

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

SECURITIES AND EXCHANGE COMMISSION,)	
)	
PLAINTIFF,)	
)	
v.)	Civil Action No. 1:03-CV-1659
)	
PATRICK BALLINGER, et al.)	Chief Judge Larry J. McKinney
)	
DEFENDANTS.)	Magistrate Judge William T. Lawrence
)	

FINAL JUDGMENT AS TO DEFENDANT TODD F. WALKER

Todd F. Walker (“Defendant Walker”) having entered a general appearance; consented to the Court’s jurisdiction over Defendant Walker 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 Defendant Walker and Defendant Walker’s 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 FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Walker and Defendant Walker's 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 Defendant Walker and

Defendant Walker's 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 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding of examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Walker is liable for disgorgement in the amount of \$160,663.10, together with prejudgment interest thereon in the amount of \$20,990.42. Defendant shall satisfy this obligation pursuant to the terms of the payment schedule set forth in paragraph VI below, which provides for post-judgment interest on

portions of the disgorgement amount that are paid over time, pursuant to 28 U.S.C. § 1961.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED, that Defendant Walker shall pay a civil penalty in the amount of \$50,000 pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. Defendant shall satisfy this obligation pursuant to the terms of the payment schedule set forth in paragraph VI below.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED, that Defendant Walker shall pay the monetary amounts set forth in Sections IV and V of this Final Judgment according to the following schedule: (1) within ten (10) days of the entry of this final Judgment, Walker shall pay \$40,000 to the Receiver appointed in this lawsuit; (2) Walker shall make seven (7) quarterly payments of \$18,016.56 to the Receiver, with the first quarterly payment due three months from the date of the entry of the Final Judgment, and subsequent payments due every three months thereafter; and (3) Walker shall make a final payment of \$80,000 to the Receiver due twenty-four (24) months from the date of the entry of the Final Judgment. The total amount to be paid pursuant to this schedule is \$246,115.95, which includes post-judgment interest on the deferred payments totaling \$14,462.43. No portion of any payment under this plan shall be allocated towards payment of civil penalties until the payment of disgorgement plus prejudgment interest has been paid in full.

Payments under this paragraph shall be made to the order of “Resort Hotels et al. Receivership” and delivered to the Receiver, Stephen P. Bedell (the “Receiver”), Foley & Lardner LLP, 321 N. Clark, Suite 2800 Chicago, Illinois 60610. Each payment shall be accompanied by a cover letter identifying Defendant Walker 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. Defendant Walker shall simultaneously transmit photocopies of each such payment and letter to the Commission's counsel of record in this action. By making these payments, Defendant Walker relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant Walker. The Receiver shall deposit this payment or payments into an interest-bearing account and shall deduct from the account only such fees and expenses as are authorized by the Court. The Court and the parties contemplate that disgorged funds will be distributed to injured investors. Defendant Walker shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

If Defendant Walker fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Final Judgment, including prejudgment and post-judgment interest, and civil penalty, minus any payments made, shall become due and payable immediately without further application to the Court. Additionally, the Commission or the Receiver may enforce the judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through any other collection procedures authorized by law) at any time after Defendant Walker is delinquent in making any payment pursuant to the payment plan. Defendant Walker shall pay additional post-judgment interest on any delinquent payments pursuant to 28 U.S.C. § 1961.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED, that the Receiver shall deposit all payments Defendant Walker makes pursuant to this order requiring payment of civil penalties into a segregated interest-bearing account, pursuant to the Fair Fund

provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246, which provides that civil penalties may be distributed to injured investors, rather than paid to the U.S. Treasury, in accordance with a Court-approved plan of distribution of investor funds (“Fair Fund distribution”). No portion of this civil penalty amount may be used for any purpose other than for a Fair Fund distribution to injured investors, to the extent that the total amount of disgorgement and interest ultimately paid by all defendants in this action remains insufficient to make whole all investors injured in connection with this lawsuit. To the extent that the disgorgement and interest payments received from Defendant Walker and the other defendants in this action are sufficient to make whole all injured investors without resort to using the entire portion of the civil penalty amount, then the Receiver shall: (1) pay any such remaining civil penalty by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission; (2) deliver or mail such payment(s) to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312; and (3) submit such payment(s) under a cover letter setting forth the reason for the payment(s), the title and civil action number of this matter, and the name of this Court. A copy of such cover letter and money order or check shall be sent to the Commission’s counsel in this action.

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 all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant Walker shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant Walker’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 Defendant Walker's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant Walker shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's and the Receiver'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 Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant Walker by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Walker shall be deemed a "Judgment Defendant" for the purposes of the First Supplemental Receiver Order.

IX.

The Court understands that some of the funds invested by investors in an investment program that is the subject of a lawsuit styled as SEC v. First Choice Management Services, Inc., Case No. 3:01CV0446RM, currently pending in the federal district court for the Northern District of Indiana (the "First Choice" lawsuit), were applied to one or more of the investment programs that are the subject of this lawsuit. The Court understands that some of the amounts paid in connection with this lawsuit may be used to pay investors whose claims arise in the First Choice lawsuit. The Court does not make any ruling at this time concerning the allocation of assets collected pursuant to this Final

Judgment, and understands that the Receivers for the two actions and the Commission are working together to determine the appropriate allocation percentages. In the event that the Receivers and the Commission are unable to agree upon the appropriate allocation of assets collected pursuant to this Final Judgment, any of them may move this Court for appropriate relief.

X.

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

XI.


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.

XII.

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.

SO ORDERED:

Dated: 05/22/2007


LARRY J. MCKINNEY, CHIEF JUDGE
United States District Court
Southern District of Indiana

DISTRIBUTION TO
ALL COUNSEL OF RECORD