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U.S.D.C. Atlanta

UNITED STATES DISTRICT COURT  
For The  
NORTHERN DISTRICT OF GEORGIA

JAN 20 2000

LUTHER D. THOMAS, Clerk  
By: *Shaw*  
Deputy Clerk

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

CLUB ATLANTA TRAVEL, INC.,  
DAVID L. STRAUB, FRANK GARNER,  
and FRED GARNER,

Defendants.

FILED IN CLERK'S OFFICE  
U.S.D.C. Atlanta

CIVIL ACTION FILE NO.  
1:97-CV-2774-CAM

FEB 7 - 2000

LUTHER D. THOMAS, Clerk  
By: *Shaw*  
Deputy Clerk

ORDER REGARDING  
DISGORGEMENT AND CIVIL  
PENALTY AS TO FRANK  
GARNER AND FRED GARNER

On September 18, 1997, this Court ordered that defendants Frank Garner and Fred Garner shall each pay disgorgement, plus prejudgment interest thereon, and a civil penalty pursuant to Section 20(d)(2)(C)(i) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(d)(2)(C)(i)] and Section 21(d)(3)(B)(iii)(I) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)(3)(B)(iii)(I)] in amounts as may be determined by agreement between the plaintiff Securities and Exchange Commission ("Commission") and these respective defendants. In the event that the parties could not agree as to the appropriate amount of disgorgement or civil penalty, the Court would determine the amount of disgorgement, plus prejudgment interest thereon, and/or civil penalty, as necessary.

Plaintiff Commission and defendants Frank Garner and Fred Garner have informed the Court that they have come to an agreement concerning an appropriate resolution regarding disgorgement, prejudgment interest, and a civil penalty. Accordingly, the Court being fully advised in the premises:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant Frank Garner shall pay disgorgement in the amount of \$474,025.00, plus prejudgment interest thereon. The calculation of such prejudgment interest is to be computed at the Internal Revenue Service rate for unpaid taxes. Based upon Frank Garner's sworn representations in his Statement of Financial Condition dated as of March \_\_\_, 1999, and submitted to the Commission, payment of all but \$13,448.00 of the disgorgement and prejudgment interest thereon is waived, contingent upon the accuracy and completeness of Frank Garner's Statement of Financial Condition.

II

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that based upon Frank Garner's sworn representations in his Statement of Financial Condition updated as of March \_\_\_, 1999, and submitted to the Commission, the Court is not ordering him to pay a civil penalty pursuant to Section 20(d)(2)(C)(i) of the Securities Act [15 U.S.C. § 77t(d)(2)(C)(i)] and Section 21(d)(3)(B)(iii)(I) of the Exchange Act [15 U.S.C. § 78u(d)(3)(B)(iii)(I)]. The determination not to impose a civil penalty and to waive payment of all but \$13,448.00 of disgorgement and prejudgment interest thereon is contingent upon the accuracy and completeness of Frank Garner's Statement of Financial Condition. If at any time following the entry of this Order, the Commission obtains information indicating that Frank Garner'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 Frank Garner, petition this Court for an order requiring Frank Garner to pay disgorgement, prejudgment and postjudgment interest thereon, and a civil penalty. In connection with any such petition, the only issues shall be whether the financial information provided by Frank Garner was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, and the amount of the civil penalty to be imposed. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Frank Garner to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Order, and the Commission may also request additional discovery. Frank Garner may not, by way of defense to such petition, challenge the validity of his Stipulation And Consent or this Order, contest the allegations in the Commission's complaint, the amount of disgorgement and interest, or assert that disgorgement or the payment of a civil penalty should not be ordered.

### III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Fred Garner shall pay disgorgement in the amount of \$401,245.00, plus prejudgment interest thereon. The calculation of such prejudgment interest is to be computed at the Internal Revenue Service rate for unpaid taxes. Based upon Fred Garner's sworn representations in his Statement of Financial Condition updated as of March \_\_, 1999, and submitted to the Commission, payment of all but \$33,250.00 of the disgorgement and prejudgment interest thereon is waived, contingent upon the accuracy and completeness of Fred Garner's Statement of Financial Condition.

IV.

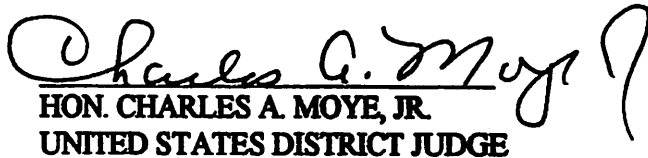
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that based upon Fred Garner's sworn representations in his Statement of Financial Condition updated as of March \_\_, 1999, and submitted to the Commission, the Court is not ordering him to pay a civil penalty pursuant to Section 20(d)(2)(C)(i) of the Securities Act [15 U.S.C. § 77t(d)(2)(C)(i)] and Section 21(d)(3)(B)(iii)(I) of the Exchange Act [15 U.S.C. § 78u(d)(3)(B)(iii)(I)]. The determination not to impose a civil penalty and to waive payment of all but \$33,250.00 of disgorgement and prejudgment interest thereon is contingent upon the accuracy and completeness of Fred Garner's Statement of Financial Condition. If at any time following the entry of this Order, the Commission obtains information indicating that Fred Garner'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 Fred Garner, petition this Court for an order requiring Fred Garner to pay disgorgement, prejudgment and postjudgment interest thereon, and a civil penalty. In connection with any such petition, the only issues shall be whether the financial information provided by Fred Garner was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, and the amount of the civil penalty to be imposed. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Fred Garner to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Order, and the Commission may also request additional discovery. Fred Garner may not, by way of defense to such petition, challenge the validity of his Stipulation And Consent or this Order, contest the allegations in

the Commission's complaint, the amount of disgorgement and interest, or assert that disgorgement or the payment of a civil penalty should not be ordered.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over this matter for all purposes and may order other and further relief that this Court deems appropriate under the circumstances.

SO ORDERED, this 7<sup>th</sup> day of February, 1999.

  
HON. CHARLES A. MOYE, JR.  
UNITED STATES DISTRICT JUDGE