

MARK K. SCHONFELD  
Regional Director  
Bohdan S. Ozaruk (BSO-4502)  
Attorneys for Plaintiff  
Securities and Exchange Commission  
3 World Financial Center, Room 4300  
New York, New York 10281-1022  
(212) 336-0144 (Ozaruk)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
against	:	
	:	93 Civ. 4400 (RWS)
JOSEPH CONTINI, D/B/A PERSONAL	:	
PORTFOLIO WATCH	:	
	:	
Defendants.	:	

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**MOTION FOR ORDER TO SHOW CAUSE FOR A  
PLAN OF DISTRIBUTION, ORDER APPROVING PLAINTIFF  
SECURITIES AND EXCHANGE COMMISSION’S PLAN FOR DISTRIBUTION OF  
DISGORGED ASSETS, AND APPOINTING A DISTRIBUTION AGENT**

Plaintiff Securities and Exchange Commission (“Commission”) moves for an Order to Show Cause for a Proposed Plan of Distribution (“Order to Show Cause”) and, at the conclusion of the procedures outlined in the Order to Show Cause, for an order approving the Commission’s Plan for Distribution of Disgorged Assets (the “Plan”).

**I.**

**BACKGROUND**

In an amended complaint dated April 29, 1994, the Commission alleged that from November 1991 through at least July 1993, Contini misappropriated approximately \$1 million from at least 23 investors in investment partnerships called Personal Portfolio Watch. The

Commission similarly alleged that Contini misappropriated an additional \$57,000 in other investment partnerships. In both instances, Contini used most of this money either to pay his own personal or business expenses, or to pay withdrawals of principal or “profits” to other investors.

#### Final Judgment

On May 17, 1995, Contini consented to the entry of a Final Judgment enjoining him, and ordering him to pay \$2,302,461, consisting of \$1,253,772 in disgorgement and prejudgment interest, and a \$1,048,689 civil penalty. *Final Consent Judgment*, Exh. 1, ¶ IV, VII. The Final Judgment directed payment of disgorgement and prejudgment interest to investors who were victims of his fraud, and who are identified in an attachment to the Final Judgment. *Id.*, ¶ IV. The Final Judgment was signed by the Court on March 23, 1995 and filed in May 1995.

Pursuant to that Final Judgment, Contini made payments in 1995 and 1997, and as directed by an order of this Court dated October 13, 2005, to the Clerk of this Court (the “Distribution Fund”). As a result of those payments, and with accumulated interest, the Distribution Fund currently totals in excess of \$209,000. Exh. 2 (excerpt of Court Registry Investment System report, dated July 23, 2007). The Distribution Fund was deposited in an interest bearing account, number 1:93 cv 4400-1, where the funds remain pending further order of this Court. The Commission now respectfully submits a proposed Plan for distributing the Fund.

#### Tax Administrator

On May 3, 2006, upon motion by the Commission, the Court entered an order appointing Damasco & Associates (“Damasco”), a certified public accounting firm located in San Francisco, California, as tax administrator to execute all income tax reporting requirements of the

Distribution Fund. Docket Entry 41.

**A. Order to Show Cause**

The Order to Show Cause requires the Commission to serve all Eligible Claimants with a copy of the Plan, the Order to Show Cause, and this Motion for an Order to Show Cause. A copy of a proposed Order to Show Cause is attached as Exh. 3.

For all potential claimants of whom the Commission is now unaware and who are not named in the Plan as Eligible Claimants, the Order to Show Cause requires the Commission to post a notice on the Commission's website to alert such potential claimants of the proposed Plan, along with providing information about the proposed Plan. The Order to Show Cause requires the Eligible Claimants and any other potential claimants, within sixty (60) days of the entry of the Order to Show Cause, to show cause, if there be any, why this Court should not enter an Order Approving the Commission's Plan and Appointing a Distribution Agent by sending a letter to counsel for the Commission.

If no objections are submitted within the allotted time period, the Commission shall file a notice so advising the Court and, upon receipt of such notice, the Court may enter an order approving the Commission's Plan and Appointing a Distribution Agent. If the Commission receives any objections to the Plan, the Order to Show Cause requires the Commission to file them together with its responses within ninety (90) days of the entry of the Order to Show Cause, with copies of any such objections and responses to be served upon anyone who submitted objections to the Plan. The Commission may propose an amended plan if it deems it necessary; the Court may conduct a hearing before approving the Commission's Plan or any amended plan if it deems it necessary or appropriate.

The Show Cause procedure provides the Eligible Claimants and other potential claimants

with notice of the Plan and an opportunity to object to the Plan before it is approved. This procedure should reduce the costs involved with administering a distribution of funds, thereby maximizing returns for the Eligible Claimants.

**B. The Plan**

The Plan will result in the distribution of the funds now in the registry. A copy of the Plan is attached as Exh. 4. The monies to be distributed under the Plan would be paid to investors who were defrauded as a result of the conduct alleged in the Complaint, after payment of any tax liabilities, the costs of distribution, and fees of the Distribution Agent, along with any CRIS administrative costs. The Plan provides for a *pro rata* distribution to the Eligible Claimants in proportion to the amount each Eligible Claimant invested.

**C. The Distribution Agent**

The Commission proposes that David R. Kittay, Esq., of the firm of Kittay & Gershfeld, P.C., be appointed as the Distribution Agent under the Plan. A copy of Mr. Kittay's credentials is attached as Exh. 5.

**II.**

**ARGUMENT**

Although a distribution of disgorged funds is not required by statute, where practicable, disgorged money is often distributed to victims of the violation in accordance with a plan proposed by the Commission and approved by the court. Where feasible and appropriate to effect such a distribution, the Commission has been vested with broad discretion in fashioning distribution plans for funds, like the Plan in this case. *SEC v. Certain Unknown Purchasers*, 817 F.2d 1018 (2d Cir. 1987); *SEC v. Levine*, 881 F.2d 1165 (2d Cir. 1989).

Here, the Commission has: (i) identified the Eligible Claimants who were defrauded as a result of the conduct alleged in the Complaint; (ii) determined the amount of the Eligible

Claimants' losses due to Contini's securities law violations and their *pro rata* share; and (iii) compiled detailed and updated contact information for the Eligible Claimants. A distribution of funds to the Eligible Claimants should be neither difficult nor costly. Because the cost of identifying the Eligible Claimants, determining how much the Eligible Claimants lost due to the Defendants' securities law violations, and distributing the recovered funds on a *pro rata* basis is both feasible and justifiable, given the amount the Eligible Claimants stand to receive, it is appropriate to distribute the funds to the Eligible Claimants.

