

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-CV-80737-HURLEY/HOPKINS

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.)
)
TRADE-LLC,)
PHILIP W. MILTON, and)
WILLIAM H. CENTER,)
)
Defendants,)
)
)
BD LLC,)
TWTT-LLC,)
and CMJ CAPITAL LLC,)
)
Relief Defendants.)
_____)

**FINAL JUDGMENT OF PERMANENT INJUNCTION
AND OTHER RELIEF AGAINST PHILIP W. MILTON**

Plaintiff Securities and Exchange Commission commenced this action by filing its Complaint against Defendant Philip W. Milton and others. In its Complaint, the Commission sought, among other relief, a permanent injunction to prohibit violations by Milton of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940; disgorgement of all ill-gotten gains and prejudgment interest thereon; and the imposition of a civil money penalty.

Milton, by the Consent of Defendant Philip W. Milton to Entry of Final Judgment and Other Relief (“Consent”), has entered a general appearance, consented to the Court’s jurisdiction over him and the subject matter of this action, consented to the entry of this Final Judgment of

Permanent Injunction and Other Relief Against Philip W. Milton (“Final Judgment”) without admitting or denying the allegations of the Complaint (except as to subject matter and personal jurisdiction), waived findings of fact and conclusions of law, and waived any right to appeal from this Final Judgment. This Court having accepted the Consent and having jurisdiction over Milton and the subject matter of this action, and the Court being fully advised in the premises, enters Final Judgment as follows:

I.

SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 THEREUNDER

IT IS ORDERED AND ADJUDGED that Philip W. Milton, his officers, 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 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 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.

SECTIONS 206(1) AND 206(2) OF THE ADVISERS ACT

IT IS FURTHER ORDERED AND ADJUDGED that Philip W. Milton, his officers, 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)], while acting as an investment adviser, by the use of any means or instrumentality of interstate commerce, or of the mails:

- (a) employing any device, scheme, or artifice to defraud any client or prospective client; or
- (b) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any client or prospective client.

III.

DISGORGEMENT AND CIVIL PENALTY

IT IS FURTHER ORDERED AND ADJUDGED that Philip W. Milton shall pay disgorgement of \$2,320,915.67, representing the ill-gotten gains he received as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$31,048.69, and a civil penalty in the amount of \$130,000.00 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

Milton shall satisfy this obligation by paying \$2,481,964.36 within fourteen days to the Clerk of this Court, together with a cover letter identifying Milton 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. Milton shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Milton relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Milton. Milton shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 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 Court, 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 (10) percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States.

Milton shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amount he pays pursuant to this Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Milton further shall not claim, assert, or apply for tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts he pays pursuant to this Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

IV.

FAIR FUND

The Commission may by motion propose a plan to distribute the Fund subject to the Court's approval. Such a 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 civil penalties pursuant to this Final Judgment shall be treated as penalties paid to the government for all purposes, including tax purposes. To preserve the deterrent effect of the civil penalty, Milton shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Milton's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Milton's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Milton shall, within thirty 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 Final Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Milton by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

V.

INCORPORATION OF CONSENT

IT IS FURTHER ORDERED AND ADJUDGED that the Consent is incorporated herein with the same force and effect as if fully set forth herein.

VI.

RETENTION OF JURISDICTION

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

VII.

CERTIFICATION UNDER RULE 54(b)

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.

DONE AND ORDERED this 23rd day of JUNE, 2010 at WEST PALM BEACH, Florida.


UNITED STATES DISTRICT COURT JUDGE

Copies to:

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