

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: An allegation against **JOHN ARTHUR BOULTBEE**, a former member of the Institute, under Rule 201.1 of the Rules of Professional Conduct, as amended.

TO: Mr. John Arthur Boulton

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order made June 13, 2013)

1. This tribunal of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on June 13, 2013 to hear an allegation of professional misconduct brought by the Professional Conduct Committee against John Arthur Boulton, a former member of the Institute.

2. Ms. Alexandra Hersak appeared on behalf of the Professional Conduct Committee (PCC). Mr. Boulton attended electronically by telephone, at his own request, without counsel. He confirmed that he knew that he had the right to attend with counsel and waived that right. Mr. Peter Carey attended the hearing as counsel to the Discipline Committee.

3. The decision of the tribunal was made known at the conclusion of the hearing on June 13, 2013, and the written Decision and Order sent to the parties on June 21, 2013. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegation, the decision, the order, and the reasons of the tribunal for its decision and order.

Allegations

4. The following allegation was made against Mr. Boulton by the Professional Conduct Committee on August 9, 2012:

THAT, the said John A. Boulton, on or about the 10th day of February, 2011, was convicted of the offence of fraud as set out in Schedule "A" attached to this charge and did thereby fail to act in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the Rules of Professional Conduct.

Plea

5. Mr. Boulton entered a plea of not guilty to the allegation.

Proceedings

6. Ms. Hersak advised the tribunal that Mr. Boulton's membership had been revoked for an administrative matter. Mr. Boulton had been advised by letter from the Registrar that his membership was revoked on October 18, 2012 (Exhibit 2). Under Section 19 of the *Chartered Accountants Act, 2010* (Exhibit 1), the Institute still has jurisdiction over former members in respect of an investigation or disciplinary proceeding.

7. Ms. Hersak also submitted that under Rule 201.2, when a certificate of conviction is filed with the Discipline Committee, there is a rebuttable presumption that the member failed to maintain the good reputation of the profession when the member is the subject of an Allegation under Rule 201.1, on account of any matter referred to in Rule 102.1. Ms. Hersak explained that the matter before the courts had involved Mr. Boulton and three other defendants. The case had been before the United States District Court, the Court of Appeal and the Supreme Court. When Ms. Hersak sought to file the original certified copy of the United States District Court amended judgment on behalf of the PCC, Mr. Boulton objected to the filing. A copy of this document was also contained at Tab 1 of the Document Brief which Ms. Hersak also sought to file.

8. Mr. Boulton expressed his concern that the judgment summary submitted by Ms. Hersak was not the final judgment and that a subsequent judgment had been made. Mr. Boulton stated that he had not previously seen the certified judgment. Ms. Hersak stated that it was part of the disclosure package sent to Mr. Boulton in October 2012 and also arranged for another copy to be emailed to Mr. Boulton during the hearing.

9. When asked if he still objected to the certified judgment being filed, Mr. Boulton stated that he objected to anything to do with his conviction, as it had been a foreign conviction and would not be admissible under Section 22 of the *Ontario Evidence Act*. However, once it was confirmed to Mr. Boulton that the document being filed as evidence had the official certification seal on the front cover Mr. Boulton stated he would accept the document.

10. Ms. Hersak stated that Tab 2 of the Document Brief contained the clerk's file copy of the transcript of the sentencing hearing, noting that Mr. Boulton had originally been sentenced on three counts but after a successful appeal had ultimately been sentenced only on one count.

11. Mr. Boulton objected to the contents of Tab 2, stating that it referred to three counts of fraud and contained proceedings involving all four defendants. He said that only certain parts of the transcript relate to the sentencing and he felt the contents could be prejudicial and inflammatory, and are full of argument. Ms. Hersak agreed that the transcript does relate to all four defendants and that there is some overlap in the early rulings that the tribunal would have to be guided through. Ms. Hersak stated that the transcript does contain facts which are both mitigating and aggravating.

12. Ms. Hersak submitted that the transcript under Tab 2 is an official transcript, acceptable as evidence under Section 18.08 of the Rules of Practice and Procedure. Mr. Boulton submitted that in accordance with *The Law Society vs. Martin*, the *Ontario Evidence Act* would override the rules of practice of the Institute. As it was established that the transcripts under Tabs 2 and 3 were official transcripts, Mr. Boulton agreed to accept these documents as evidence.

