


UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:10-cv-10015-JLT
)	
RICHARD ELKINSON,)	
)	
Defendant.)	

[proposed] 
**FINAL JUDGMENT OF PERMANENT INJUNCTION,
DISGORGEMENT AND OTHER RELIEF**

Plaintiff Securities and Exchange Commission (“the Commission”) having filed a Complaint on January 7, 2010, defendant Richard Elkinson (“Elkinson”) having failed to answer, plead or otherwise defend in this action, a default having been entered on February 24, 2010, the Court having considered the Commission’s motion for entry of a default judgment and all the pleadings and evidence submitted in support thereof; and the Court having determined that Elkinson is not an infant or incompetent person and is not in the military service of the United States:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Elkinson and each of his agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise,

including facsimile transmission, electronic mail, or overnight delivery service, are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §77q(a)] by, directly or indirectly, through the use of any means or instrumentalities of interstate commerce, or the mails, or of any facility of any national securities exchange:

- (a) employing any device, scheme or artifice to defraud;
- (b) obtaining any money or property by means of any untrue statement of a material fact or any omission 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) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser,

in the offer or sale of any securities.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Elkinson and each of his agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, including facsimile transmission, electronic mail, or overnight delivery service, are permanently restrained and enjoined from violating Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5] by, directly or indirectly, through the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- (a) employing any device, scheme or artifice to defraud;
- (b) making any untrue statement of a material fact or omitting 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) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Elkinson and each of his agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, including facsimile transmission, electronic mail, or overnight delivery service, are permanently restrained and enjoined from violating Sections 5(a) and (c) of the Securities Act [15 U.S.C. §77e(a), (c)] by, directly or indirectly, through the use of the mails or any means or instrumentality of interstate commerce:

- (a) selling securities through the use or medium of a prospectus or otherwise, or carrying securities for the purpose of sale or for delivery after sale while no registration statement is in effect as to such securities; or
- (b) offering to sell or buy, through the use or medium of any prospectus or otherwise, securities when a registration statement has not been filed as to such securities.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], Elkinson shall pay disgorgement of \$28,000,000, representing profits gained as a result of the conduct alleged in the Complaint, plus pre-judgment interest in the amount of \$468,533, for a total disgorgement amount of \$28,468,533, and that, pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], Elkinson shall pay a civil penalty in the amount of \$ ONE MILLION DOLLARS. Elkinson shall pay these disgorgement and penalty obligations within ten (10) days after entry of this Final Judgment. Any amounts recovered from Elkinson in connection with his obligation to pay restitution pursuant to a final judgment entered against him in any criminal proceeding based upon the same conduct alleged in the Complaint in this action shall be credited toward his disgorgement obligation pursuant to this Final Judgment.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the payments required pursuant to Paragraph IV above shall be made by money order, certified check or cashier's check made payable to the Clerk, United States District Court for the District of Massachusetts. The payments shall be mailed to the Clerk of this Court at the John Joseph Moakley U.S. Courthouse, One Courthouse Way, Boston, MA 02210, with a cover letter identifying Elkinson, the name and number of this action, and the name of this Court, and copies of the payment and cover letter shall be mailed to counsel of record for the Commission. Upon

payment of the disgorgement and penalty obligations set forth above, Elkinson shall relinquish all legal and equitable right, title and interest in such payments, and no part of the funds shall be returned to him. The Clerk shall deposit the payments into an interest-bearing account with the Court Registry Investment System ("CRIS"). These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the CRIS until further order of the Court. In accordance with the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of the 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 propose a plan to distribute the Fund subject to the Court's approval. Such plan may provide that the 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 a civil penalty pursuant to this Final Judgment shall be treated as a penalty paid to the government for all purposes, including all tax purposes.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over Elkinson as a party to this matter for all purposes, including the implementation and enforcement of this Final Judgment.


UNITED STATES DISTRICT JUDGE

Dated: 6/7/, 2010