

United States District Court
For the Northern District of California

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E-FILED on 4/26/13

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.
ALBERT K. HU,
ASENQUA, INC.,
ASENQUA CAPITAL MANAGEMENT, LLC,
AQC ASSET MANAGEMENT, LTD., and
FIRESIDE CAPITAL MANAGEMENT, LTD.

Defendants.

No. C-09-01177 RMW

**ORDER GRANTING PLAINTIFF'S
MOTION FOR FINAL JUDGMENT
AGAINST ALL DEFENDANTS**

[Re: Docket No. 101]

Plaintiff, the Securities and Exchange Commission ("Commission"), moved for final judgement against all defendants. On March 1, 2013, the court entered a default judgment against defendants Asenqua, Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd, and Fireside Capital Management, Ltd. Dkt. No. 105. The only remaining defendant, Albert K. Hu, failed to respond to the plaintiff's motion [or appear at the hearing].

I. BACKGROUND

The Commission alleges that Hu violated the antifraud provisions of the Securities Act of 1944 and the Securities Exchange Act of 1934 (counts 1 and 2) and violated the Investment Advisers Act of 1940 (counts 3 and 4). The Commission seeks a final judgment against defendant Hu on the basis that Hu's recent criminal conviction is based on the same relevant facts, *United*

1 *States v. Hu*, No. 09-cr-487 RMW (N.D. Cal.), and thus works as an estoppel in favor of the
2 government in this civil action. The Commission also seeks: (1) a permanent injunction against all
3 defendants for future violation of Section 17(a) of the Securities Act and Section 10(b) of the
4 Securities Exchange Act and Rule 10b-5 thereunder; (2) a permanent injunction against Hu for
5 violations of Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act and Rule 206(4)-8
6 thereunder; (3) disgorgement and prejudgement interest in the amount of \$6,624,238; and (4) civil
7 money penalties.

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9 **II. ORDER**

10 Because Hu does not oppose the motion, and upon good cause shown, the court GRANTS
11 the Government's motion for final judgment against Hu and grants relief as follows:

12 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that defendant Albert K. Hu and
13 defendants Asenqua, Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and
14 Fireside Capital Management, Ltd., and their respective officers, agents, servants, employees,
15 attorneys, and those persons in active concert or participation with any of them, who receive actual
16 notice of this Order, by personal service or otherwise, and each of them, are permanently restrained
17 and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of
18 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R.
19 § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of
20 any facility of any national securities exchange, in connection with the purchase or sale of any
21 security:

22 (a) to employ any device, scheme, or artifice to defraud;

23 (b) to make any untrue statement of a material fact or to omit to state a material fact
24 necessary in order to make the statements made, in the light of the circumstances under which they
25 were made, not misleading; or

26 (c) to engage in any act, practice, or course of business which operates or would operate
27 as a fraud or deceit upon any person.
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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Albert K. Hu and defendants Asenqua, Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and Fireside Capital Management, Ltd., and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, 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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Albert K. Hu and his officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, is permanently restrained and enjoined from violating Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-6(1) and 80b-6(2)], by the use of any means or instrumentality of interstate commerce, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud any client or prospective client;
- or
- (b) to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Albert K. Hu and his officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, is permanently restrained and enjoined from violating Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8], by the use of any means or instrumentality of interstate commerce, directly or indirectly:

(a) to make any untrue statement of a material fact or omitting 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, to any investor or prospective investor in a pooled investment vehicle;
or

(b) otherwise to engage in any act, practice or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in a pooled investment vehicle.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Albert K. Hu and defendants Asenqua, Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and Fireside Capital Management, Ltd., are jointly and severally liable for disgorgement of \$4,980,000, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$1,644,238, for a total of \$6,624,238. Defendants shall satisfy this obligation by paying \$6,624,238 to plaintiff Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendants may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the following: the case title; the civil action number; the name of this Court; defendants Albert K. Hu, Asenqua, Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and Fireside Capital Management, Ltd. as defendants in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendants shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission’s counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant.

The Commission shall hold the funds (collectively, the “Fund”) and may propose a plan to distribute the Fund subject to the Court’s approval. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court’s judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendants shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Albert K. Hu and defendants Asenqua, Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and Fireside Capital Management, Ltd., shall jointly and severally pay a civil penalty in the amount of \$1,300,0000 to plaintiff Securities and Exchange Commission pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)]. Defendants shall make this payment within 14 days after entry of this Final Judgment.

Defendants may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier’s check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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Defendants shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission’s counsel in this action. By making this payment, defendants relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to defendants. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury. Defendants shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

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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.

DATED: April 26, 2013



RONALD M. WHYTE
United States District Judge