13. In presenting the case for the PCC, Ms. Hersak reviewed the Certified Copy of the United States District Court – Illinois – Amended Judgment (Exhibit 3) and the Document Brief (Exhibit 4). Mr. Boulton's original conviction for mail fraud was changed to one count. Since he had already served time, he was given a supervised release and ordered to pay a fine of \$500 and restitution of \$15,000. Mr. Boulton's supervision ended after three years but he is prevented from entering the United States as a result of his conviction.

14. Ms. Hersak stated that there were overlapping sentencing guideline issues and the judge decided to use the same guidelines for all four defendants (Tab 2). On the Count 7 offence, the mailing and issuance of cheques occurred in Illinois and there was no Canadian element involved, and any such reference was removed from Mr. Boulton's presentence report. The US court found Mr. Boulton guilty of the mailing of a \$15,000 payment that he was not entitled to. Mr. Boulton had been the Chief Financial Officer and then remained as the Executive Vice-President of Hollinger

International. An amended judgment of the United States District Court (Exhibit 5) that corrected a clerical mistake was filed by Ms. Hersak.

15. Ms. Hersak filed Extracts Document 407 (Exhibit 6) which sets out the specifics of the case against Mr. Boulton and his co-defendants. Mr. Boulton is identified as a Canadian Chartered Accountant who had a .98% share in Ravelston Corporation Limited, an Ontario corporation that had a controlling interest in Hollinger Inc. Mr. Boulton, at one time, was the CFO of Ravelston, the CFO, Executive Vice-President and Director of Hollinger Inc., and CFO and Executive Vice-President of Hollinger International. Mr. Boulton, along with his co-defendants, was charged with knowingly causing to be deposited for delivery by an interstate carrier an envelope addressed to Mark Kipnis (a co-defendant), to be sent and delivered by an interstate carrier, which envelope contained non-competition payments in the form of cheques totaling \$600,000 made payable to Mr. Boulton and three other co-defendants.

16. Ms. Hersak submitted that, by his actions, Mr. Boulton had failed to maintain the good reputation of the profession, noting that the public does not look well upon a chartered accountant being convicted and serving time in prison. Ms. Hersak stated that Mr. Boulton was an officer of the corporations who had failed to uphold the honesty and integrity of the profession while in a position of trust.

17. Mr. Boulton had provided a package of documents prior to the hearing for distribution to the tribunal. He submitted a newspaper article on the high Federal conviction rate (Exhibit 7). Ms. Hersak noted that such article is not proof of truth, she would not object to its admission as evidence. Mr. Boulton stated that the article points out that in the US there is a 90 percent plus conviction rate since federal prosecutors only bring charges when they are sure of a conviction. Mr. Boulton referred to a crime statistics document (Exhibit 8) showing statistics in various countries, noting that only the most egregious cases are prosecuted in the US.

18. Mr. Boulton distributed a Superior Court of Justice case *Black v. Breeden* concerning libel actions brought by Conrad Black. Mr. Boulton also sought to make reference to a newspaper article which Ms. Hersak felt was not relevant and would have no weight on this proceeding. After consideration, the tribunal agreed to accept the document and would later decide on weight and relevance.

19. Mr. Boulton sought to introduce a flashdrive containing the transcript of the entire court proceedings. Ms. Hersak stated that it would be an abuse of process to attempt to have this tribunal relitigate the underpinnings of Mr. Boulton's trial and criminal conviction. Ms. Hersak distributed *Demeter v. British Pacific Life Insurance Co.*, noting that she had provided all precedent cases in advance to Mr. Boulton. The *Demeter* case dealt with an attempt to retry a case in another forum, and Ms. Hersak submitted that it would be contrary to law for the tribunal to accept the flashdrive. Ms. Hersak stated that this tribunal has accepted the position of the US courts in the past and has made findings of guilt. Section 38 of the *Canada Evidence Act* would not apply in this case.

20. Ms. Hersak distributed the *Law Society vs. Martyn* case about a lawyer convicted of fraud in Bermuda. In that case, it was decided that the Law Society could rely on the criminal conviction and the summary of facts set out in the Bermuda Court of Appeal's reasons. The lawyer in that case was prohibited from relitigating his conviction. Ms. Hersak submitted that Mr. Boulton had legal representation, submitted evidence, was convicted and went through an appeal process. The tribunal can rely on Mr. Boulton's criminal conviction for fraud in another jurisdiction.

21. Mr. Boulton submitted that the *Demeter* case should not be considered since it occurred in 1984, prior to the inclusion of Section 38 of the *Canada Evidence Act*. Mr. Boulton stated that if he

was a Canadian working in Canada, a different standard would have applied. Mr. Boulton submitted that the rebuttable presumption should not apply to foreign convictions and if a member were convicted under foreign law, it should not be sufficient as evidence of wrong-doing. Mr. Boulton stated that what is considered a crime in one country may not be in another jurisdiction.

