

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-cv-60082- DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

FREDERIC ELM f/k/a FREDERIC ELMALEH,  
*et al.*,

Defendants,

and

AMANDA ELM f/k/a AMANDA ELMALEH,

Relief Defendant.

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**JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AS TO  
DEFENDANTS ELM TREE INVESTMENT ADVISORS, LLC, ELM TREE  
INVESTMENT FUND LP, ELM TREE ‘E’CONOMY FUND LP,  
AND ELM TREE MOTION OPPORTUNITY LP**

The Securities and Exchange Commission having filed a Complaint and Defendants Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund LP, Elm Tree ‘e’Conomy Fund LP, and Elm Tree Motion Opportunity LP (collectively, “Defendants”) having entered a general appearance; consented to the Court’s jurisdiction over them and the subject matter of this action; consented to entry of this Judgment of Permanent Injunction and Other Relief (“Judgment”) without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein); waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

**I.**

**PERMANENT INJUNCTION**

**A. Section 17(a) of the Securities Act**

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendants 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;

by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants’ qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) any of the officers, agents, servants, employees, and attorneys of Defendants; and (b) other persons in active concert or participation with any of the Defendants or with anyone described in (a).

**B. Section 10(b) and Rule 10b-5 of the Exchange Act**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendants are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78j(b) and 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;

by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants' qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) any of the officers, agents, servants, employees, and attorneys of Defendants; and (b) other persons in active concert or participation with any of the Defendants or with anyone described in (a).

**C. Sections 206(1) and 206(2) of the Advisers Act**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Elm Tree Investment Advisors, LLC ("ETIA") 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 use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser:

- (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;

by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the

prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) ETIA's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) any of the officers, agents, servants, employees, and attorneys of ETIA; and (b) other persons in active concert or participation with ETIA or with anyone described in (a).

**D. Section 206(4) and Rules 206(4)-8(a)(1) and 206(4)-8(a)(2) of the Advisers Act**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that ETIA is permanently restrained and enjoined from violating Section 206(4) and Rules 206(4)-8(a)(1) and 206(4)-8(a)(2) of the Advisers Act, 15 U.S.C. § 80b-6(4) and 17 C.F.R. §§ 275.206(4)-8(a)(1) and 275.206(4)-8(a)(2), by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser to a pooled investment vehicle:

- (a) to make any untrue statement of a material fact or to omit to state a material fact necessary 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 the pooled investment vehicle; or
- (b) to otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle;

by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) ETIA's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who

receive actual notice of this Judgment by personal service or otherwise: (a) any of the officers, agents, servants, employees, and attorneys of ETIA; and (b) other persons in active concert or participation with ETIA or with anyone described in (a).

**II.**

**DISGORGEMENT AND CIVIL PENALTY**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that upon motion of the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains and/or a civil penalty 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); and, if so, the amount(s) of the disgorgement and/or civil penalty. If disgorgement is ordered, Defendants shall pay prejudgment interest thereon, calculated from December 1, 2014, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (i) Defendants will be precluded from arguing they and Defendant Frederic Elm f/k/a Frederic Elmaleh did not violate the federal securities laws as alleged in the Complaint; (ii) Defendants may not challenge the validity of the Consent or this Judgment; (iii) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (iv) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

**III.**

**INCORPORATION OF CONSENT**

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

**IV.**

**RETENTION OF JURISDICTION**

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

**V.**

**RECEIVERSHIP ORDER**

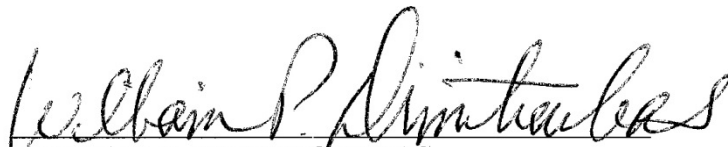
**IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** the Receivership Order entered by the Court on January 16, 2015 [DE 13] remains in effect, and Grisel Alonso, Esq., the Court-appointed Receiver for Defendants, may continue to act consistently with the rights and powers afforded to her under the terms of the Receivership Order. Nothing herein shall be deemed to limit the powers provided to the Receiver in the Receivership Order, nor shall this Judgment be deemed as an admission by the Receiver or Defendants in any litigation between the Receiver and any third party.

**VI.**

**RULE 54(b) CERTIFICATION**

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 Judgment forthwith and without further notice.

**DONE AND ORDERED** in Chambers in Fort Lauderdale, Broward County, Florida, this 29th day of January, 2016.

  
WILLIAM P. DIMITROULEAS  
United States District Judge

Copies to:

Counsel of Record