**III.**

**CONCLUSION**

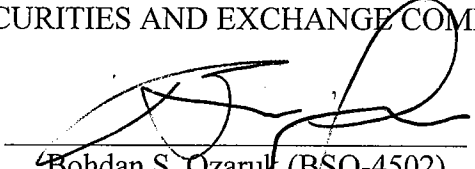
The Commission respectfully requests that its Order to Show Cause be granted and, at the conclusion of the procedures outlined in the Order to Show Cause, requests that its Plan be approved.

Dated: New York, New York  
September 10, 2007

Respectfully submitted,

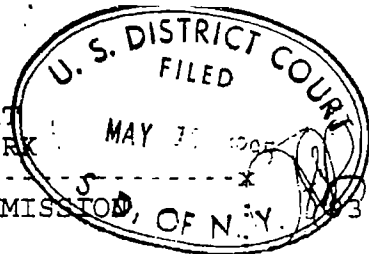
SECURITIES AND EXCHANGE COMMISSION

By: \_\_\_\_\_

  
Bohdan S. Ozaruk (BSO-4502)  
Northeast Regional Office  
3 World Financial Center  
New York, New York 10281  
(212) 336-0144  
Attorneys for Plaintiff

# Exhibit 1

5-17-95



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, OF N.Y. Civ. 4400 (RWS)

Plaintiff,

- against -

JOSEPH CONTINI, individually and  
d/b/a PERSONAL PORTFOLIO WATCH,

Defendant.

FINAL CONSENT  
JUDGMENT OF  
PERMANENT INJUNCTION  
AND OTHER RELIEF  
AGAINST JOSEPH  
CONTINI

# 950981

Plaintiff Securities and Exchange Commission ("Commission"),  
having commenced this action by filing a Complaint and an Amended  
Complaint, alleging, inter alia, that defendant Joseph Contini  
("Contini") violated Sections 17(a) of the Securities Act of 1933  
("Securities Act") [15 U.S.C. §77q(a)], Section 10(b) of the  
Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C.  
§78j(b)], Rule 10b-5 thereunder [17 C.F.R. §240.10b-5], and  
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)]; and  
defendant Contini having admitted the in personam jurisdiction of  
this Court over him and this Court's jurisdiction over the  
subject matter of this action, having waived the entry of  
findings of fact and conclusions of law pursuant to Rule 52 of  
the Federal Rules of Civil Procedure, and without admitting or  
denying the allegations of the Amended Complaint except as to  
jurisdiction which is admitted, having consented to the entry,  
without further notice, of this Final Consent Judgment of  
Permanent Injunction and Other Relief against Joseph Contini  
("Final Judgment"):

9/11/97  
D.P.  
ST-120  
MC  
9/16/30  
#110,800-76

MICROFILM  
MAY 17 1995  
-12:00 PM

A CERTIFIED COPY  
JAMES H. HARRISON, CLERK

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Contini be and hereby is permanently restrained and enjoined from, directly or indirectly, singly or in concert, in the offer or sale of any securities, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails:

- (a) employing any device, scheme, or artifice to defraud;
- (b) obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and
- (c) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser,

in violation of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Contini be and hereby is permanently restrained and enjoined from, directly or indirectly, singly or in concert, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:



- (a) employing any device, scheme, or artifice to defraud;
- (b) making 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; or
- (c) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in violation of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

### III.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Contini be and hereby is permanently restrained and enjoined from, directly or indirectly, singly or in concert, by the use of the mails, or any means or instrumentality of interstate commerce:

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

in violation of Sections 206(1) and (2) of the Advisers Act [15 U.S.C. §§80b-6(1) and (2)].

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, in accordance with the terms set forth in the Consent of Joseph Contini to Final Consent Judgment of Permanent Injunction and Other Relief, defendant Contini shall be liable to pay disgorgement of \$1,253,772.76, consisting of disgorgement of funds misappropriated in the amount of \$1,048,689.81, plus pre-judgment interest of \$205,087.95; provided, however, that:

- (a) payment of disgorgement in the amount of \$109,000 to William Ryan and prejudgment interest thereon in the amount of \$21,254.53 is waived in light of the fact that Mr. Ryan is defendant Contini's uncle and has executed a written release of claims against defendant Contini;
- (b) any payments made by defendant Contini to persons identified on Exhibit A pursuant to an order issued in United States v. Joseph Contini, 94 Cr. 184 (KMW), requiring defendant Contini to pay restitution to investors defrauded by the illegal conduct alleged in the Complaint, may be offset against any disgorgement ordered against defendant Contini pursuant to the Final Judgment; and
- (c) any funds recovered by plaintiff Commission from the sale or disposal of assets of defendant Contini may be offset against the disgorgement ordered pursuant to the Final Judgment.

The disgorgement and interest shall be paid to the persons identified on Exhibit A and in the amounts set forth on Exhibit A, in accordance with the provisions of Paragraphs V. and VI. of this Final Judgment.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, assets frozen or otherwise obtained by the Commission in satisfaction of this Final Judgment, now or hereinafter, or the proceeds thereof, shall be disposed of in the following manner:

- (a) Such moneys shall be deposited into an interest-bearing money market account with the Court Registry Investment System (the "C.R.I.S. Account"). Interest earned on the funds in the C.R.I.S. Account shall be credited to the C.R.I.S. Account and shall thereafter be treated in the same manner as principal.
- (b) Funds in the C.R.I.S. Account shall be held until further order of the Court, and shall be disbursed in accordance with a plan of distribution to be submitted by plaintiff Commission and approved by the Court. Such plan shall provide that such funds be distributed to the persons identified on Exhibit A in the amounts set forth therein or, if the moneys in the C.R.I.S. Account are insufficient to make full payment to such persons, on a pro rata basis based on the amounts set forth

on Exhibit A. In no event shall any portion of the account be returned to defendant Contini, his successors or assigns.