22. After deliberations, the tribunal advised that it would not accept the electronic flashdrive as evidence in the proceedings.

23. Mr. Boulton filed a National Post news article (Exhibit 9) concerning reasons why Conrad Black would be allowed back into Canada following his release from prison. The article stated that offences committed abroad are evaluated in the context of Canadian criminal laws and Mr. Black's convictions for fraud and obstruction of justice were assessed as more serious than summary misdemeanors but less serious than indictable crimes.

24. Ms. Hersak submitted that Exhibits 7 through 9 have very little evidentiary basis and really only go to weight in the tribunal's consideration. There is no support for the crime statistics quoted and there is nothing specific to Mr. Boulton's case. Ms. Hersak stated that Mr. Boulton has been convicted of fraud in the US and that is the matter being dealt with by the tribunal.

25. Ms. Hersak submitted that the evidence was clear, cogent and convincing that Mr. Boulton failed to maintain the good reputation of the profession contrary to Rule 201.1 as a result of his criminal conviction for fraud. The certified copy of the US judgment is acceptable proof of guilt under the rules and Mr. Boulton must be found guilty of the allegation.

26. Mr. Boulton submitted that there is not enough evidence to conclude that fraud was what he was convicted of by Canadian definition. Mr. Boulton stated that not all convictions should be automatically considered creating a bad reputation for the profession. He noted that his original conviction was reduced by the courts to one count. Mr. Boulton argued that in his opinion he was entitled to the \$15,000 payment and so consequently the receipt was not fraudulent and that the nominal fine which was confirmed on his appeal was more indicative of the transgression than the incarceration that he served.

Decision

27. After deliberating, the tribunal made the following decision:

THAT having heard the plea of not guilty to the Allegation, and having seen and considered the evidence, the Discipline Committee finds John Arthur Boulton guilty of the Allegation.

Reasons For Decision

28. Mr. Boulton was found guilty by a US court, later confirmed by the US Supreme Court, of a charge that resulted in his incarceration for 329 days, a nominal fine and restitution of his proceeds from the crime of \$15,000. The tribunal was very careful to focus only on the one count of which the US Supreme Court ultimately found Mr. Boulton guilty. The facts of the case convinced the tribunal that Mr. Boulton's actions fit the definition of crimes set out in Rule 102 and consequently that Rule 201.2 applied such that, on being provided with a certified copy of the judgment, the tribunal would have to presume, subject to the rebuttal of Mr. Boulton, that the profession's reputation had been diminished by his actions. The tribunal determined that the copy of the judgment provided by the PCC was certified and that Rule 201.2 applied. Further, Mr. Boulton did not refute these facts.

29. Mr. Boulton attempted to provide as evidence the entire transcript of the trials in the US indicating that the tribunal would not be able to find evidence within the transcript to support the ultimate charge. The tribunal determined that if it received this transcript on this premise, it would essentially be accepting a role to retry the case. This is not an acceptable role for the tribunal and consequently this transcript was rejected by the tribunal and not accepted into evidence.

30. Mr. Boulton made various statements concerning the charge against him, the US Courts in general, and about the seriousness of his crime. These statements were largely unsubstantiated by evidence that the tribunal was able to rely on, and consequently the tribunal determined that Mr. Boulton's statements were only his opinion. Nevertheless, the tribunal considered carefully if any of the arguments, or the arguments taken collectively, were strong enough to create a rebuttal of the presumption of a breach of Rule 201.1. The tribunal concluded they were not, and that instead the finding of the US Court, confirmed by the US Supreme Court and resulting in incarceration of Mr. Boulton for 329 days, was sufficient to find Mr. Boulton guilty of Rule 201.1.

Sanction

31. Ms. Hersak provided additional evidence with respect to sanction. She filed a position paper that had been put forward at the sentencing hearing of Mr. Boulton (Exhibit 10) which noted that he would automatically lose his ability to practise as a chartered accountant. Ms. Hersak stated that this was evidence of Mr. Boulton's expectation that he would automatically lose his CA designation at the time of conviction. Ms. Hersak filed various newspaper articles (Exhibit 11) relating to the fraud charges and trial that identified Mr. Boulton as a chartered accountant.

