

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION :
 :
 : Plaintiff, : Civil Action No. 01-9058 (AGS)
 v. :
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 ABSOLUTEFUTURE.COM, et al. :
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 Defendants and Relief Defendants. :

**SECOND REVISED FINAL JUDGMENT OF DEFAULT AGAINST ROGER M.
DETRANO AND ABSOLUTEFUTURE.COM**

WHEREAS, on October 11, 2001, Plaintiff Securities and Exchange Commission (the "Commission"), commenced this action by filing a Complaint against Defendants AbsoluteFuture.com ("AFTF"), Berkshire Capital Partners, Inc. ("Berkshire"), Commonwealth Associates, Ltd. ("Commonwealth Associates"), Commonwealth Partners NY LLC ("Commonwealth Partners"), Roger M. DeTrano ("DeTrano"), Dottenhoff Financial, Ltd. ("Dottenhoff"), Edward A. Durante ("Durante"), Galton Scott & Golett, Inc. ("Galton"), and Zimenn Importing and Exporting, Inc. ("Zimenn"), collectively referred to herein as "Defendants," and summonses were issued on that date to the same;

WHEREAS, on January 23, 2003, the Court entered the Final Judgment of Default Against AFTF, Berkshire, Commonwealth Associates, Commonwealth Partners, Detrano, Dottenhoff, Durante, Galton, and Zimenn Importing and Exporting, Inc. (the "Final Default Judgment");

WHEREAS, Defendant Detrano appealed the entry of the Final Default Judgment to the United States Court of Appeals for the Second Circuit;

WHEREAS, On December 14, 2004 the United States Court of Appeals for the Second

Circuit vacated the Final Default Judgment in part and remanded it with directions that the Court enter judgments providing that DeTrano shall be jointly and severally liable with AFTI for \$150,000, plus prejudgment interest, of his total disgorgement of \$494,694.82 and conversely, that AFTI shall be jointly and severally liable with DeTrano for \$150,000, plus prejudgment interest, of its total disgorgement of \$1,026,093.91;

WHEREAS, the Court accepts as true the following factual allegations in the complaint against the Defendants who have defaulted, and finds:

1. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act of 1933 ("Securities Act"), [15 U.S.C. § 77v(a)], and Sections 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), [15 U.S.C. §§ 78u(e) and 78aa].

2. The Defendants employed the means or instrumentalities of interstate commerce, the mails, or facilities of national securities exchanges to engage in the conduct alleged in the Complaint.

3. From July 1999 through May 2000, the Defendants engaged in a fraudulent scheme to manipulate the public market for AFTI stock. As part of the scheme, AFTI issued four press releases in July and August 1999 which contained false and misleading statements about AFTI's relationships with third parties and the potential business prospects that would result from those relationships. Starting in November 1999, Durante and DeTrano conspired with AFTI to use false Form S-8 registrations in order to place 4.1 million unrestricted shares under Durante's control for use in the manipulative trading. AFTI issued 4.1 million shares pursuant to Form S-8 to entities controlled by Durante and DeTrano (Berkshire, Commonwealth Partners, Dottenhoff, Galton, and Zimenn) purportedly in exchange for consulting services. AFTI issued

the shares even though the shares were not eligible for registration on Form S-8 because Durante and DeTrano did not intend to provide bona fide consulting services in exchange for them. DeTrano, via Commonwealth Partners, facilitated the transfer of 1 million of the 4.1 million shares to Durante. Durante used the S-8 shares he obtained to manipulate AFTI stock by conducting manipulative buying and selling with market makers in brokerage accounts held by Berkshire, Commonwealth Associates, Dottenhoff, Galton, and Zimenn. Durante also used the shares to create the appearance of an active market for AFTI shares by orchestrating large block deals which contained hidden unreported discounts and which were structured so that they were reported to the market twice, falsely inflating the apparent trading volume of the stock. AFTI participated in Durante's manipulative use of the S-8 shares by issuing at least two press releases, one of which was false, which were timed to coincide with Durante's trading. Through this conduct, the Defendants violated Section 17(a) of the Securities Act, [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act, [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder, [17 C.F.R. § 240.10b-5].

