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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

★ JAN 09 2006 ★

LONG ISLAND OFFICE

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

- against - :

KIMBERLY J. CARRELLA,
VINCENT M. CARRELLA,
JAMES R. MANCUSO,
KEVIN J. BARTON,
PHILIP J. HOURICAN,
NOEL J. BELMONTE, and
JOHN C. KAWAS, JR.,

Defendants. :

04-CV-3754 (LDW/MLO)

~~PROPOSED~~
**FINAL JUDGMENT BY DEFAULT AS
TO DEFENDANT KIMBERLY J. CARRELLA**

WHEREAS, on August 30, 2004, Plaintiff United States Securities and Exchange Commission ("Commission") commenced this action by filing a Complaint seeking injunctive and other relief, charging Defendant Kimberly J. Carrella ("Defendant" or "Kimberly Carrella") with violations of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a), Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78(j)(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5;

WHEREAS, in accordance with Fed. R. Civ. P. 4(e)(2), the Commission delivered a copy of the Summons and Complaint to Kimberly Carrella's attorney;

WHEREAS, on October 20, 2004, Kimberly Carrella filed the Answer of Defendant Kimberly Carrella to the Complaint of the Securities and Exchange Commission;

MOVANT'S COUNSEL IS DIRECTED TO SERVE A COPY
OF THIS ORDER ON ALL PARTIES UPON RECEIPT.

WHEREAS, on June 3, 2005, Kimberly Carrella filed a Motion to Withdraw Kimberly Carrella's Answer, and since that time she has not defended this action;

WHEREAS, the Court granted Kimberly Carrella's motion to withdraw her answer in a Memorandum and Order dated June 20, 2005;

WHEREAS, since June 20, 2005 Kimberly Carrella has not defended this action;

WHEREAS, the Clerk of the Court certified Kimberly Carrella's default pursuant to Fed. R. Civ. P. 55(a) on December 30, 2005;

WHEREAS, the Court having found that this Court has jurisdiction over Kimberly Carrella and over the subject matter of this action and the jurisdiction to grant the relief requested by the Commission, and the Court being fully advised of the premises:

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, 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 the 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 is liable for disgorgement of \$3,324,791.46 on a joint and several basis with defendant Vincent M. Carrella, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$601,940.60, and a civil penalty in the amount of \$ 20,000 pursuant to Section 20(d)(2)(C) of the Securities Act of 1933, 15

U.S.C. § 77(d)(2)(C), and/or Section 21(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u(d). Defendant shall satisfy this obligation by paying \$ _____ within ten business days to the Clerk of this Court, together with a cover letter identifying Kimberly Carrella as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. 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. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS") or any other type of interest bearing account that is utilized by the Court. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States.

The Commission may by motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all

tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that Defendant is entitled to, nor shall Defendant further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

IV.

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.

V.

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: 1/9, 06

Central Btg, NY

[Signature]
UNITED STATES DISTRICT JUDGE