

At the Ex Parte Motion Support Office of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse, 60 Centre Street, Borough of Manhattan, City and State of New York, on the _____ day of November, 2004.

P R E S E N T : HON.

, Justice.

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STATE OF NEW YORK,

Plaintiff,

**JUDGMENT ON CONSENT
AGAINST
GARY L. PILGRIM AND
HAROLD J. BAXTER**

-against-

Index No.: 403728/2003

PILGRIM BAXTER & ASSOCIATES, LTD.,
GARY L. PILGRIM and HAROLD J. BAXTER,

Defendants.

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The plaintiff having brought this action pursuant to Civil Practice Law and Rules § 1301, Article 23-A of the General Business Law, section 349 of the General Business Law and Executive Law § 63(12) by the service of a summons and complaint upon the above-named defendants, Pilgrim Baxter & Associates, Ltd., now known as Liberty Ridge Capital (“PBA”), Gary L. Pilgrim and Harold J. Baxter, for a judgment, among other things: (1) permanently enjoining defendants from engaging in fraudulent practices in violation of Article 23-A of the General Business Law, section 349 of the General Business Law or section 63(12) of the Executive Law; (2) permanently enjoining defendants Gary L. Pilgrim and Harold J. Baxter from

directly or indirectly engaging in the sale, offer to sell, purchase, offer to purchase, promotion, negotiation or distribution of any securities; (3) directing that defendants, among other things, disgorge all profits obtained from the activities alleged to be illegal in the Complaint and pay restitution, damages and penalties; and (4) seeking other just and proper relief,

NOW, on reading and filing the Summons dated November 20, 2003, the Complaint dated November 20, 2003, the Answer of Defendant Gary L. Pilgrim dated April 23, 2004, the Answer of Defendant Harold J. Baxter dated April 23, 2004, the Answer of Defendant Pilgrim Baxter & Associates, Ltd. dated April 26, 2004, the Affirmation of Assistant Attorney General Charles T. Caliendo, affirmed November 17, 2004, the Consent of Defendant Gary L. Pilgrim to the Judgment On Consent Against Gary L. Pilgrim And Harold J. Baxter dated November 9, 2004 and the Consent of Defendant Harold J. Baxter to the Judgment On Consent Against Gary L. Pilgrim And Harold J. Baxter dated November 9, 2004, which consents neither admit nor deny the allegations of the Complaint herein, and the consents of their respective attorneys, and due deliberation having been had,

On motion of Eliot Spitzer, Attorney General of the State of New York, attorney for plaintiff, it is hereby

ORDERED, ADJUDGED and DECREED, that Defendant Gary L. Pilgrim be and hereby is permanently enjoined from investing or trading in mutual funds (except money market funds) on his own behalf or on behalf of others; provided, however, that he may purchase mutual fund shares on his own behalf or on behalf of his Family that are held for at least one year (as used herein, the term "Family" shall mean the respective individual Defendant's spouse, siblings, children, grandchildren, great-grandchildren, nieces and nephews and their respective

spouses); and it is further

ORDERED, ADJUDGED and DECREED, that Defendant Harold J. Baxter be and hereby is permanently enjoined from investing or trading in mutual funds (except money market funds) on his own behalf or on behalf of others; provided, however, that he may purchase mutual fund shares on his own behalf or on behalf of his Family (as defined above) that are held for at least one year; and it is further

ORDERED, ADJUDGED and DECREED, that Defendant Gary L. Pilgrim be and hereby is permanently enjoined from directly or indirectly engaging or attempting to engage in violations of Article 22-A of the General Business Law, Article 23-A of the General Business Law or Executive Law § 63(12); and it is further

ORDERED, ADJUDGED and DECREED, that Defendant Harold J. Baxter be and hereby is permanently enjoined from directly or indirectly engaging or attempting to engage in violations of Article 22-A of the General Business Law, Article 23-A of the General Business Law or Executive Law § 63 (12); and it is further

