

*CASTRO*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MITCHEL S. GUTTENBERG,  
ERIK R. FRANKLIN,  
DAVID M. TAVDY,  
MARK E. LENOWITZ,  
ROBERT D. BABCOCK,  
ANDREW A. SREBNIK,  
KEN OKADA,  
DAVID A. GLASS,  
MARC R. JURMAN,  
RANDI E. COLLOTTA,  
CHRISTOPHER K. COLLOTTA,  
Q CAPITAL INVESTMENT PARTNERS, LP,  
DSJ INTERNATIONAL RESOURCES LTD. (d/b/a  
CHELSEY CAPITAL), and  
JASPER CAPITAL LLC,

Defendants.

C.A. No. 07 CV 1774 (PKC)

USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 9/12/08

**FINAL JUDGMENT AS TO DAVID A. GLASS AND JASPER CAPITAL LLC**

The Securities and Exchange Commission having filed a Complaint and Defendants David A. Glass (“Glass”) and Jasper Capital (“Jasper”) (collectively “Defendants”) having entered a general appearance; consented to the Court’s jurisdiction over Defendants and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants and Defendants' 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 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated 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.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants and Defendants' 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 Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by

use of the mails, directly or indirectly:

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

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are jointly and severally liable for disgorgement of \$2,751,366, representing ill-gotten gains as a result of the conduct alleged in the complaint. Defendants' payment of disgorgement shall be deemed satisfied, on a dollar for dollar basis, by the amount of criminal forfeiture ordered by the Court in the pending criminal case before the United States District Court for the Southern District of New York, United States v. David Glass, 1:07-CR-159 (LAK). If Glass is ordered to pay less than \$2,751,366 in criminal forfeiture, then Defendants shall pay the remaining disgorgement obligation (\$2,751,366 less the amount of criminal forfeiture ordered) within thirty (30) days of sentencing in the pending criminal case, by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. Payment of this disgorgement obligation shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Jasper and Glass as the defendants 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. A copy of this letter and payment shall also be delivered to or mailed to Christopher Swart, Securities and Exchange Commission, 100 F Street NE, Mail Stop 6041, Washington, DC 20549. Defendants shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendants shall comply with all of the undertakings and agreements set forth therein.


V.

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

VI.

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.

Dated: September 11, 2008

  
\_\_\_\_\_  
THE HONORABLE P. KEVIN CASTEL  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

C.A. No. 07 CV 1774

v.

MITCHEL S. GUTTENBERG,  
ERIK R. FRANKLIN,  
DAVID M. TAVDY,  
MARK E. LENOWITZ,  
ROBERT D. BABCOCK,  
ANDREW A. SREBNIK,  
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DAVID A. GLASS,  
MARC R. JURMAN,  
RANDI E. COLLOTTA,  
CHRISTOPHER K. COLLOTTA,  
Q CAPITAL INVESTMENT PARTNERS, LP,  
DSJ INTERNATIONAL RESOURCES LTD. (d/b/a  
CHELSEY CAPITAL), and  
JASPER CAPITAL LLC,

Defendants.

**CONSENT OF DEFENDANTS DAVID A. GLASS AND JASPER CAPITAL LLC**

1. Defendants David A. Glass ("Glass") and Jasper Capital LLC ("Jasper") (collectively "Defendants") acknowledge having been served with the complaint in this action, enter a general appearance, and admit the Court's jurisdiction over Defendants and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Defendants admits), Defendants hereby consent

to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendants from violation of Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5];
- (b) orders Defendants to pay disgorgement in the amount of \$2,751,366.

3. Defendants waive the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

4. Defendants waive the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

5. Defendants enter into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

6. Defendants agree that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

7. Defendants will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

8. Defendants waive service of the Final Judgment and agree that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant

of its terms and conditions. Defendants further agree to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

9. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendants in this civil proceeding. Defendants acknowledge that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendants waive any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendants further acknowledge that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendants understand that they shall not be permitted to contest the factual allegations of the complaint in this action.

10. Defendants understand and agree to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendants agree: (i) not to take any action or to make or permit to

be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendants hereby withdraw any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendants breach this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendants': (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

11. Defendants hereby waive any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendants to defend against this action. For these purposes, Defendants agree that neither Defendant is the prevailing party in this action since the parties have reached a good faith settlement.

12. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendants (i) agree to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoint Defendants' undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waive the territorial limits on




service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Defendants' travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consent to personal jurisdiction over Defendants in any United States District Court for purposes of enforcing any such subpoena.