- (c) Prior to making any disbursements from the C.R.I.S. Account, the Clerk of the Court is directed to deduct from the income earned on the investment the fee authorized by Rule 8(c)(2)(IV) of the Local Civil Rules for the United States District Court for the Southern District of New York

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Contini shall pay directly to each person identified on Exhibit A disgorgement and interest in the amounts set forth on Exhibit A, less whatever amounts have been disbursed to such persons pursuant to Paragraph V., above. Any partial payments shall be made to all persons listed in Exhibit A on a pro rata basis. Such monies shall be paid by U.S. postal money order, certified check, bank cashier's check, or bank money order. Within three (3) business days after Contini has made any payment of funds to any persons identified on Exhibit A as required by Paragraph IV. above, Contini shall transmit copies of such payments to the attention of Richard H. Walker, Esq., Regional Director, U.S. Securities and Exchange Commission, Northeast Regional Office, 7 World Trade Center, 13th Floor, New York, New York 10048, together with proof of delivery and a cover letter that

identifies the defendant, the name, and case number of this action and the court in which it was brought.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Contini shall pay a civil penalty of \$1,048,689.81 to the United States Treasury ("Treasury"), pursuant to the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Exchange Act Section 21(d)(3)(A) [15 U.S.C. §78u(d)(3)(A)]. Such penalty shall be paid after payment of disgorgement and interest, as ordered in Paragraph IV. of this Final Judgment, and in accordance with the provisions of Paragraph VIII. of this Final Judgment.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all payments to the Treasury required by Paragraph VII. of this Final Consent Judgment shall be made by U.S. postal money order, certified check, bank cashier's check, or bank money order payable to the order of the Securities and Exchange Commission, and shall be transmitted to the Comptroller, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, under cover of a letter that identifies the defendant, the name and civil action number of this litigation, and the court in which it was brought. Copies of the cover letters and payments shall be simultaneously transmitted to the attention of Richard H. Walker, Esq., Regional Director, U.S. Securities and Exchange Commission, Northeast Regional Office, 7 World Trade Center, 13th Floor, New York, New York 10048.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Final Judgment is binding upon Contini, his agents, employees, and attorneys, and upon those persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, pursuant to Federal Rule of Civil Procedure 65(d).

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the annexed Consent of Joseph Contini, and the same hereby is, incorporated in this Final Judgment with the same force and effect as fully set forth herein.

XI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for all purposes.

XII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Clerk of the Court is hereby directed to enter this Final Judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

*Mr. [unclear]*

*March 23, 1995*

*J. Sweet*  

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*USDT*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
SECURITIES AND EXCHANGE COMMISSION, : 93 Civ. 4400 (RWS)  
: :  
Plaintiff, : :  
: :  
- against - : :  
: :  
JOSEPH CONTINI, individually and : :  
d/b/a PERSONAL PORTFOLIO WATCH, : :  
: :  
Defendant. : :  
-----X

CONSENT OF  
JOSEPH CONTINI

I.

Defendant Joseph Contini ("Contini"), having read and understood the terms of the attached Final Consent Judgment of Permanent Injunction and Other Relief against Joseph Contini (the "Final Judgment"), acknowledges service and admits the in personam jurisdiction of this Court over him, this Court's jurisdiction over the subject matter of this action, and the service of the Summons, Complaint and Amended Complaint on him; waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure; and hereby consents to the entry, without further notice, of the Final Judgment, without admitting or denying the allegations contained in the Amended Complaint of the plaintiff Securities and Exchange Commission (the "Commission") filed in this matter.

II.

Defendant Contini waives any right he may have to appeal from the annexed Final Judgment.

III.

Defendant Contini states that no tender, offer, threat, promise, or inducement of any kind has been made by plaintiff Commission or by any member, officer, agent, or representative thereof to induce him into entering into this Consent. Defendant Contini states that he enters into this Consent voluntarily.

IV.

Defendant Contini hereby consents to pay disgorgement of \$1,253,772.76, consisting of disgorgement of funds misappropriated in the amount of \$1,048,689.81, plus pre-judgment interest of \$205,082.95; provided, however, that:

- (a) payment of disgorgement in the amount of \$109,000 to William Ryan and pre-judgment interest thereon in the amount of \$21,254.53 is waived in light of the fact that Mr. Ryan is defendant Contini's uncle and has executed a written release of claims against defendant Contini;
- (b) any payments made by defendant Contini to persons identified on Exhibit A pursuant to an order issued in United States v. Joseph Contini, 94 Cr. 184 (KMW), requiring defendant Contini to pay restitution to investors defrauded by the illegal conduct alleged in the Complaint, may be offset against any disgorgement ordered against defendant Contini pursuant to the Final Judgment; and



(c) any funds recovered by plaintiff Commission from the sale or disposal of assets of defendant Contini may be offset against the disgorgement ordered pursuant to the Final Judgment.

The disgorgement and interest shall be paid to the persons identified on Exhibit A to the Final Judgment and in the amounts set forth on Exhibit A, in accordance with the provisions of Paragraphs V. and VI. of the Final Judgment. Defendant Contini further consents that assets frozen or otherwise obtained by the Commission in satisfaction of the Final Judgment, now or hereafter, or the proceeds thereof, be deposited into an interest-bearing money market account with the Court Registry Investment System and disposed of in accordance with Paragraphs V-VIII. of the Final Judgment.

V.

Defendant Contini hereby consents to pay a civil penalty of \$1,048,689.81 to the United States Treasury, pursuant to the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Exchange Act Section 21(d)(3)(A) [15 U.S.C. §78u(d)(3)(A)]. Such penalty shall be paid after payment of disgorgement and interest to the victims, as ordered in Paragraph IV. of the Final Judgment, and in accordance with the provisions of Paragraphs VII. and VIII. of the Final Judgment.

VI.

Defendant Contini agrees that he will not oppose the enforcement of the Final Judgment on the ground, if any exists,

that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection he may have based thereon.

VII.

Defendant Contini acknowledges that this Consent and the four stipulations executed by Contini concerning the disposition of certain assets, copies of which are annexed hereto, embody the entire understanding by and between Contini and the Commission relating to the settlement of this action.

VIII.

Defendant Contini understands that plaintiff Commission, at its sole and exclusive discretion, may refer this matter, or any information or any real or testimonial evidence gathered in connection therewith or derived therefrom, to any person or entity having appropriate criminal, civil, or administrative jurisdiction or authority.

IX.

Defendant Contini acknowledges and agrees that this proceeding and his consent to the entry of the Final Judgment are for the purposes of resolving this civil proceeding only, in conformity with the provisions of 17 C.F.R. § 202.5(f), and do not resolve, extend to, affect, or preclude any other proceeding which may be brought against him, including, without limitation, United States v. Joseph Contini, 94 Cr. 184 (KMW). Consistent with the provisions of 17 C.F.R. §202.5(f), defendant Contini waives any claim of Double Jeopardy based upon the settlement of

this proceeding, including the imposition of any remedy or civil penalty herein.

X.

Defendant Contini acknowledges that a violation of any of the terms or provisions of the annexed Final Judgment may place him in contempt of this Court and subject him to civil or criminal sanctions.

XI.

Defendant Contini acknowledges that he has been informed that the plaintiff Commission has not and does not waive its rights to commence, at its sole and exclusive discretion, any administrative or civil action or any civil or criminal contempt proceeding against any other persons or entities as a result of this matter or any information or evidence gathered in connection therewith or derived therefrom.

