

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	Civil Action No.
NATIONAL INSTITUTE COMPANIES OF	:	00-cv-1216
AMERICA, INC., et al.	:	
	:	
Defendants.	:	

FINAL JUDGMENT AS TO DEFENDANT JOHN A. D'ONOFRIO

The Securities and Exchange Commission having filed a Complaint, and Defendant, John A. D'Onofrio ("Defendant"), having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant, Defendant's agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the

Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [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.

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant, Defendant's agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise 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.

III.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant, Defendant's agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding of examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 15(a) of the Exchange Act, 15 U.S.C. 78o(a), by making use of the mails or any means or instrumentality of interstate commerce, to effect any transaction in, or induce or attempt to induce the purchase or sale of any security, unless registered with the Commission as a broker or dealer in accordance with Section 15(b) of the Exchange Act, 15 U.S.C. 78o(b).

V.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently barred from serving as an officer or director of any issuer that has a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act, 15 U.S.C. 781, or that is required to file reports with the Commission pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. 78o(d).

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant pay disgorgement in the amount of \$287,000, plus pre-judgment interest thereon. Based on Defendant's sworn representations in his Statement of Financial Condition dated March 5, 2004, and other documents and information submitted to the Commission, the Court is not ordering Defendant to pay a civil penalty and waives all but \$75,000 of the disgorgement and pre-judgment interest thereon. The determination not to impose a civil penalty and to waive payment of all but \$75,000 of the disgorgement and pre-judgment interest is contingent upon the accuracy and completeness of Defendant's Statement of Financial Condition and other documents and information submitted to the Commission. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Defendant's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant, petition the Court for an order requiring Defendant to pay the unpaid portion of the disgorgement, pre-judgment and post-

judgment interest thereon, and the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of his Consent or the Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant pay the unwaived portion of the disgorgement and pre-judgment interest in the amount of \$75,000 in the manner set forth below:

- (a) within 10 ten days after service of this Final Judgment, Defendant is to pay \$25,000;
- (b) beginning the first full month after the due date of the payment in subparagraph (VII) (a) above, Defendant is to pay \$1,600 per month on or before the 30th day of each month for a period of twenty-three (23) consecutive months; and
- (c) Defendant is to pay the remaining \$13,200 within 30 days after the final payment is due pursuant to subparagraph (VII) (b) above.
- (d) Defendant shall make all payments pursuant to subparagraphs (VII) (a) - (c) as follows:
 - (i) made by United States postal money order, certified check, bank cashier's check or bank money order;
 - (ii) payable to the Securities and Exchange Commission;

(iii) hand-delivered or mailed to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and

(iv) submitted under cover letter that identifies John A. D'Onofrio as a Defendant in these proceedings and the civil action number of these proceedings, a copy of which cover letter and money order or check shall be sent to Arthur Gabinet, District Administrator, Philadelphia District Office, Securities and Exchange Commission, Mellon Independence Center, 701 Market Street, Suite 2000, Philadelphia, PA 19106.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, if Defendant fails to pay any single payment, or part of any single payment, due under Section VII. above, in the manner and within the precise time specified for such payment in Section VII. above, the waiver provisions of Section VI. and the installment payment terms of Section VII. shall no longer apply and the full amount of Defendant's remaining unpaid disgorgement and pre-judgment interest shall be immediately due, owing, and payable

(plus post-judgment interest on such remaining unpaid amount, from the date of the entry of the Final Judgment until such amount is paid in full).

IX.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

X.

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

August 19, 2004
Date

Jay Hassen Port
United States District Judge