32. Ms. Hersak, on behalf of the PCC, submitted that an appropriate sanction in this matter would be: a written reprimand; a fine in the amount of \$10,000; and full publicity including newspaper publication noting that Mr. Boulton's membership had been revoked. The PCC also sought an order for the costs on a partial indemnity basis. Ms. Hersak filed a Costs Outline (Exhibit 12) which showed that the costs incurred were approximately \$10,000, as there had been no investigator appointed in this matter. The PCC was seeking an order for recovery of approximately 50% of the costs in the amount of \$5,000. Ms. Hersak said the PCC had no objection to a time period deemed acceptable by the tribunal for Mr. Boulton to pay the fine and costs.

33. Ms. Hersak submitted that this is a moral turpitude offence whereby Mr. Boulton was in a position of trust as a director and officer of a public company which enabled him to take money he was not entitled to. Any matter involving fraud by a CA, regardless of the amount, is serious and never appropriate. Through his actions, Mr. Boulton has damaged the reputation of himself and all chartered accountants. The sanction imposed must reflect the seriousness of his actions and satisfy the applicable principles of sentencing: specific and general deterrence. In cases involving moral turpitude, the PCC would normally request revocation of membership but since Mr. Boulton's membership was previously revoked on an administrative matter, it cannot be revoked a second time. Protection of the public is paramount and publicity will advise the public that Mr. Boulton is no longer a CA.

34. Ms. Hersak indicated the aggravating factors included that Mr. Boulton, while in a position of trust, took monies belonging to shareholders he was not entitled to and became the subject of a criminal offence. Ms. Hersak noted that Mr. Boulton has shown no expression of remorse for his actions. The fact that the matter was widely publicized and identified Mr. Boulton as a chartered accountant has had an impact on the public.

35. Ms. Hersak identified several mitigating factors. Mr. Boulton has served a period of incarceration, completed his supervised release and has made restitution in the amount of \$15,000

ordered by the courts. Due to the involvement of Conrad Black as a co-defendant, Mr. Boulton has been the subject of a full media circus which would otherwise not have garnered the same exposure. During the US criminal proceedings, Mr. Boulton's counsel had indicated a conviction would result in the automatic removal of Mr. Boulton's designation. Ms. Hersak stated that although Mr. Boulton has paid a penalty, his actions must also be dealt with by the Institute.

36. Ms. Hersak stated that a reprimand addresses the seriousness of the conduct and acts as a specific deterrent, reinforcing that the conduct is less than what is expected of a member of the profession. The fine requested by the PCC falls within the range of similar cases.

37. Publicity is the strongest weapon of general deterrence to inform other members and the public of a member's actions. Ms. Hersak stated that revocation through the Discipline Committee is publicized in a newspaper and suggested the *Globe and Mail* and the *Chicago Tribune*, or other Chicago newspaper. The public should be made aware that Mr. Boulton's membership has been revoked and he is no longer a chartered accountant, since his revocation for an administrative matter would not have garnered the same notoriety.

38. Ms. Hersak noted that costs are an indemnity and a portion of the costs incurred should be paid by Mr. Boulton and the balance by the membership as a whole.

39. Ms. Hersak distributed a case brief containing *Humphreys, Adams, Rapier, Wellman, Spensieri, Butler and Bertrand*, pointing out relevant items in each case which mainly involved fraud. In the *Bertrand* matter, his membership had been revoked for non-compliance with a previous discipline order and publication of the revocation was ordered in the subsequent case.

40. Mr. Boulton stated that the position paper on sentencing which referenced the likelihood that he would lose his CA designation was submitted at an earlier stage of the court proceedings, prior to many of the counts being dropped. Mr. Boulton submitted that much of the newspaper publicity revolved around Conrad Black and his own notoriety was collateral damage. Mr. Boulton stated that due to the amount of publicity this matter has already been the subject of, he would prefer to avoid more.

41. Mr. Boulton stated that the eleven months he had already served could not be given back to him by the courts so it was counted as time served. He felt that under different circumstances, the fraud in the amount of only \$15,000 would have resulted in probation and he would never have done jail time. Mr. Boulton stated that restitution of \$15,000 had been paid back to the Hollinger Corporation and the fine of \$500 ordered by the US courts had been paid. He submitted that any further penalty was unwarranted, any further fine would be unfair, and he has no ability to pay.

Order

42. After deliberating, the tribunal made the following order:

IT IS ORDERED in respect of the Allegation:

1. THAT Mr. Boulton be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Boulton be and he is hereby fined the sum of \$10,000 to be remitted to the Institute within three (3) years from the date this Decision and Order is made.