XII.

Defendant Contini understands that it is the Commission's policy, set forth in 17 C.F.R. §202.5(e), not to permit a defendant to consent to a judgment or order that imposes a sanction while denying the allegations in the Amended Complaint. Defendant Contini further understands that the Commission's acceptance of the settlement in this matter is based upon compliance with this policy by defendant Contini.

XIII.

Defendant Contini agrees that the attached Final Judgment may be presented by the Commission to the Court for signature and entry without further notice.

XIV.

Defendant Contini consents that this Court shall retain jurisdiction of this matter for all purposes.

XV.

Defendant Contini hereby agrees that this Consent of Joseph Contini shall be annexed to and made part of the Final Judgment filed simultaneously herewith with the same force and effect as if fully set forth therein.

ZR/SD by ZR

Dated: , New York  
, 1994<sup>5</sup>

Joseph Contini  
Joseph Contini

STATE OF NEW YORK )  
COUNTY OF Orange )

ss.:

ZR/SD by ZR

On this 9<sup>th</sup> day of January, 1994<sup>5</sup>, before me personally came Joseph Contini, to me known and known to me to be the person who executed the foregoing Consent, and he acknowledged to me that he executed the same.

Joseph L. Dratel  
Notary Public

My commission expires:

ZR/SD by ZR

Dated: New York, New York  
Jan. 9, 1994<sup>5</sup>

JOSHUA L. DRATEL  
Notary Public, State of New York  
No. 31-4706951  
Qualified in New York County  
Commission Expires May 31, 1996

✓ DATED: NEW YORK, NEW YORK  
MARCH 23 1995  
[Signature]  
U.S.D.J.

**EXHIBIT A**

PERSONAL PORTFOLIO WATCH  
INVESTMENT AND PRE-JUDGMENT INTEREST

		INVESTMENT	TOTAL INTEREST	TOTAL INVESTMENT PLUS INTEREST
** NAME ABRAMS	IVAN			
** Subtotal **		9000.00	1422.59	10422.59
** NAME ABRAMS	NICHOLAS			
** Subtotal **		9000.00	1422.59	10422.59
** NAME ANDREWS	VALERIE & THOMAS			
** Subtotal **		10000.00	1643.34	11643.34
** NAME ARNOLD	ANTHONY			
** Subtotal **		15000.00	2068.91	17068.91
** NAME AVERSANO	ANTHONY			
** Subtotal **		65000.00	10376.10	80376.10
** NAME AVERSANO	PAT			
** Subtotal **		10000.00	1643.34	11643.34
** NAME AVERSANO	PAUL			
** Subtotal **		50000.00	7966.01	57966.01
** NAME AVITABILE	JOHN			
** Subtotal **		18470.00	6937.00	56687.00
** NAME BACHMAN	BRUCE & MARLENE			
** Subtotal **		20000.00	3709.89	23709.89
** NAME BAHRENBURG	JOHN			
** Subtotal **		10000.00	1712.76	11712.76
** NAME BARBOUR	DONALD			
** Subtotal **		40000.00	7419.79	47419.79

PERSONAL PORTFOLIO WATCH  
INVESTMENT AND PRE-JUDGMENT INTEREST

		INVESTMENT	TOTAL INTEREST	TOTAL INVESTMENT PLUS INTEREST
** NAME BARSHAY	BERNARD			
** Subtotal **		9000.00	1479.01	10479.01
** NAME BELENKE	CHARLOTTE			
** Subtotal **		1000.00	164.33	1164.33
** NAME BROGNANO	DEBRA			
** Subtotal **		24286.00	7301.37	47301.37
** NAME BRONSTEIN	DAVID			
** Subtotal **		136300.00	35996.98	172296.98
** NAME CELTRUDA	JOSEPH			
** Subtotal **		10000.00	1712.76	11712.76
** NAME CHRISTIAN	ANTHONY			
** Subtotal **		10000.00	1712.76	11712.76
** NAME CHRYSTIE	EINAR			
** Subtotal **		9000.00	1360.17	10360.17
** NAME CICCOLELLA	MICHAEL			
** Subtotal **		10000.00	1580.66	11580.66
** NAME CONTI	ALFONZO			
** Subtotal **		20000.00	3161.32	23161.32
** NAME DAVIS	ED			
** Subtotal **		10186.00	1986.02	26986.02
** NAME DIROCCO	ANTHONY			
** Subtotal **		10000.00	1643.34	11643.34

PERSONAL PORTFOLIO WATCH  
INVESTMENT AND PRE-JUDGMENT INTEREST

	INVESTMENT	TOTAL INTEREST	TOTAL INVESTMENT PLUS INTEREST
** NAME FEDERICO JOHN			
** Subtotal **	10000.00	1511.31	11511.31
** NAME FISHER GISELA			
** Subtotal **	20000.00	3425.50	23425.50
** NAME GARITE CARL			
** Subtotal **	10000.00	1643.34	11643.34
** NAME GIERLOFF CHRISTIAN			
** Subtotal **	20000.00	3286.68	23286.68
** NAME HALL ALAN			
** Subtotal **	9000.00	1422.59	10422.59
** NAME HAYNES DEREK			
** Subtotal **	20000.00	3448.07	23448.07
** NAME HOUSEHOLDER VIRGIL			
** Subtotal **	10000.00	1643.34	11643.34
** NAME IULIANO ARLENE			
** Subtotal **	10000.00	1379.26	11379.26
** NAME JETHANY CHANDER			
** Subtotal **	15000.00	2787.47	17787.47
** NAME KELLY RONALD			
** Subtotal **	9000.00	1360.17	10360.17
** NAME KOZLARK ROBERT			
** Subtotal **	1857.00	1185.96	20185.96



PERSONAL PORTFOLIO WATCH  
INVESTMENT AND PRE-JUDGMENT INTEREST

		INVESTMENT	TOTAL INTEREST	TOTAL INVESTMENT PLUS INTEREST
** NAME LACKNER	TRUDY			
** Subtotal **		15000.00	2569.13	17569.13
** NAME LOEBRICH	ROBERT			
** Subtotal **		40000.00	10163.93	50163.93
** NAME MCLAUGHLIN	TARA			
** Subtotal **		10000.00	1917.72	11917.72
** NAME MILLER	BYRON			
** Subtotal **		10000.00	1643.34	11643.34
** NAME MULLEN	CHARLES			
** Subtotal **		15000.00	2465.04	17465.04
** NAME PAN	EDWARD			
** Subtotal **		11881.00	5175.21	45175.21
** NAME PEPER	KLAUS			
** Subtotal **		10000.00	1712.76	11712.76
** NAME PREDATSCH	BRUCE			
** Subtotal **		10000.00	1712.76	11712.76
** NAME PREDATSCH	GERDA			
** Subtotal **		20000.00	3425.48	23425.48
** NAME PREISIG	JULIA			
** Subtotal **		10000.00	1712.76	11712.76
** NAME PURDY	PETER			
** Subtotal **		12000.00	1988.61	13988.61