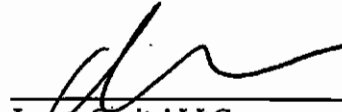
13. Defendants agree that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

14. Defendants agree that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

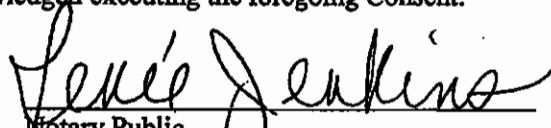
Dated: 8/12/08

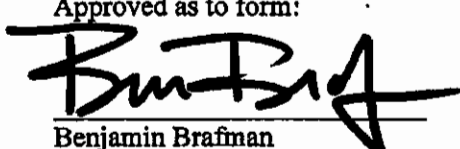
  
\_\_\_\_\_  
David A. Glass

Dated: 8/12/08

  
\_\_\_\_\_  
Jasper Capital LLC  
David A. Glass, President

On August 12, 2008, David Glass, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

  
\_\_\_\_\_  
Notary Public  
Commission expires

Approved as to form:  
  
\_\_\_\_\_  
Benjamin Brafman  
Brafman & Associates, P.C.  
Attorney for Defendants

**RENEE JENKINS**  
NOTARY PUBLIC, State of New York  
No. 01JE611425  
Qualified in Bronx County  
Commission Expires June 14, 2008

United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

Date:

In Re:

-v-

Case #: ( )

Dear Litigant,

Enclosed is a copy of the judgment entered in your case.

Your attention is directed to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, which requires that if you wish to appeal the judgment in your case, you must file a notice of appeal within 30 days of the date of entry of the judgment (60 days if the United States or an officer or agency of the United States is a party).

If you wish to appeal the judgment but for any reason you are unable to file your notice of appeal within the required time, you may make a motion for an extension of time in accordance with the provision of Fed. R. App. P. 4(a)(5). That rule requires you to show "excusable neglect" or "good cause" for your failure to file your notice of appeal within the time allowed. Any such motion must first be served upon the other parties and then filed with the Pro Se Office no later than 60 days from the date of entry of the judgment (90 days if the United States or an officer or agency of the United States is a party).

The enclosed Forms 1, 2 and 3 cover some common situations, and you may choose to use one of them if appropriate to your circumstances.

The Filing fee for a notice of appeal is \$5.00 and the appellate docketing fee is \$450.00 payable to the "Clerk of the Court, USDC, SDNY" by certified check, money order or cash. No personal checks are accepted.

J. Michael McMahon, Clerk of Court

by: \_\_\_\_\_

, Deputy Clerk

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006

United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

-----X  
-V-  
-----X

**NOTICE OF APPEAL**

civ. ( )

Notice is hereby given that \_\_\_\_\_  
(party)  
hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment [describe it]

entered in this action on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
(day) (month) (year)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

Date: \_\_\_\_\_ ( ) \_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form to take an appeal provided that it is received by the office of the Clerk of the District Court within 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 1

United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

-----X  
-V-  
-----X

MOTION FOR EXTENSION OF TIME  
TO FILE A NOTICE OF APPEAL

civ. ( )

Pursuant to Fed. R. App. P. 4(a)(5), \_\_\_\_\_ respectfully  
(party)  
requests leave to file the within notice of appeal out of time. \_\_\_\_\_  
(party)  
desires to appeal the judgment in this action entered on \_\_\_\_\_ but failed to file a  
(day)  
notice of appeal within the required number of days because:

[Explain here the "excusable neglect" or "good cause" which led to your failure to file a notice of appeal within the required number of days.]

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

Date: \_\_\_\_\_

( ) \_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form, together with a copy of Form 1, if you are seeking to appeal a judgment and did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be received in the office of the Clerk of the District Court no later than 60 days of the date which the judgment was entered (90 days if the United States or an officer or agency of the United States is a party).

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006

FORM 2

United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

-----X  
-V-  
-----X

NOTICE OF APPEAL  
AND  
MOTION FOR EXTENSION OF TIME

civ. ( )

1. Notice is hereby given that \_\_\_\_\_ hereby appeals to  
(party)  
the United States Court of Appeals for the Second Circuit from the judgment entered on \_\_\_\_\_.  
[Give a description of the judgment]

2. In the event that this form was not received in the Clerk's office within the required time  
\_\_\_\_\_ respectfully requests the court to grant an extension of time in  
(party)  
accordance with Fed. R. App. P. 4(a)(5).

a. In support of this request, \_\_\_\_\_ states that  
(party)  
this Court's judgment was received on \_\_\_\_\_ and that this form was mailed to the  
(date)  
court on \_\_\_\_\_  
(date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

Date: \_\_\_\_\_

( ) \_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form if you are mailing your notice of appeal and are not sure the Clerk of the District Court will receive it within the 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

**FORM 3**

**United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213**

-----X  
|  
-V-  
|  
-----X

**AFFIRMATION OF SERVICE**

civ. ( )

I, \_\_\_\_\_, declare under penalty of perjury that I have  
served a copy of the attached \_\_\_\_\_

\_\_\_\_\_

upon \_\_\_\_\_

\_\_\_\_\_

whose address is: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_  
New York, New York

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)