3. THAT notice of this Decision and Order, disclosing Mr. Boulton's name, be given after this Decision and Order is made:
 - (a) to all members of the Institute;
 - (b) to all provincial institutes/Ordre;
 and shall be made available to the public.
4. THAT notice of the Decision and Order, disclosing Mr. Boulton's name and prior revocation of membership, be given by publication on the Institute's website and in *The Globe and Mail* and the *Chicago Tribune*. All costs associated with the publication shall be borne by Mr. Boulton and shall be in addition to any other costs ordered by the committee

IT IS FURTHER ORDERED:

5. THAT Mr. Boulton be and he is hereby charged costs fixed at \$5,000 to be remitted to the Institute within three (3) years from the date this Decision and Order is made.

Reasons for Sanction

43. Mr. Boulton did not deny that he received the funds in question, nor did he deny that he was responsible for their dispersal from the company to him (and others). The tribunal carefully noted that ultimately Mr. Boulton was found guilty of only one of the charges contained in the certificate of conviction received as primary evidence but determined that it must accept that the punishment confirmed by the Supreme Court fit the crime and that because the punishment included incarceration in addition to a fine and restitution, the crime was indeed serious.

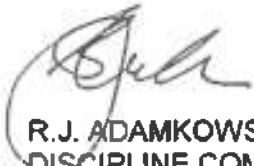
44. Having made the above determination, the onus was then on Mr. Boulton to refute the inferred damage to the profession. He did not do this. In addition to the arguments put forward by Mr. Boulton that the tribunal considered and have commented on under its Reasons for Decision, Mr. Boulton stated that the relatively small amount of money involved in his offence should diminish the seriousness of the crime. The tribunal could not accept this argument based simply on the quantum of money received by Mr. Boulton. That is, the amount of money involved is not the only criteria that must be considered, and so we could not infer anything from Mr. Boulton's reference to it as being nominal. Further, others had also received funds making the total quantum much greater than the \$15,000 received by Mr. Boulton.

45. The tribunal found that the PCC's summary of the mitigating and aggravating factors was relevant and fair, and took these into consideration when determining that the fine and other sanctions were appropriate to this case and within the range of comparable cases.

46. The tribunal also considered the mitigating arguments put forward by Mr. Boulton, particularly that he has served time and made restitution of all of his proceeds from this crime and some that others had received. We also heard of the financial hardship Mr. Boulton has suffered and as a result of this have determined that Mr. Boulton should be allowed what the tribunal considered very generous timelines to satisfy the financial sanctions and costs ordered by the tribunal.

47. Publicity is necessary as a general deterrent for other members. Notice to the public is important both to let the public know that Mr. Boulton's membership had been revoked and that he subsequently has been the subject of a disciplinary hearing, and that the Institute takes its role as a governing body seriously. There were no rare and unusual circumstances which suggested the usual publicity, including publication in a newspaper where the member resides or was employed, or where the activity took place, was not appropriate in this case. Accordingly, the tribunal ordered the usual publication of the decision and order.

DATED AT TORONTO THIS 3RD DAY OF SEPTEMBER 2013
BY ORDER OF THE DISCIPLINE COMMITTEE



R.J. ADAMKOWSKI, CPA, CA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

G. HINTON (PUBLIC REPRESENTATIVE)

T.D. HOGAN, CPA, CA

W.K. McDOUGALL, CPA, CA

UNITED STATES DISTRICT COURT

SCHEDULE "A"

Northern

District of

Illinois

UNITED STATES OF AMERICA

V.

JOHN A. BOULTBEE

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 05 CR 727-2

USM Number: NONE

Richard A. Greenberg

Defendant's Attorney

Date of Original Judgment: 02/10/2011

(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
☒ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(c))
☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- ☐ pleaded guilty to count(s) _____
☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

X was found guilty on count(s) SEVEN of the Redacted Superseding Information
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §1341*	Mail Fraud	03/01/2001	Seven

The defendant is sentenced as provided in pages 2 3 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984. Other than the amendments or modifications stated in this judgment, the judgment previously entered shall stand. (See attachments)

X The defendant has been found not guilty on count(s) 5, 8, 9, 10, 11, 12, 15 and 16 of the redacted superseding information

X Count(s) 1 and 6 ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

March 24, 2011

Date of Imposition of Judgment

Signature of Judge

Amy J. St. Eve, United States District Court Judge

Name and Title of Judge

Date

DEFENDANT: JOHN A. BOULTBEE
CASE NUMBER: 05 CR 727-2

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term

*Time served. The Court considers the 329 days that the defendant served in BOP custody as time served and the defendant is not to serve any additional time.