PERSONAL PORTFOLIO WATCH  
INVESTMENT AND PRE-JUDGMENT INTEREST

		INVESTMENT	TOTAL INTEREST	TOTAL INVESTMENT PLUS INTEREST
** NAME REPETTI	ROBERT & SUSAN			
** Subtotal **		10000.00	1580.66	11580.66
** NAME RESTA	JOSEPH			
** Subtotal **		20000.00	3425.48	23425.48
** NAME ROSS	MARGARET			
** Subtotal **		10000.00	1712.76	11712.76
** NAME ROSSI	RICHARD			
** Subtotal **		10000.00	1997.13	11997.13
** NAME RYAN	ANGELA			
** Subtotal **		10000.00	1712.76	11712.76
** NAME SENA	NICHOLAS			
** Subtotal **		9500.00	1897.28	11397.28
** NAME SENA	NICHOLAS III			
** Subtotal **		10000.00	1580.66	11580.66
** NAME SHAH	NIMESH			
** Subtotal **		10000.00	1580.66	11580.66
** NAME SIEMON	WALTER			
** Subtotal **		10000.00	1997.13	11997.13
** NAME SPELLS	ROY			
** Subtotal **		15000.00	2465.06	17465.06
** NAME STARK	BRIAN			
** Subtotal **		10000.00	1643.34	11643.34

PERSONAL PORTFOLIO WATCH  
INVESTMENT AND PRE-JUDGMENT INTEREST

		INVESTMENT	TOTAL INTEREST	TOTAL INVESTMENT PLUS INTEREST
** NAME STOCKIN	JEFFREY			
** Subtotal **		10000.00	1712.76	11712.76
** NAME TRADING	LOSSES			
** Subtotal **		-17790.19	-4593.56	-4593.56
** NAME TRUMPETTO	ELAINE & JOHN			
** Subtotal **		10000.00	1580.66	11580.66
** NAME ZYKOFF	FELIX			
** Subtotal **		8000.00	1534.17	9534.17
*** Total ***		939689.81	183828.42	1253378.42

# Exhibit 2

NY-06093-B Contin  
 Act # 2195

07/23/07

Docket Account Management System  
 Report by Docket, case number 1:93cv04400-1

Date	Docket#	Received	Disbursed	Check#	Voucher#	Docket Balance
04/25/07	1:93cv04400-1	198.98	0.00			193,879.24
05/02/07	1:93cv04400-1	208.85	0.00			194,088.09
05/02/07	1:93cv04400-1	2,000.00	0.00			196,088.09
05/09/07	1:93cv04400-1	210.09	0.00			196,298.18
05/15/07	1:93cv04400-1	12,071.48	0.00			208,551.98
05/16/07	1:93cv04400-1	182.32	0.00			196,480.50
05/23/07	1:93cv04400-1	2,000.00	0.00			210,551.98
05/23/07	1:93cv04400-1	205.48	0.00			210,757.46
05/30/07	1:93cv04400-1	173.46	0.00			210,930.92
06/06/07	1:93cv04400-1	0.00	4,943.14	790190	54709197453	205,987.78
06/06/07	1:93cv04400-1	169.20	0.00			206,156.98
06/13/07	1:93cv04400-1	164.61	0.00			206,321.59
06/20/07	1:93cv04400-1	165.39	0.00			206,486.98
06/27/07	1:93cv04400-1	155.40	0.00			206,653.38
07/03/07	1:93cv04400-1	2,000.00	0.00			208,653.38
07/04/07	1:93cv04400-1	199.29	0.00			208,852.67
07/11/07	1:93cv04400-1	211.90	0.00			209,064.57
07/18/07	1:93cv04400-1	209.64	0.00			209,273.61

# Exhibit 3

MARK K. SCHONFELD  
Regional Director  
Bohdan S. Ozaruk (BSO-4502)  
Attorneys for Plaintiff  
Securities and Exchange Commission  
3 World Financial Center, Room 4300  
New York, New York 10281-1022  
(212) 336-0144 (Ozaruk)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
against	:	
	:	93 Civ. 4400 (RWS)
JOSEPH CONTINI, D/B/A PERSONAL	:	
PORTFOLIO WATCH	:	
	:	
Defendants.	:	

---

**ORDER TO SHOW CAUSE FOR A PROPOSED PLAN OF DISTRIBUTION**

Plaintiff Securities and Exchange Commission (“Commission”) has filed a motion for:  
(1) an Order directing Eligible Claimants to show cause why the Court should not approve the Commission’s proposed plan of distribution (the “Plan”); and (2) an Order approving the Commission’s proposed Plan and appointing a Distribution Agent.

The Court has considered the Commission’s motion and all other evidence and arguments presented regarding this motion.

**BASED UPON THE FOREGOING:**

**I.**

**IT IS HEREBY ORDERED** that within ten business days of the entry of this Order to Show Cause the Commission shall serve the Eligible Claimants as named in the Plan (“Eligible

Claimants”) and the Defendants with a copy of the Plan, this Order to Show Cause, the Commission’s Motion for an Order to Show Cause, and the Order Approving the proposed Plan and Appointing a Distribution Agent. Service under this Order may be made upon the Eligible Claimants by first-class mail at their last known address and upon Contini by first-class mail.

**II.**

**IT IS FURTHER ORDERED** that the Commission shall post a notice on the Commission’s website, located at <http://www.sec.gov/divisions/enforce/claims.htm>, to alert potential claimants of whom the Commission is now unaware, and this website posting shall be sufficient notice of the proposed Plan to all such potential claimants who are not named in the Plan as Eligible Claimants. The notice shall specify how copies of the proposed Plan may be obtained and shall state that persons desiring to comment on or object to the proposed Plan may submit their views in writing to the Commission by letter addressed to Bohdan S. Ozaruk, Esq., Securities and Exchange Commission, Northeast Regional Office, 3 World Financial Center, Suite 400, New York, New York 10281-1022. Anyone not named as an Eligible Claimant in the Commission’s proposed Plan who may have a claim to distributions under the Plan must serve an objection to the proposed Plan in a timely manner as provided for in paragraph III below demonstrating under penalty of perjury the grounds for such claim. The failure to do so will bar such potential claimants from participating in any distributions under the Plan.

