

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW JERSEY**

|  |   |                  |
|--|---|------------------|
| SECURITIES AND EXCHANGE<br>COMMISSION, | ) |                  |
|  | ) | No.              |
| Applicant,                             | ) |                  |
|  | ) | Judge            |
| v.                                     | ) |                  |
|  | ) | Magistrate Judge |
| EDGAR B. ALACAN,                       | ) |                  |
|  | ) |                  |
| Defendant.                             | ) |                  |

**APPLICATION FOR AN ORDER OF COURT  
DIRECTING COMPLIANCE WITH AN ORDER OF  
THE SECURITIES AND EXCHANGE COMMISSION**

1. On July 6, 2004, the Securities and Exchange Commission (“Commission”) issued its Opinion and Order (the “Commission Order”) as to Edgar B. Alacan (“Alacan”) finding that Alacan defrauded several of his brokerage customers and wrongfully profited from his fraudulent scheme. The Commission Order required, among other things, that Alacan pay a civil penalty. Alacan failed to obey this order. Pursuant to Section 21(e) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78u(e)], the Commission respectfully applies to this Court for an order directing Alacan to comply with the Commission Order. A copy of the Commission Order is attached hereto as Exhibit A.

**DEFENDANT**

2. Alacan is a resident of Monmouth Junction, New Jersey. Alacan was a registered representative associated with J.W. Barclay and Co., Inc. (“Barclay”), a broker-dealer formerly registered with the Commission, from April 1996 to September 2000.

**JURISDICTION**

3. The Commission makes this application pursuant to Section 21(e)(1) of the Exchange Act [15 U.S.C. § 78u(e)(1)] for an order of this Court commanding Alacan to comply with the Commission Order. The Court has jurisdiction over this action pursuant to Sections 21(e) and 27 of the Exchange Act. [15 U.S.C. §§ 78u(e) and 78aa]. Venue is appropriate in this district because the defendant is a resident of New Jersey.

**THE COMMISSION ORDER**

4. On April 2, 2002, the Commission issued an Order Instituting Public Administrative and Cease and Desist Proceedings (the “OIP”) against Alacan and others, which alleged, among other things, that Alacan engaged in fraudulent sales practices in the accounts of certain of his customers at Barclay. Among other things, the OIP alleged that Alacan defrauded certain of his customers by making unauthorized purchases and sales of securities, including unauthorized purchases of securities on margin, churning accounts, and making unsuitable purchases and sales of securities, including unsuitable purchases of stock on margin. The OIP alleged that by engaging in these fraudulent sales practices, Alacan willfully violated Section 17(a) of the Securities Act of 1933 (“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 promulgated thereunder [17 C.F.R. § 240.10b-5].

5. On October 23, 2003, following a hearing, Administrative Law Judge James T. Kelly issued an Initial Decision finding that Alacan had willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The ALJ ordered Alacan to: (1) cease and desist from committing or causing any violations or future violations of

Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder; (2) pay disgorgement of \$9,768.16, plus prejudgment interest thereon; (3) pay post-judgment interest; and (4) pay a civil money penalty of \$110,000. The Initial Decision also barred Alacan from association with any broker or dealer. See In the Matter of J.W. Barclay & Co., Inc., Admin. Proc. No. 3-10765, Initial Decision Rel. No. 239, 2003 WL 21706348 (October 23, 2003).

6. Alacan appealed the Initial Decision to the Commission, which on November 17, 2003, issued an order granting Alacan's petition for review of the Initial Decision and ordering a review on the Commission's initiative.

7. Alacan paid disgorgement of \$9,768.16 and interest in the amount of \$4,834.34 on or about May 25, 2004.

8. On June 15, 2004, the Commission heard oral argument on Alacan's petition for review and on the subjects briefed pursuant to the Commission's order.

9. On July 6, 2004, the Commission issued the Commission Order, which barred Alacan from association with any broker or dealer, imposed a cease-and-desist order, ordered Alacan to disgorge \$9,768.16 plus prejudgment interest as set forth in the order (with credit for amounts already paid), and ordered that Alacan pay a civil money penalty of \$110,000 within 21 days of the issuance of the Commission Order.

10. On or about July 23, 2004, Alacan paid \$125.65 in satisfaction of the additional prejudgment interest due pursuant to the Commission Order.

11. On or about July 26, 2004, Alacan filed with the Commission a motion for emergency partial stay of the Commission Order, requesting that the Commission stay the

effectiveness of those portions of its Order barring Alacan from association with any broker or dealer and requiring payment of the \$110,000 civil penalty pending judicial review of the Commission Order by the appropriate court of appeals.

12. On or about July 28, 2004, Alacan filed a petition for review in the United States Court of Appeals for the Second Circuit.

13. On or about July 29, 2004, the Commission issued an order in which it granted Alacan a brief stay of the effectiveness of the broker-dealer bar and \$110,000 civil penalty obligation for ten days to permit Alacan to move the Court of Appeals for a stay, and further ordered that if Alacan filed such a motion, the Commission's temporary stay would continue pending determination of the stay motion by the Court of Appeals.

14. On or about July 29, 2004, Alacan moved the Court of Appeals to stay the effectiveness of the portions of Commission's Order barring Alacan from association with any broker-dealer and requiring payment of the \$110,000 civil penalty pending the resolution of his appeal. On or about September 23, 2004, the Court issued an order denying Alacan's motion to stay. Upon issuance of the Court's order, the Commission's temporary stay expired.

15. On October 26, 2004, the Court entered an order disposing of the appeal pursuant to a Stipulation of Dismissal of Appeal filed by the parties in which the parties stipulated that the appeal is hereby withdrawn without costs and without attorneys' fees pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure.

**ALACAN FAILED TO COMPLY WITH THE COMMISSION ORDER**

16. Alacan has not paid the \$110,000 civil penalty ordered by the Commission.

**CLAIM FOR RELIEF**

17. Section 21(e)(1) of the Exchange Act [15 U.S.C. § 78u(e)(1)] provides that upon application of the Commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus, injunctions, and orders commanding any person to comply with the provisions of the Exchange Act, and the rules, regulations and orders thereunder.

18. The Commission respectfully requests that this Court issue an order, pursuant to Section 21(e)(1) of the Exchange Act, commanding that Alacan comply with the Commission Order and pay the civil penalty ordered by the Commission.

**WHEREFORE**, the Commission respectfully requests that the Court:

- 1) Enter an order commanding that Edgar B. Alacan comply with the Commission Order and pay the \$110,000 civil penalty required by the Commission Order;
- 2) Order such other and further relief as may be necessary and appropriate to achieve compliance with the Commission Order; and
- 3) Retain jurisdiction over this matter as necessary to assure compliance with the Court's Order.

Respectfully submitted,

s/Charles J. Kerstetter

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