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOHN A BOULTBEE
CASE NUMBER: 05 CR 727-2

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$ 500.00	\$ 15,000.00

☐ The determination of restitution is deferred until _____ An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
*Tom Kram Chicago Newspaper Liquidation Corp. c/o O'Melveny & Meyers Attn: Abby F. Rudzin Times Square Tower 7 Times Square New York, NY 10036		\$15,000.00	

TOTALS	\$ _____	\$ 15,000.00
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

x the interest requirement is waived for ☐ fine x restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

UNITED STATES DISTRICT COURT

District of _____

UNITED STATES OF AMERICA

V.

JOHN A. BOULTBEE

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 05 CR 727-2

USM Number NONE

Richard A. Greenberg

Defendant's Attorney

Date of Original Judgment: 12/10/2007

(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☒ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
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- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(c))
☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
☐ Direct Motion to District Court Pursuant to ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- ☐ pleaded guilty to count(s) _____
☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
☒ was found guilty on count(s) *SEVEN of the Redacted Superseding Information
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1341 & 1346	Mail Fraud	03/01/2001	SEVEN

The defendant is sentenced as provided in pages 2 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant has been found not guilty on count(s) 5, 8, 9, 10, 11, 12, 15 and 16 of the redacted superseding information

☒ Count(s) *1 and 6 ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

February 10, 2011

Date of Imposition of Judgment

Signature of Judge

Amy J. St. Eve, United States District Court Judge

Name and Title of Judge

03/14/2011

Date

AO 245C (Rev. 06/05) Amended Judgment in a Criminal Case
Sheet 2 — Imprisonment

(NOTE: Identify Changes with Asterisks (*)

Judgment — Page 2 of 6

DEFENDANT: JOHN A. BOULTBEE
CASE NUMBER: 05 CR 727-2

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term

*27 months on Count Seven of the redacted Superseding Information. *The court considers defendant's time served.

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

8 _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOHN A. BOULTBEE
CASE NUMBER: 05 CR 727-2

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of *THREE YEARS on Count Seven of the redacted superseding information.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- X The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- x The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the

DEFENDANT: JOHN A. BOULTBEE
CASE NUMBER: 05 CR 727-2

ADDITIONAL SUPERVISED RELEASE TERMS

The defendant shall submit to an alcohol evaluation, and follow all treatment recommendations.

Upon release from imprisonment, any remaining balance on the monetary penalties shall become a condition of supervised release, and shall be payable in equal monthly increments of 10% of the defendant's net monthly income.

DEFENDANT: JOHN A. BOULTBEE
CASE NUMBER: 05 CR 727-2

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ *100.00	\$ 500.00	\$ *15,000.00

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
James McDonough, Esq. Sun-Times Media Group 350 North Orleans - 10-S Chicago, IL 60654		*\$15,000.00	

TOTALS	\$ _____	\$ *\$15,000.00
--------	----------	-----------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JOHN A. BOULTBEE
CASE NUMBER: 05 CR 727-2

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☒ Lump sum payment of \$ *15,600.00 due immediately; balance due
- ☐ not later than _____, or
- ☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
*See attached Amended Preliminary Order of Forfeiture.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	No. 05 CR 727
)	Judge Amy J. St. Eve
JOHN A. BOULTBEE,)	
PETER Y. ATKINSON, and)	
MARK S. KIPNIS)	

AMENDED PRELIMINARY ORDER OF FORFEITURE

This cause comes before the Court on the parties' agreed motion for entry of an Amended Preliminary Order of Forfeiture pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C), Title 28, United States Code, Section 2461(c), and Fed. R. Crim. P. 32.2. Having considered the motion, the Court enters the following Order:

1. With respect to defendants Boulton and Atkinson, the provisions of this Court's January 31, 2008 Preliminary Order of Forfeiture remain in place with respect to the *in personam* money judgment in the amount of \$600,000 representing the proceeds from the Supplemental Payments. That is, defendants Boulton and Atkinson remain jointly and severally liable for an *in personam* money judgment in the amount of \$600,000 representing the proceeds from the Supplemental Payments. Defendants Boulton, Atkinson, and Kipnis are no longer jointly and severally liable *in personam* for a money judgment in the amount of \$5.5 million representing the proceeds paid via the APC agreements.