**III.**

**IT IS FURTHER ORDERED** that the Eligible Claimants and any other potential claimant, within sixty (60) days from the entry of this Order, shall show Cause, if there be any, why this Court should not enter an Order Approving the Commission’s Plan and Appointing a Distribution Agent by sending a letter to counsel for the Commission setting forth objections to



the Plan. All such letters shall be addressed to Bohdan S. Ozaruk, Esq., Securities and Exchange Commission, Northeast Regional Office, 3 World Financial Center, Suite 400, New York, New York 10281-1022. If no objections are submitted within the allotted time period, the Commission shall file a notice so advising the Court. Upon receipt of such notice from the Commission, the Court may enter an order approving the Commission's Plan and appointing a Distribution Agent.

**IV.**

**IT IS FURTHER ORDERED** that, if the Commission receives any objections to the Plan, it shall file them together with its responses within ninety (90) days of the entry of this Order, with copies of any such objections and responses to be served upon anyone who submitted objections to the Plan and upon the Defendants. The Commission may propose an amended plan if it deems it necessary. If the Court deems it necessary or appropriate, the Court may conduct a hearing before approving the Commission's Plan.

SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2007:

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

# Exhibit 4



from at least 23 investors in investment partnerships called Personal Portfolio Watch. The Commission similarly alleged that Contini misappropriated an additional \$57,000 in other investment partnerships. In both instances, Contini used most of this money either to pay his own personal or business expenses, or to pay withdrawals of principal or “profits” to other investors.

2. On May 17, 1995, Contini consented to the entry of a Final Judgment enjoining him, and ordering him to pay \$2,302,461, consisting of \$1,253,772 in disgorgement and prejudgment interest, and a \$1,048,689 civil penalty. Exh. 1, ¶ IV, VII. The Final Judgment directed payment of disgorgement and prejudgment interest to investors who were victims of his fraud, and who are identified in an attachment to the Final Judgment. *Id.*, ¶ IV. The Final Judgment was signed by the Court on March 23, 1995 and filed in May 1995.

4. Pursuant to that Final Judgment, Contini made payments in 1995 and 1997, and as directed by an order of this Court dated October 13, 2005, to the Clerk of this Court (the “Distribution Fund”). As a result of those payments, and with accumulated interest, the Distribution Fund currently totals in excess of \$209,000. Exh. 2 (excerpt of Court Registry Investment System report, dated July 23, 2007).

5. The Distribution Fund was deposited in an interest bearing account, number 1:93 cv 4400-1, where the funds remain pending further order of this Court.<sup>1</sup>

6. The Commission now respectfully submits this Plan for distributing those funds.

### **C. DEFINITIONS**

As used in this Plan, the following definitions shall apply:

---

<sup>1</sup> The funds remaining in the Fund reflect payment of taxes obligations of the Fund, along with the Tax Administrator’s fees, as ordered by this Court on March 30, 2006, April 13, 2006, and subsequently.

7. "Disgorgement Fund" means the amount of money, as of the date of the *Order Approving Plan of Distribution*, paid into the registry of this Court consisting of all funds deposited into the CRIS in this case by Contini, plus accrued interest.

8. "Eligible Claimants" means the 58 investors identified in Exhibit A to the Final Judgment, and as identified in ¶ 12 below.

10. Each Eligible Claimant's "Actual Loss" means the total amount invested by each Eligible Claimant. The "Total Actual Loss" shall mean the sum of the Actual Loss of all 58 Eligible Claimants.

11. Each Eligible Claimant's "Loss Ratio" means the ratio of each Eligible Claimant's Actual Loss to the Total Actual Loss.

12. The Eligible Claimants, along with the amount of their losses and loss ratios, are as follows:

<b>Eligible Claimants</b>	<b>Actual Loss</b>	<b>Loss Ratio</b>
Abrams, Ivan	\$9,000	.0093996
Abrams, Nicholas	\$9,000	.0093996
Andrews, Thomas & Valerie	\$10,000	.0104440
Arnold, Anthony	\$15,000	.0156661
Aversano, Anthony	\$65,000	.0678865
Aversano, Pat	\$10,000	.0104440
Aversano, Paul	\$50,000	.0522204
Avitabile, John	\$18,470	.0192902
Bachman, Bruce E.	\$20,000	.0208881
Bahrenberg, John F.	\$10,000	.0104440
Barbour, Donald	\$40,000	.0417763
Barshay, Bernard	\$9,000	.0093996
Belenke, Charlotte	\$1,000	.0010444
Brogna, Debra	\$24,286	.0253644
Bronstein, David	\$136,300	.1423528
Celtruda, Joseph O. & Catherine M.	\$10,000	.0104440
Christian, Anthony & Helen	\$10,000	.0104440
Chrystie, Einar	\$9,000	.0093996
Ciccolella, Michael	\$10,000	.0104440
Conti, Alfonso	\$20,000	.0208881
Davis, Edward J.	\$10,186	.0106383

DiRocco, Anthony	\$10,000	.0104440
Federico, John	\$10,000	.0104440
Fisher, Gisela	\$20,000	.0208881
Garite, Carl	\$10,000	.0104440
Gierloff, Christian	\$20,000	.0208881
Hall, Alan	\$9,000	.0093996
Haynes, Derek	\$20,000	.0208881
Householder, Virgil	\$10,000	.0104440
Iuliano, Arlene	\$10,000	.0104440
Jethani, Chander P.	\$15,000	.0156661
Ronald D. Kelly	\$9,000	.0093996
Kozlark, Robert J.	\$1,857	.0019394
Lackner, Trudy	\$15,000	.0156661
Loebrich, Robert	\$40,000	.0417763
McLaughlin, Tara H.	\$10,000	.0104440
Miller, Byron	\$10,000	.0104440
Mullen, Charles	\$15,000	.0156661
Pan, Edward S.	\$11,881	.0124086
Peper, Klaus	\$10,000	.0104440
Predatsch, Bruce J. W.	\$10,000	.0104440
Predatsch, Gerda M.	\$20,000	.0208881
Preisig, Julia	\$10,000	.0104440
Purdy, Peter L.	\$12,000	.0125328
Repetti, Robert & Susan	\$10,000	.0104440
Resta, Joseph P.	\$20,000	.0208881
Ross, Margaret	\$10,000	.0104440
Rossi, Richard	\$10,000	.0104440
Ryan, Angela Paolocelli	\$10,000	.0104440
Sena, Nicholas	\$9,500	.0099218
Sena, Nicholas III	\$10,000	.0104440
Shah, Nimish	\$10,000	.0104440
Siemon, Walter H., Jr.	\$10,000	.0104440
Spells, Roy R.	\$15,000	.0156661
Stark, Brian	\$10,000	.0104440
Stockin, Jeffrey G.	\$10,000	.0104440
Trumpetto, Elaine Carey & John A.	\$10,000	.0104440
Zykoff, Felix B.	\$8,000	.0083552
<b>TOTALS</b>	<b>\$957,480</b>	

**D. THE TAX ADMINISTRATOR**

13. Damasco & Associates was previously appointed Tax Administrator of the Distribution Fund, pursuant to an order of this Court dated October 24, 2006. Docket Entry 41.

