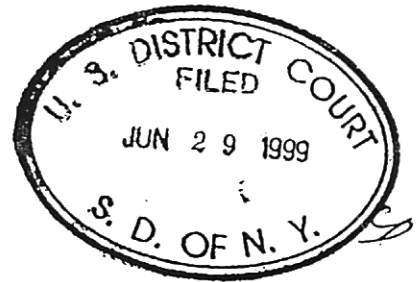


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Edwin H. Nordlinger (EN-6258)
Deputy Regional Director
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
7 World Trade Center
New York, New York 10048
(212) 748-8038



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

SECURITIES AND EXCHANGE COMMISSION,	:
	:
Plaintiff,	:
	:
-against-	: 98 Civ. 2218 (CSH)
	:
NICHI CAPITAL, LTD.,	: FINAL JUDGMENT BY
OLAWANDE A. AGUNLOYE, WISE CHOICE	: DEFAULT
DISCOUNT BROKERAGE, INC., RALPH	:
ANTEBY, and BRIAN WALFISH,	: # 99, 1481
	:
Defendants,	:
	:
-and-	:
	:
STRATEGIC RISK MANAGEMENT,	:
	:
Relief Defendant.	:
	:
-----x	:

WHEREAS plaintiff Securities and Exchange Commission ("Commission") commenced this action for injunctive and other relief on March 27, 1998, by filing a Summons and Complaint against, among others, defendants Nichi Capital, Ltd. ("Nichi"), Olawande A. Agunloye ("Agunloye"), Wise Choice Discount Brokerage, Inc. ("Wise Choice"), and Brian Walfish ("Walfish") (collectively, "Defendants"); and

WHEREAS Defendants have failed to answer the Complaint or otherwise defend or appear through counsel in this action as required by Federal Rule of Civil Procedure 12(a); and

WHEREAS the Clerk of the Court has signed certificates duly noting the default of each of the Defendants; and

WHEREAS Plaintiff Commission has submitted a Motion for Entry of Final Judgment by Default against Defendants in connection with the default judgments; and

WHEREAS the Court having considered the Memorandum of Law, the Declaration of Audry Weintrob, Esq., and the attached exhibits in support of Plaintiff Commission's Motion for Entry of Final Judgment by Default against Defendants, and all other proceedings had herein.

THE COURT FINDS AS AGAINST DEFENDANTS:

1. The 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. § 77u(e) and 78aa.

2. Valid service of the Complaint and a valid Summons was made upon Nichi, Agunloye, and Wise Choice on March 27, 1998, and upon Walfish on April 8, 1998 in compliance with Fed. R. Civ. P. 4(e).

3. Defendants, having failed to answer, plead, or otherwise respond to the Complaint, have defaulted in this action under Rule 55 of the Federal Rules of Civil Procedure.

4. As a consequence of their default, Defendants have admitted the factual allegations set forth in the Complaint.

5. Defendants' ill-gotten gains from the conduct alleged in the Complaint total \$928,827.50. Prejudgment interest on that amount through March 31, 1999 totals \$75,337.55.

NOW THEREFORE:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants are permanently restrained and enjoined, singly or in concert, in the offer or sale of any securities by the use of any means or instrument of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly, from:

- (A) employing any device, scheme, or artifice to defraud;
- (B) obtaining 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 violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are permanently restrained and enjoined, 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, from:

- (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 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 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.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are permanently restrained and enjoined, 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, from:

(A) representing that a security is being offered or sold on an "all-or-none" basis, unless the security is part of an offering or distribution being made on the condition that all or a specified amount of the consideration paid for such security will be promptly refunded to the purchaser unless: (1) all of the securities being offered are sold at a specific price within a specified time; and (2) the total amount due to the seller is received by him by a specified date; or

(B) representing that a security is being offered or sold on any other basis whereby all or part of the consideration paid for any such security will be refunded to the purchaser if all or some of the securities are not sold, unless the security is part of an offering or distribution being made on the condition that all or a specified part of the consideration paid for such security will be promptly refunded to the purchaser unless: (1) a specified number of units of the security are sold at a specified price within a specified time; and (2) the total amount due to the seller is received by him by a specified date,

in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-9 thereunder, 17 C.F.R. § 240.10b-9.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are permanently restrained and enjoined from, directly or indirectly, singly or in concert making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell any securities through the use or medium of any prospectus or otherwise unless a registration statement is in effect as to such securities, in violation of Section 5(a) of the Securities Act, 15 U.S.C. § 77e(a).

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants, jointly and severally, shall disgorge a total of \$1,004,165.05 consisting of: (1) \$928,827.50 representing Defendants' profits from transactions in Nichi securities during the period from October 1997 through March 27, 1998; and (2) \$75,337.55 in prejudgment interest thereon, calculated through March 31, 1999. Payment shall be made in the manner specified in Paragraph X.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Nichi shall pay \$10,000 to the Treasury of the United States ("Treasury") as a civil penalty 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). This penalty shall be paid within thirty (30) business days of the entry of this Final Judgment. Payment shall be made in the manner specified in Paragraph XI.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wise *CMA* Choice shall pay \$(0,000) to the Treasury of the United States ("Treasury") as a civil penalty 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). This penalty shall be paid within thirty (30) business days of the entry of this Final Judgment. Payment shall be made in the manner specified in Paragraph XI.