4. In December 1999 and January 2000, AFTI issued a total of 4.1 million shares of stock to Commonwealth Partners, Berkshire, Dottenhoff, Galton, and Zimenn. AFTI purported to register all 4.1 million shares pursuant to two Forms S-8 that were filed in December 1999 and January 2000. Neither of AFTI's offerings met the requirements of Form S-8 and therefore no registration was in effect for the shares. The 3 million shares issued to Berkshire, Dottenhoff, Galton, and Zimenn were not eligible for registration because those shares were not issued in exchange for bona fide services. The 1.1 million shares issued to Commonwealth Partners were not eligible for registration because those shares were issued explicitly in exchange for the promotion of AFTI's stock and the raising of capital for AFTI. In addition, in each case, the shares were issued to corporate

entities, not natural persons. As such, the Form S-8 registration statements that were filed were invalid. Durante and DeTrano used the entities to which the shares were issued, Berkshire, Commonwealth Partners, Dottenhoff, Galton, and Zimenn, to sell the unregistered stock to the public. No valid registration statement was ever filed in connection with either: (1) the initial sale to Commonwealth Partners, Berkshire, Dottenhoff, Galton, and Zimenn; or (2) the resales by those entities to the public. Accordingly, Berkshire, Commonwealth Partners, DeTrano, Dottenhoff, Durante, Galton and Zimenn violated Sections 5(a) and 5(c) of the Securities Act, [15 U.S.C. §§ 77e(a), 77e(c)].

5. AFTI filed a Form 10-KSB, filed with the Commission on April 14, 2000 which contained false and misleading statements about the shares that were registered pursuant to Form S-8 and the consulting services that the company was to receive in exchange for those shares. Accordingly, AFTI violated Exchange Act Section 13(a), [15 U.S.C. § 17(m)(a)], and Rules 12b-20 and 13a-1 [17 C.F.R. §§ 240.12b-20, 240.13a-1], thereunder.

6. In December 1999, DeTrano became the beneficial owner of approximately 23% of the outstanding shares of AFTI common stock. In January 2000, Durante became the beneficial owner of approximately 22% of the outstanding shares of AFTI common stock. Neither Durante nor DeTrano ever made any of the filings required by Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1 and 16a-3. Both Durante and DeTrano therefore violated Sections 13(d) and 16(a) of the Exchange Act, [15 U.S.C. § 78m(d), 78p(a)], and Rules 13d-1 and 16a-3, [17 C.F.R. § 240.13d-1, 240.16a-3], thereunder.

7. As part of the scheme, AFTI received a total of \$850,000 from Durante and DeTrano. DeTrano and Commonwealth Partners made \$160,694.64, and DeTrano made \$240,416.97 in illicit

profits from the sale of AFTI stock during the course of the scheme. Durante and Berkshire made \$1,615,227 in illicit profits from sales of the AFTI stock during the course of the scheme. AFTI, Berkshire, Commonwealth Partners, DeTrano and Durante must disgorge their illicit profits.

WHEREAS, the Commission applied, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, for the entry of the Final Default Judgment based on the Defendants' failure to answer or otherwise respond to the Commission's Complaint and the Court having considered the *prima facie* case for relief shown by the Commission in this matter which is supported by the full record and the Declaration of LeeAnn G. Gaunt dated September 18, 2002 and the Supplemental Declaration of LeeAnn G. Gaunt dated January 17, 2003 and filed with the Commission's motion for entry of the Final Default Judgment, and the exhibits thereto, which showing has not been rebutted by the Defendants;

NOW THEREFORE, BASED ON THE FOREGOING:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that in accordance with the December 14, 2004 Opinion of the United States Court of Appeals for the Second Circuit, the Final Default Judgment as it relates to Defendants DeTrano and AFTI is hereby vacated;

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Commission's application for entry of this Revised Final Judgment as to Defendants DeTrano and AFTI is **GRANTED** and the Final Default Judgment remains valid as to all other Defendants.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that DeTrano and AFTI

be and hereby are permanently enjoined and restrained, directly or indirectly, singly or in concert, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, from:

- (1) employing any device, scheme, or artifice to defraud;
- (2) obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (3) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, in violation of Section 17(a) of the Securities Act, [15 U.S.C. § 77q(a)].

IV.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the DeTrano and AFTI hereby are permanently enjoined and restrained from, directly or indirectly, singly or in concert, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange:

- (1) employing any device, scheme, or artifice to defraud;
- (2) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading; and
- (3) engaging in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person,

in violation of Section 10(b) of the Exchange Act, [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder, [17 C.F.R. § 240.10b-5].

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that DeTrano and AFTI are permanently enjoined and restrained from, directly or indirectly, unless a registration statement is in effect as to a security:

- (1) use any means or instrumentality of interstate commerce or the mails to sell such security; or
- (2) carry or cause to be carried through the mails or in interstate commerce, by any means or instrumentality of interstate commerce, any such security for the purpose of sale or for delivery after sale;

in violation of Section 5(a) of the Securities Act, [15 U.S.C. § 77e(a)].

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that DeTrano and AFTI are permanently enjoined and restrained from, directly or indirectly, unless a registration statement is in effect as to a security, or while the registration statement is the subject of a refusal order or stop order or any public proceeding or examination under Section 8 of the Securities Act, [15 U.S.C. § 77h], use any means or instrumentality of interstate commerce or the mails to offer to sell or offer to buy through the use or medium or any prospectus or otherwise any security in violation of Section 5(c) of the Securities Act, [15 U.S.C. § 77e(c)].