Damasco & Associates will continue to have the responsibilities specified in the October 24, 2006 Order.

**E. THE DISTRIBUTION AGENT**

14. Upon entry of the Court's Order approving this Plan, and subject to Court approval of a Distribution Agent, the Distribution Agent shall have the following rights and responsibilities:

a. The Distribution Agent, after consultation with the Commission, shall distribute the Disgorgement Fund in accordance with the Plan.

b. Upon entry of this Order approving the Plan, the Distribution Agent shall by letter to the Clerk ask the Clerk to determine the amount of money in the Distribution Fund that is currently held in the CRIS account. Following such determination, the Distribution Agent shall (i) ask the Clerk to transfer those funds in their entirety, after deducting any necessary CRIS administrative fees, to the Distribution Agent; and (ii) the Clerk is hereby directed to turn over such funds to the Distribution Agent. Upon receipt of such funds from the Clerk, the Distribution Agent shall promptly deposit the funds in an interest-bearing money market account or in multiple such accounts as may be necessary to ensure that the entire amount deposited is insured by the Federal Deposit Insurance Corporation.

c. If Contini makes any further payments into the CRIS account after the entry of the Order approving this Plan, but before the distribution occurs pursuant to this Plan, the Clerk shall promptly transfer any such additional funds to the Distribution Fund. Such transfer of additional funds may be made to the Distribution Agent without further order of this Court. The Distribution Agent shall add such additional funds to the Distribution Fund prior to the distribution.

d. The Distribution Agent shall provide the previously appointed Tax Administrator, Damasco & Associates, with any information or documents needed by the Tax Administrator. As provided in the Order dated October 21, 2005, (providing for the appointment of Damasco as Tax Administrator) Damasco may pay taxes and receive fees related to its performance as Tax Administrator out of the Disgorgement Fund.

e. The Distribution Agent is entitled to receive compensation from the Disgorgement Fund at the rate of \$200 an hour, and other reasonable and documented costs and expenses incurred in performance of the Distribution Agent's duties under the Plan. The Distribution Agent will prepare, for Court approval, a proposed plan of distribution to the Eligible Claimants, along with the fees and expenses of the Distribution Agent (including a reserve amount for preparation of a final report, as directed in ¶ k.), and fees and expenses of the tax administrator.

f. After final payment of any tax obligations, CRIS administrative fees, Damasco's fees related to its performance as tax administrator, and the Distribution Agent's fees and expenses as approved by the Court, the Distribution Agent shall disburse to each Eligible Claimant an amount equal to his or her Loss Ratio (as set out in ¶ 12 in the Plan) multiplied by the amount remaining in the Distribution Fund in accordance with the Plan without further order of the Court.

g. The Distribution Agent is excused from all legal requirements to post a bond or give an undertaking of any type in connection with the Distribution Agent's duties and obligations under the Plan.



h. The Distribution Agent is entitled to rely on all outstanding rules of law and court orders, and shall not be liable to anyone for good faith compliance with any order, rule, law, judgment, or decree, including the orders of this Court.

i. The Distribution Agent may be removed at any time by the Court, and replaced with a successor. In the event the Distribution Agent decides to resign, the Distribution Agent shall first give written notice to the Commission and the Court of such intention to resign, and the resignation shall not be effective until the Court has appointed a successor. The Distribution Agent shall then follow instructions provided by successor to the Court.

j. If for any reason monies, including returned checks or checks that have not been cashed, remain in the Disgorgement Fund after six months from the date the funds are disbursed to the Eligible Claimants in accordance with the Plan, the Distribution Agent shall, after consultation with the Commission and without further order of the Court, pay such funds to the Commission for deposit into the United States Treasury or, if the Commission deems it necessary or appropriate to propose to the Court a plan for a subsequent distribution, continue to hold such funds in trust until further order of the Court. If the Distribution Agent pays any funds to the Commission for deposit into the United States Treasury pursuant to this paragraph, the payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying the Distribution Agent; setting forth the title and civil action number of this action and the name of this Court; and indicating that payment is made pursuant to this Plan and the Order approving this Plan and that the funds are being paid for deposit by the Comptroller, Securities and Exchange Commission, into the United States Treasury. The Distribution Agent shall simultaneously

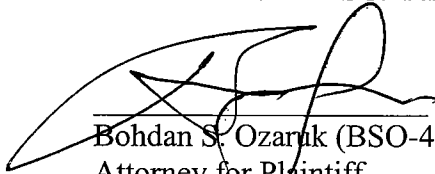
transmit photocopies of such payment and letter to the Commission's counsel in this action.

Upon receipt of such funds from the Distribution Agent the Commission's Office of Financial Management shall promptly remit the funds to the United States Treasury.

k. The Distribution Agent shall serve upon the Commission and file with the Court a final report upon the completion of the Distribution Agent's duties under the Plan.

Dated: New York, New York  
September 10, 2007

RESPECTFULLY SUBMITTED,



Bohdan S. Ozark (BSO-4502)  
Attorney for Plaintiff  
United States Securities and Exchange Commission  
Northeast Regional Office  
3 World Financial Center  
New York, New York 10281-1022  
(212) 336-0144

# Exhibit 5

**DAVID R. KITTAY**  
**100 WHITE PLAINS ROAD**  
**TARRYTOWN, NEW YORK 10591**  
**Tel.:(914) 332-8000; Fax: (914) 332-8001**  
**Email: [dkittay@kittaylaw.com](mailto:dkittay@kittaylaw.com)**

**CURRENT  
EMPLOYMENT**

**SEC RECEIVER (2000- )**

**PANEL BANKRUPTCY TRUSTEE (1990- )**  
Southern District of New York (Manhattan)

**KITTAY & GERSHFELD, P.C. (1992- )**  
One Exchange Plaza, 55 Broadway, New York, New York 10006  
100 White Plains Rd., Tarrytown, New York 10591

Founder and President of firm specializing in insolvency and related matters.

