. LENNON,
FOUNTAINHEAD FUND, L.P., and
FOUNTAINHEAD ASSET MANAGEMENT, L.L.C.

Defendants.

Civil Action
No. 04-CV-3604

FILED
SEP 19 2005
MICHAEL E. HUNT, Clerk
By: [Signature]

**FINAL JUDGMENT AS TO
DEFENDANT ANTHONY P. POSTIGLIONE, JR.**

The Securities and Exchange Commission having filed a Complaint, and Defendant Anthony P. Postiglione, Jr. ("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 and Defendant's agents, servants, employees, attorneys, 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 Securities Exchange Act of 1934 [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.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, 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 of 1933 [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.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, 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, Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-6(1) and 80b-6(2), by use of the mails or any means or instrumentality of interstate commerce:

- (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.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable, jointly and severally with Defendant William J. Lennon, for disgorgement in the amount of \$549,145.94, representing profits gained as a result of the conduct alleged in the Complaint,

plus prejudgment interest thereon. Based on Defendant's sworn representations in his Statement of Financial Condition dated April 29, 2005, and other documents and information submitted to the Commission, however, the Court is not ordering Defendant to pay a civil penalty. The disgorgement and prejudgment interest amount shall be satisfied, in part, by the Defendant and Defendant's spouse, Megan Postiglione, disclaiming of any and all rights and/or claims to the monies or other assets Defendant invested in the Fountainhead Fund, which, pursuant to the Report of the Receiver dated January 18, 2005, filed in this action, totaled \$181,653.72, as of July 31, 2004. Any monies or other assets invested in the Fountainhead Fund by Defendant will remain in the Fountainhead Fund until they are distributed to investors, other than the Defendant and/or Defendant's spouse, by the Receiver and pursuant to further Order of this Court Order. The remaining balance of the ordered disgorgement, plus the total amount of the ordered prejudgment interest, is waived. The determination not to impose a civil penalty, to partially waive payment of the ordered disgorgement, and to waive all of the ordered prejudgment interest is contingent upon the accuracy and completeness of Defendant's Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Defendant's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant, petition the Court for an order requiring Defendant to pay the unsatisfied portion of the disgorgement, prejudgment and post-judgment interest thereon, and the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by Defendant

was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of the Consent or this Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of disgorgement, prejudgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and prejudgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

V.

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

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 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: 9/19/2005, _____

LD
LEGROME D. DAVIS
UNITED STATES DISTRICT JUDGE

9/20/05

Faxed
A. Greer
K. Kase

Mailed
C. - Fulmy
J. Scherer
K. Raphael
A. Strong