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that DeTrano is hereby

permanently enjoined and restrained from, directly or indirectly, singly or in concert, acquiring, directly or indirectly, the beneficial ownership of more than five percent of any equity security of a class which is registered pursuant to Section 12 of the Exchange Act, [15 U.S.C. § 781], or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in Section 12(g)(2)(G) of the Exchange Act, [15 U.S.C. § 781(g)(2)(G)], or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., and failing, within ten days after such acquisition, to send to the issuer of the security, to each exchange where the security is traded and to file with the Commission, a statement required by Section 13(d) of the Exchange Act, which among other things, identifies the background, identity and the nature of such beneficial ownership by such person on whose behalf the purchases have been made and identifies the source and amount of the funds used in making the purchases, in violation of Section 13(d) of the Exchange Act, [15 U.S.C. § 78m(d)], and Rule 13d-1 thereunder, [17 C.F.R. § 240.13d-1].

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that DeTrano hereby is permanently enjoined and restrained from, directly or indirectly, singly or in concert, acquiring, directly or indirectly, the beneficial ownership of more than ten percent of any equity security of a class which is registered pursuant to Section 12 of the Exchange Act, [15 U.S.C. § 781], or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in Section 12(g)(2)(G) of the Exchange Act, [15 U.S.C. § 781(g)(2)(G)], or any equity security issued by a closed-end investment company registered under

the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., and failing, within ten days after such acquisition, to send to each exchange where the security is traded and to file with the Commission, a statement required by Section 16(a) of the Exchange Act, which among other things, identifies the amount of all equity securities of such issuer of which he is a beneficial owner, in violation of Section 16(a) of the Exchange Act, [15 U.S.C. § 78p(a)], and Rule 16a-3 thereunder, [17 C.F.R. § 240.16a-3].

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that AFTI is hereby permanently enjoined and restrained from, directly or indirectly, violating Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1 and 12b-20 [17 C.F.R. §§ 240.13a-1 and 240.12b-20] thereunder, by filing with the Commission an annual report on behalf of any issuer which is required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(1)] and the Rules and regulations promulgated thereunder, which contains any untrue statements of material fact required to be stated therein or necessary to make the statements made, in light of the circumstances under which they were made, not misleading, or which fails to comply in any material respect with the requirement of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)].

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that AFTI shall pay disgorgement in the amount of \$850,000, representing its ill-gotten gains from the conduct alleged in this proceeding, plus prejudgment interest thereon through December 2002, in the amount of \$176,093.91 for a total disgorgement amount of \$1,026,093.91. A portion of its

disgorgement, \$150,000, and the associated pre judgment interest shall be owed jointly and severally with Roger Detrano. Payment shall be made within thirty days of entry of this judgment to the Registry of the Court, by cashier's check, certified check, or U.S. postal money order, made payable to "Clerk, United States District Court", under cover of a letter that identifies AFTI as the defendant, the name and number of this action and the name of this Court, with a copy to SEC counsel at the Commission's Boston District Office located at Tremont Street, Suite 600, Boston, MA 02108. The disgorged funds and prejudgment interest shall be held by the Registry of this Court in an interest bearing account pending further order of the Court.

XI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that DeTrano shall pay disgorgement in the amount of \$401,111.61, representing his ill-gotten gains from the conduct alleged in this proceeding, plus prejudgment interest thereon through December 2002, in the amount of \$93,583.21 for a total disgorgement of \$494,694.82. DeTrano shall be jointly and severally liable with Commonwealth Partners for \$198,187.50 of the total \$494,694.82. DeTrano shall be jointly and severally liable with AFTI for \$150,000 of the total \$494,694.82. Payment shall be made within thirty days of entry of this judgment to the Registry of the Court, by cashier's check, certified check, or U.S. postal money order, made payable to "Clerk, United States District Court," under cover of a letter that identifies DeTrano as the defendant, the name and number of this action and the name of this Court, with a copy to SEC counsel at the Commission's Boston District Office located at Tremont Street, Suite 600, Boston, MA 02108. The disgorged funds and prejudgment interest shall be held by the Registry of this Court in an

interest bearing account pending further order of the Court.

XII.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, implementing and enforcing the terms and conditions of this Revised Final Judgment.


XIII.

IT IS FURTHER ORDERED that the Court expressly determines that there is no just reason for delay in the entry of this Revised Final Judgment. The Clerk of the Court is hereby directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure to enter this Revised Final Judgment forthwith.

XIV.

IT IS FURTHER ORDERED that pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, this Revised Final Judgment is binding upon DeTrano and AFTI and their agents, servants, employees, partners, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Revised Final Judgment by personal service or otherwise.

Dated: March 22, 2005


DEBORAH A. BATTIS
UNITED STATES DISTRICT JUDGE