ORDERED, ADJUDGED and DECREED, that Defendant Gary L. Pilgrim be and hereby is permanently enjoined from directly or indirectly engaging or attempting to engage in any business relating to the purchase or sale of, or offer to purchase or sell, securities (as governed and/or defined by Article 23-A of the General Business Law) or commodities or commodities contracts (as governed and/or defined by Article 23-A of the General Business Law), or the rendering of investment advice, to or from the public, including, without limitation, (1) acting as a broker or dealer, or as agent, salesperson, or employee of a broker, dealer, or other person, firm, partnership, or corporation engaged in any business relating to securities or

commodities, (2) engaging in the issuance, promotion, negotiation, advertisement, or distribution of any securities or commodities or commodities contracts, (3) acting as or being or attempting to act as a director, trustee, officer, partner, member, employee or agent of any corporation, partnership, firm, association, syndicate, company, trust or other combination engaged in the securities or commodities business, and (4) writing, publishing, preparing, selling, or distributing to the public any letter or other literature (whether in written or electronic format, on the Internet or otherwise) advising, suggesting, or in any other manner communicating advice with respect to the purchase or sale of securities or commodities or commodities contracts; provided, however, that nothing in this paragraph shall prohibit Gary L. Pilgrim from: (i) investing for his own or his Family's (as defined above) account in securities, commodities and private equity investments; (ii) using a company, partnership, charitable entity or other business entity to invest his own or his Family's (as defined above) money; or (iii) managing such account, money or investments; and it is further

ORDERED, ADJUDGED and DECREED, that Defendant Harold J. Baxter be and hereby is permanently enjoined from directly or indirectly engaging or attempting to engage in any business relating to the purchase or sale of, or offer to purchase or sell, securities (as governed and/or defined by Article 23-A of the General Business Law) or commodities or commodities contracts (as governed and/or defined by Article 23-A of the General Business Law), or the rendering of investment advice, to or from the public, including, without limitation, (1) acting as a broker or dealer, or as agent, salesperson, or employee of a broker, dealer, or other person, firm, partnership, or corporation engaged in any business relating to securities or commodities, (2) engaging in the issuance, promotion, negotiation, advertisement, or distribution

of any securities or commodities or commodities contracts, (3) acting as or being or attempting to act as a director, trustee, officer, partner, member, employee or agent of any corporation, company, partnership, firm, association, syndicate, trust or other combination engaged in the securities or commodities business, and (4) writing, publishing, preparing, selling, or distributing to the public any letter or other literature (whether in written or electronic format, on the Internet or otherwise) advising, suggesting, or in any other manner communicating advice with respect to the purchase or sale of securities or commodities or commodities contracts; provided, however, that nothing in this paragraph shall prohibit Harold J. Baxter from: (i) investing for his own or his Family's (as defined above) account in securities, commodities and private equity investments; (ii) using a company, partnership, charitable entity or other business entity to invest his own or his Family's (as defined above) money; or (iii) managing such account, money or investments; and it is further

ORDERED, ADJUDGED and DECREED, that Defendant Gary L. Pilgrim shall pay EIGHTY MILLION DOLLARS (\$80,000,000) no later than January 31, 2005 of which SIXTY MILLION DOLLARS (\$60,000,000) shall be designated as disgorgement and restitution and TWENTY MILLION DOLLARS (\$20,000,000) shall be designated as a civil penalty; and it is further

ORDERED, ADJUDGED and DECREED, that Defendant Harold J. Baxter shall pay EIGHTY MILLION DOLLARS (\$80,000,000) no later than January 31, 2005 of which SIXTY MILLION DOLLARS (\$60,000,000) shall be designated as disgorgement and restitution and TWENTY MILLION DOLLARS (\$20,000,000) shall be designated as a civil penalty; and it is further

ORDERED, ADJUDGED and DECREED, that payment of such disgorgement and restitution and civil penalties by Defendant Gary L. Pilgrim shall be made in accordance with the terms of the Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions Pursuant to Section 8A of the Securities Act, Sections 17A(c)(4)(C) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act of the United States Securities and Exchange Commission in the Administrative Proceeding styled *In The Matter of Gary L. Pilgrim*, and payment of such disgorgement and restitution and civil penalties by Defendant Harold J. Baxter shall be made in accordance with the terms of the Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions Pursuant to Section 8A of the Securities Act, Sections 15(b)(6), 17A(c)(4)(C) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act of the United States Securities and Exchange Commission in the Administrative Proceeding styled *In The Matter of Harold J. Baxter* (hereinafter the “SEC Orders”), copies of which SEC Orders are attached hereto as Exhibit A; and it is further

ORDERED, ADJUDGED and DECREED, that no payments made or costs incurred by Gary L. Pilgrim and/or Harold J. Baxter pursuant to or in connection with this Judgment shall be borne directly or indirectly by any mutual fund managed or advised by PBA or the investors therein.