2. The process for collecting the *in personam* money judgment against defendants Boulton and Atkinson remains the same as in this Court's January 31, 2008 Preliminary Order of Forfeiture (¶¶ 2-4). Thus, in the first instance the government shall attempt to collect from defendants Boulton and Atkinson the fraud proceeds they personally received (\$15,000 each), plus

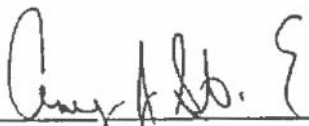
their proportional share of the fraud proceeds personally received by defendant Radler (\$285,000). That proportional share, based on defendant Boulbee and Atkinson's respective shares of the Supplemental Payments, is 4.76% of \$285,000, or \$13,566.

3. In or about July 2008, the government collected \$290,421 from defendant Atkinson, to satisfy the January 31, 2008 Preliminary Order of Forfeiture. Defendant Atkinson has therefore already paid his share of the *in personam* money judgment (\$15,000 for the payment that he received, plus \$13,566 as his proportional share of the remaining funds at issue). The Court will issue a separate minute order directing that funds in the amount of \$261,855 plus interest be released to defendant Atkinson by the United States Marshal Service.

4. This Court shall retain jurisdiction in this matter to take additional action and enter further orders to implement and enforce this Amended Preliminary Order of Forfeiture.

IT IS SO ORDERED.

3-14-11


AMY J. ST. EVE
United States District Court
Northern District of Illinois

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	
)	No. 05 CR 727
CONRAD M. BLACK,)	
JOHN A. BOULTBEE,)	Judge Amy J. St. Eve
PETER Y. ATKINSON, and)	
MARK S. KIPNIS)	

PRELIMINARY ORDER OF FORFEITURE

This cause comes before the Court on motion of the United States for entry of a preliminary order of forfeiture as to specific property pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C), Title 28, United States Code, Section 2461(c), and Fed. R. Crim. P. 32.2; and the Court being fully informed hereby finds as follows:

(a) On January 10, 2007, a superseding information was filed charging defendants Conrad M. Black, John A. Boultee, Peter Y. Atkinson, and Mark S. Kipnis, with mail and wire fraud offenses pursuant to the provisions of 18 U.S.C. §§ 1341 and 1343 (Counts One through Seven), among other violations;

(b) The indictment sought forfeiture to the United States of specific property pursuant to the provisions of 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) (Forfeiture Allegation One);

(c) On July 13, 2007, the jury returned a guilty verdict against defendants Black, Boultee, Atkinson, and Kipnis as to certain counts of the superseding information, including Counts One, Six, and Seven, thereby making the property named in the indictment subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c);

(d) On July 13, 2007, the defendants waived their right to have the forfeiture allegations in the superseding information considered by the jury. It was agreed instead that this Court would

consider matters relating to forfeiture;

(e) On December 10, 2007, after considering evidence and submissions by the parties, this Court entered a Memorandum Opinion and Order imposing a forfeiture judgment in which defendants Black, Boulton, Atkinson, and Kipnis were held jointly and severally liable *in personam* for a money judgment in an amount of \$5.5 million representing the proceeds of the APC transaction. In addition, this Court ordered that defendants Black, Boulton, and Atkinson be held jointly and severally liable for an *in personam* money judgment in the amount of \$600,000 representing the proceeds from the Supplemental Payments;

(f) On November 17, 2005, this Court entered an Order to Preserve Certain Property Subject to Forfeiture, specifically, seized funds in the amount of \$8,558,035.00 that were proceeds of defendant Black's sale of his apartment in New York, NY and that are currently maintained by the United States Marshals Service;

(g) On September 20, 2005 co-defendant F. David Radler, entered a voluntary plea of guilty to count one of the indictment returned on August 18, 2005 charging him with violations of 18 U.S.C. §§ 1341 and 1346. The government has not sought a forfeiture judgment against defendant Radler for his share of the APC/Supplemental Payments, namely, \$2,897,500;

(h) The United States has sought, pursuant to the provisions of 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), a preliminary order of forfeiture holding defendants Black, Boulton, Atkinson, and Kipnis jointly and severally liable for an *in personam* money judgment in the amount of \$5.5 million as to the APC transaction, and defendants Black, Boulton, and Atkinson be held jointly and severally liable for an *in personam* money judgment in the amount of \$600,000 as to the Supplemental Payments.

Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED:

1. That, pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C), Title 28, United States Code, Section 2461(c), and Fed. R. Crim. P. 32.2, a judgment is entered against defendants Black, Boulbee, Atkinson, and Kipnis holding them jointly and severally liable *in personam* for a money judgment in the amount of \$5.5 million representing the proceeds of the APC transaction. In addition, defendants Black, Boulbee, and Atkinson are jointly and severally liable for an *in personam* money judgment in the amount of \$600,000 representing the proceeds from the Supplemental Payments. It is further ordered,

2. In collecting the *in personam* money judgments against the defendants, the government shall in the first instance attempt to collect from each defendant the fraud proceeds that he personally received. The total amount defendant Black received from APC is \$2,612,500 and \$285,000 from Supplemental Payments. Defendants Atkinson and Boulbee each received \$137,500 from APC and \$15,000 from Supplemental Payments. Defendant Kipnis did not receive any money from the APC or Supplemental non-compete payments. It is further ordered,

3. That, with regard to the remaining \$2,897,500 from the APC and Supplemental Payments, the government shall collect that amount from defendants Black, Atkinson, Boulbee and Kipnis in proportion to their respective shares of the non-competes. Specifically, Atkinson and Boulbee shall each be responsible for \$137,921 (4.76%) of the remaining fraud proceeds. Defendant Black shall be responsible for the remaining \$2,621,658 (90.48%) in fraud proceeds. Defendant Kipnis did not receive any money from the APC or Supplemental non-compete payments. It is further ordered,

4. That, should any amount of the forfeiture judgment remain outstanding, the government

may seek to satisfy the money judgments through the substitution of assets, if necessary, from defendants Black, Boulbee and Atkinson up to the full forfeiture amount of \$6.1 million, and from defendant Kipnis up to the \$5.5 million from the APC non-compete payments. If any of the funds in the amount of the forfeiture judgement, in the amount of \$6,100,000.00, as result of any act or omission on the part of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

the United States shall request that this Court order the forfeiture of any other property belonging to defendants Black, Boulbee, Atkinson, and Kipnis, up to the value of the money judgment, pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c), and Fed. R. Crim. P. 32.2, in order to satisfy the judgment entered by the Court. It is further ordered,

5. That the government shall collect defendant Black's share of the *in personam* forfeiture judgment from the seized funds in the amount of \$8,558,035.00 currently being held by the United States Marshal. Further, the United States Marshal shall maintain an additional \$580,842.00 of those seized funds as security until such time as defendants Atkinson and Boulbee satisfy their forfeiture liability in the amount of \$290,421.00 each. Upon entry of this order, the government shall release any and all remaining seized funds to defendant Black including interest that has accrued while funds were held by the United States Marshal. It is further ordered,

6. That, pursuant to the provisions of 21 U.S.C. § 853(g), as incorporated by 28 U.S.C.

§ 2461(c), the United States Marshals Service shall seize and take custody of funds in the amount of \$5,519,158.00, for disposition according to law and seize and take custody of funds in the amount of \$580,842.00 until further order of the Court. It is further ordered,

7. Pursuant to the provisions of 21 U.S.C. § 853(n)(1), as incorporated by 28 U.S.C. § 2461(c), upon the entry of this preliminary order of forfeiture, the United States shall publish notice of this order and of its intent to dispose of the property according to law. The United States may also, pursuant to statute, to the extent practicable, provide written notice to any person known to have alleged an interest in the property that is the subject of the preliminary order of forfeiture as a substitute for published notice as to those persons so notified. It is further ordered,

8. Pursuant to the provisions of 21 U.S.C. § 853(n)(2), as incorporated by 28 U.S.C. § 2461(c), any persons other than the defendants, asserting a legal claim in the property which has been ordered forfeit to the United States may, within thirty days of the final publication of notice or this receipt of notice under paragraph fifteen (15), whichever is earlier, may petition this Court for a hearing to adjudicate the validity of this alleged interest in the property. The hearing will be held before the Court alone, without a jury. It is further ordered,


9. Following the Court's disposition of all third parties interests, the government shall request that the Court, if appropriate, enter a final order of forfeiture as to the property that is the subject of this preliminary order of forfeiture, which shall vest clear title in the United States of America. In addition, the funds subject to forfeiture shall be held in an interest-bearing account until resolution of the direct appeal. It is further ordered,

10. The terms and conditions of this preliminary order of forfeiture will be made part of the sentence imposed against defendants Black, Boulton, Atkinson, and Kipnis and included in any

judgment and commitment order entered in this case against them. It is further ordered,

11. That, this court shall retain jurisdiction in this matter to take additional action and enter further orders to implement and enforce this forfeiture order.

IT IS SO ORDERED.


AMY J. ST. EVE
United States District Court Judge
Northern District of Illinois