**PREVIOUS  
EMPLOYMENT**

**Liddell, Sapp, Zivley, Hill & LaBoon (1988-1992)**  
237 Park Avenue, New York, New York

Managing Partner of New York Office. Partner in charge of New York trial work and litigation. Record settlement in zoning-civil rights case.

**Cadwalader, Wickersham & Taft (1978-1988) - Counsel**  
100 Maiden Lane, New York, New York

Senior litigator primarily responsible for all phases of complex litigation.  
Two \$200 million+ victories in cases personally argued.

**BAR  
ADMISSIONS**

State Courts: New York, Maryland  
U.S. District Courts: E.D.N.Y., S.D.N.Y., D. Md.  
U.S. Courts of Appeal: 2d and 4th Circuits.  
United States Supreme Court

**LANGUAGES**

Arabic, Chinese, Persian, Russian, Sanskrit, Tibetan and Turkish,  
and various European languages.

**EDUCATION**

Boston University School of Law. J.D. 1978.  
Boston University Law Review. Editor  
Brandeis University. B.A. 1974. Honors in Russian.  
Columbia University. M.A 2005

**ORGANIZATIONS** The Children's Village, Dobbs Ferry, N.Y.- Board of Directors (2004- )  
Tibetan Translators Guild of New York

**PERSONAL DATA** Married. Two children.

## DAVID R. KITTAY TRUSTEE/RECEIVER PRACTICE

*Having served as a fiduciary in the Southern District of New York for 16 years, I have performed numerous investigations, particularly involving fraud and the role of accounting and legal professionals. I have been responsible for many millions of dollars in trust funds, worked often with regulatory agencies and prosecutors, and distributed millions of dollars to creditors. Through litigation, I have recovered many millions of dollars for creditors and investors. I have been appointed on several occasions to investigate the conduct of other trustees.*

*Our office is fully integrated with Chase Bankruptcy Management Services ("BMS") and we are current on all internet filing protocols in this district, which is at the cutting edge nationally. Through BMS, directly linked to our fiduciary accounts at Chase, we have an excellent system for handling and accounting for assets, payments and all financial transactions. We use this system many times each day and it works well. Our office is staffed by top-flight insolvency and litigation lawyers and paraprofessionals, most of whom have been with me for many years.*

*In my capacity as trustee I have been audited on a regular basis by the Office of the United States Trustee and several times by the Office of the Inspector General. We are proud that our record is unblemished. For references, please call the Acting United States Trustee, Diana Adams, or any of the current or past Bankruptcy Judges in this district. I have had particularly extensive experience with Chief Judge Bernstein, former Chief (but still active) Judge Lifland and Judge Hardin.*

*I am currently serving as Distribution Agent in SEC v. Alexander. This case, in which I am charged with distributing approximately \$825,000, is related to the SEC v. Fiabane case in which I previously served. In addition, I served as Receiver/Distribution Agent in SEC v. Dudgeon (distributions of approximately \$2.8 million), SEC v. Rauerdink (distributions of approximately \$1.1 million), SEC v. Hui (distributions of approximately \$1 million) and SEC v. Strickoff (distributions of approximately \$132,000). Our work in Dudgeon was supervised by David Kornblau, Esq., in Hui by Shelley Grant, Esq., in Strickoff by Foster Hilton, Esq. and in Fiabane and Rauerdink by C. Joshua Felker, Esq.*

*Finally, my lifelong study of various foreign languages and cultures may be useful in this era of international economic integration and the targeting of ethnic groups by the unscrupulous. Speaking Russian and having the ability to get by in related languages, I am very comfortable with the Russian and Slavic milieu; I also have familiarity with the Islamic world, whether the principal language is Arabic, Persian or Turkish, and India and the far east, having studied Chinese, Tibetan and Sanskrit. I have found language and cultural facility to be of immeasurable value in dealing with people with different backgrounds. Particularly given the circumstances in which I often find myself as a trustee, where people tend to be uncooperative, be they disgruntled investors, principals or witnesses, I have found*

*that being able to speak to them in their languages, with appropriate cultural references, opens doors and leads to solutions.*

*Some of my more notable cases which may be relevant to qualifications for an SEC Receivership are:*

**STOCKBRIDGE FUNDING CORP.** (91 B 10069, S.D.N.Y.) - Chapter 11 Trustee in mortgage ponzi scheme where approximately 1000 mainly Polish and Hungarian immigrants lost their lives' savings aggregating \$44 million. Filed as no asset case. Sued and settled with major law firm for \$5 million after vigorous litigation. Liquidated hard money mortgage portfolio. Obtained \$4 million contempt judgment against another law firm. Confirmed Chapter 11 plan and distributed 15%. Numerous meetings with angry investors, some conducted in Russian and Polish. Close work with SEC (Henry Klehm), US Attorney (Alan Brudner) and Postal Inspectors. When major law firm defendant sought discovery of my communications with government, including SEC lawyers, I proposed a new privilege, the "Bankruptcy Crimes Investigation Privilege", which was adopted by the court. *Kittay v. Battle Fowler*, 153 B.R. 654 (Bankr. S.D.N.Y. 1993). At final fee hearing, Judge Conrad observed, "The Bankruptcy Court does not permit me to award you the compensation you deserve."

**VIEWER'S EDGE** (97 B 45429, S.D.N.Y.) - Chapter 7 Trustee of nationwide mail order video distributor with tens of thousands of customers. Investigated ongoing sales practices. Through litigation settlement with affiliated Fortune 100 media company, thousands of customers paid in full and significant distribution to unsecured creditors.

**LEON WRIGHT** (97 B 22207, S.D.N.Y.) - Examiner with "expanded powers" in major securities fraud case involving individual and 15 controlled companies. \$24 million lost by Swedish investment company. Conducted extensive factual investigation with forensic accountants and traced money flow. Have recovered enough through litigation and liquidation to pay creditors 100%, depending on status of investment company claim and taxes. Assisting SEC investigation (Nicholas Monaco and Teresa Verges - SEC Miami office).

**VICTORIA BIRNBAUM** (93 B 40793, S.D.N.Y.) - Chapter 11 Trustee in case of heiress who contended that lawyer Thomas Puccio, executor for her late husband's multimillion dollar estate, had violated fiduciary duties in administering estate. After extensive investigation exonerating Puccio, Chapter 11 plan confirmed paying creditors more than 70% with unusual provision enjoining debtor from suing Puccio, which would have dissipated estate assets which were the source of payment of creditors.

**KLEINERT'S INC.** (03 B 41140, S.D.N.Y.) - Appointed Trustee in former "mega" case of retailer involving allegations of accounting and bank fraud. Recovered \$8 million through litigation against former officers, accounting firm and law firm. Ongoing grand jury investigation and extensive work with document/evidence preservation.