ORDERED, ADJUDGED and DECREED, that Gary L. Pilgrim and Harold J. Baxter shall not, either alone or together, seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, payment made pursuant to any insurance policy,

with regard to any or all of the amounts payable pursuant to this Judgment; and it is further

ORDERED, ADJUDGED and DECREED, that this Judgment is limited to the Attorney General of the State of New York and does not preclude civil action or criminal prosecution by any other governmental agencies; and it is further

ORDERED, ADJUDGED and DECREED, that Gary L. Pilgrim shall cooperate fully with the Attorney General in any and all investigations, litigations or other proceedings relating to or arising from the subject matter of the Complaint and/or this Judgment, including, without limitation: (1) producing, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Attorney General; (2) using his best efforts to be interviewed by the Attorney General at such times as reasonably directed and testifying truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings, trials or other proceedings as may be requested by the Attorney General; (3) agreeing that any notice or subpoena for his appearance and testimony may be served by regular mail on his current counsel; and (4) waiving through the date of the filing of the Complaint, upon request by the Attorney General, any evidentiary privileges or protections from discovery in connection with any and all investigations, litigations or other proceedings relating to or arising from the subject matter of the Complaint and/or this Judgment; provided, however, (a) Pilgrim need not waive any evidentiary privileges or protections from discovery with respect to communications that occurred between Pilgrim and Skadden, Arps, Slate, Meagher & Flom LLP if such communications were not shared with, and were made out of the presence of and without the participation of, any third party (“third party” includes, but is not limited to, any agents or representatives of PBA or its related entities other than Pilgrim or Baxter), (b)

Pilgrim's good faith invocation of his rights against self-incrimination will not be deemed a violation of the cooperation provision contained in this paragraph, and (c) Pilgrim need not waive any evidentiary privileges or protections from discovery with respect to attorney work-product created by Skadden, Arps, Slate, Meagher & Flom LLP if such work-product was not shown to, created with and/or shared with any third party (as defined above); and it is further

ORDERED, ADJUDGED and DECREED, that Harold J. Baxter shall cooperate fully with the Attorney General in any and all investigations, litigations or other proceedings relating to or arising from the subject matter of the Complaint and/or this Judgment, including, without limitation: (1) producing, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Attorney General; (2) using his best efforts to be interviewed by the Attorney General at such times as reasonably directed and testifying truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings, trials or other proceedings as may be requested by the Attorney General; (3) agreeing that any notice or subpoena for his appearance and testimony may be served by regular mail on his current counsel; and (4) waiving through the date of the filing of the Complaint, upon request by the Attorney General, any evidentiary privileges or protections from discovery in connection with any and all investigations, litigations or other proceedings relating to or arising from the subject matter of the Complaint and/or this Judgment; provided, however, (a) Baxter need not waive any evidentiary privileges or protections from discovery with respect to communications that occurred between Baxter and Skadden, Arps, Slate, Meagher & Flom LLP if such communications were not shared with, and were made out of the presence of and without the participation of, any third party ("third party" includes, but is not limited to, any

agents or representatives of PBA or its related entities other than Baxter or Pilgrim), (b) Baxter's good faith invocation of his rights against self-incrimination will not be deemed a violation of the cooperation provision contained in this paragraph, and (c) Baxter need not waive any evidentiary privileges or protections from discovery with respect to attorney work-product created by Skadden, Arps, Slate, Meagher & Flom LLP if such work-product was not shown to, created with and/or shared with any third party (as defined above); and it is further;

ORDERED, ADJUDGED and DECREED, that Defendants Gary L. Pilgrim and Harold J. Baxter shall comply with all the provisions of the SEC Orders; and it is further

ORDERED, ADJUDGED and DECREED, that this Judgment concludes any action or proceeding, including, but not limited to, civil, criminal, regulatory or administrative, that the Attorney General of the State of New York could commence against Gary L. Pilgrim or Harold J. Baxter relating to or arising from the subject matter of the Complaint and/or this Judgment; provided, however, that the Attorney General of the State of New York may make such further application as appropriate to enforce or interpret the provisions of this Judgment, or in the alternative, maintain any action or proceeding, either civil or criminal, against Gary L. Pilgrim, Harold J. Baxter or otherwise for such other and further relief as plaintiff may determine is proper and necessary for the enforcement of this Judgment; and it is further

ORDERED, ADJUDGED and DECREED, that in any such further application or in any such civil or criminal action, facsimile transmission of a copy of any papers to current counsel for Defendants Gary L. Pilgrim and Harold J. Baxter shall be good and sufficient service on such Defendant unless such Defendant designates, in a writing to the Attorney General, another person to receive service by facsimile transmission; and it is further

ORDERED, ADJUDGED and DECREED, that facsimile transmission of a copy of this Judgment to counsel for Defendants Gary L. Pilgrim and Harold J. Baxter shall be good and sufficient service on such Defendants.

E N T E R

Justice of the Supreme Court