VIII.

CMA IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Agunloye shall pay \$(0,000) to the Treasury of the United States ("Treasury") as a civil penalty 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). This penalty shall be paid within thirty (30) business days of the entry of this Final Judgment. Payment shall be made in the manner specified in Paragraph XI.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Walfish shall pay \$10,000 to the Treasury of the United States ("Treasury") as a civil penalty 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). This penalty shall be paid within thirty (30) business days of the entry of this Final Judgment.. Payment shall be made in the manner specified in Paragraph XI.

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the monies to be paid pursuant to Paragraphs V of this Final Judgment shall be paid in the following manner:

- (1) Such monies shall be paid into the registry of the Court within 30 days from the date of entry of this Final Judgment by certified check or money order drawn to the order of "Clerk, United States District Court, S.D.N.Y.," whereupon the Clerk of this Court, or the financial Deputy Clerk, is hereby directed to deposit said check or money order into an account for this case with the Court Registry Investment System ("C.R.I.S. Account"), administered through the United States District Court for the Southern District of New York.
- (2) Simultaneously with making any payment pursuant to subparagraph (1) above, Defendants shall transmit

copies of any certified checks or money orders, front and back, as well as any accompanying correspondence, to Carmen J. Lawrence, Regional Director, United States Securities and Exchange Commission, Northeast Regional Office, Seven World Trade Center, New York, New York 10048, Attn.: Audry Weintrob, Esq., under cover of a letter that identifies the name and civil action number of this litigation, and the name of this Court. The cover letter also shall identify how much of the payment is disgorgement and how much is prejudgment interest.

- (3) Funds in the C.R.I.S. Account shall be held until further order of the Court, and shall be disbursed in accordance with a plan of distribution to be submitted by the Commission and approved by the Court. In no event shall any portion of the C.R.I.S. Account be returned to Defendants, or their agents, successors or assigns.
- (4) Interest earned on the C.R.I.S. Account shall be credited to the C.R.I.S. Account and shall thereafter be treated in the same manner as principal.
- (5) In the event that all or any portion of the C.R.I.S. Account remains after disbursement of any funds pursuant to subparagraph (3) above, the remainder shall be disbursed to the Treasury. Any payment to the

Treasury under this subparagraph (5) shall be payable to the Comptroller of the Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549, and transmitted to the Comptroller of the Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549, under cover of a letter that identifies Defendants, the name and civil action number of this litigation, and the court in which it was brought. In no event shall any portion of the C.R.I.S. Account be returned to Defendants, or their agents, successors or assigns.

- (6) Prior to making any disbursements from the C.R.I.S. Account, the Custodian of the C.R.I.S. Account is directed to deduct from the income on the investment a fee, equal to ten percent (10%) of the income earned, but not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office so held and without further order of the Court.
- (7) Copies of this Final Judgment shall be served by the Commission on the Clerk of the Court or his financial Deputy Clerk.

XI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the monies to be paid to the Treasury pursuant to Paragraph VI-IX of this

Final Judgment shall be paid by postal money order, certified check, bank cashier's check or bank money order, payable to the order of the United States Securities and Exchange Commission. The payment shall be transmitted to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312, under cover of a letter identifying the name and civil action number of this litigation, the court in which it was brought, and that the payment is a civil penalty under Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. A copy of the cover letter and payment shall be simultaneously transmitted to Carmen J. Lawrence, Esq., Regional Director, Securities and Exchange Commission, 7 World Trade Center, New York, New York 10048, Attn: Audry Weintrob, Esq.

XII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the funds held in the Nichi Capital, Ltd. account at Citibank, N.A. ("Citibank"), 111 Wall Street, New York, New York 10043, account number 43644826, that is subject to the Preliminary Injunction and Other Equitable Relief by Consent Against Defendants entered by the Court on May 13, 1998 shall be paid into the C.R.I.S. Account in the following manner:

- (1) upon service of this Order on Citibank, Citibank shall issue a certified check drawn on Nichi's account, for

the full amount contained therein, payable to the order of "Clerk, United States District Court, S.D.N.Y.;"

- (2) whereupon the Clerk of this Court, or the financial Deputy Clerk, is hereby directed to deposit said check into the C.R.I.S. Account; and
- (3) whereupon the total amount to be paid pursuant to Paragraph V will be reduced by the amount of such check.

XIII.

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

XIV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for all purposes, including the implementation and enforcement of the terms and conditions of this Final Judgment.

XV.

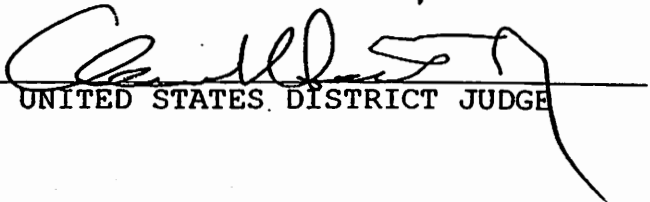
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there being no just reason for delay, the Clerk of the Court is hereby

directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure to enter this Final Judgment by Default forthwith.

SO ORDERED:

Dated: New York, New York
~~April~~ __, 1999

June 23,


UNITED STATES DISTRICT JUDGE

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON 6-30-99