

Swain, J.

00C # 24



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

00 Civ. 2502 (TS)(AJP)

DANA C. GIACCHETTO and
THE CASSANDRA GROUP, INC.,

01,1226

Defendants.

**FINAL JUDGMENT BY CONSENT AS TO
DEFENDANT DANA C. GIACCHETTO**

Plaintiff Securities and Exchange Commission ("Commission"), having filed for injunctive and other relief on April 3, 2000 ("Complaint") charging defendants Dana C. Giacchetto ("Giacchetto") and the Cassandra Group, Inc. ("Cassandra") (the "Defendants" with violating or aiding and abetting violations of, Section 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), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, Sections 206(1), 206(2), 204 and 207 of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. § 80b-1 et seq., and Rules 204-2, 206(4)-2 and 206(4)-4 thereunder, 17 C.F.R. §§ 275.204-2, 275.206(4)-2, and 275.206(4)-4, Giacchetto having executed a Partial Judgment of Permanent Injunction by Consent as to Defendant Dana C. Giacchetto on September 5, 2000, and Giacchetto having executed the annexed Consent to Final Judgment By Consent as to Defendant Dana C. Giacchetto ("Consent") admitting the jurisdiction of this Court over him and over the subject matter of this action, waiving the entry of findings of fact and

Copies mailed 5/26/01
Chambers of Judge Swain

conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and without admitting or denying the allegations contained in the Complaint, except as jurisdiction, which are admitted, consents to the entry of this Final Judgment by Consent as to Defendant Dana C. Giacchetto ("Final Judgment"). Therefore, without further notice:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Giacchetto be and hereby is permanently enjoined and restrained from, directly or indirectly, in the offer or sale of any security, or while acting as an investment adviser or as an individual associated with an investment adviser, by the use of any means or instrumentalities of transportation or communication in interstate commerce or by the use of the mails:

1. employing any device, scheme, or artifice to defraud;
2. obtaining any money or property by means of, or otherwise making, any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
3. engaging in any act, transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, the advisory client, or any other person; or
4. engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative,

in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), 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, and Sections 206(1), 206(2), and 206(4) of the Advisers Act, 15 U.S.C. § 80b-1 et seq., as defined in Rules 206(4)-2 and 206(4)-4 thereunder, 17 C.F.R. §§ 275.206(4)-2 and 275.206(4)-4.

II

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Giacchetto be and hereby is permanently enjoined and restrained from, directly or indirectly, singly or in concert, in connection with conducting business as an investment adviser, willfully making any untrue statement of a material fact in any registration application or report required to be filed with the Commission, or willfully omitting to state in any such application or report any material fact which is required to be stated therein, in violation of Section 207 of the Advisers Act, 15 U.S.C. § 80b-1 et seq.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Giacchetto be and hereby is permanently enjoined and restrained from operating as an investment adviser, or causing an investment adviser to operate, while making use of the mails or of any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser and not making and keeping for prescribed periods such records, or not furnishing such copies thereof, or not making and disseminating such reports as the Commission, by rule, has prescribed, or not providing such records for examination by representatives of the Commission, in violation of Section 204 of the

Advisers Act, 15 U.S.C. § 80b-1 et seq., and Rule 204-2 thereunder, 17 C.F.R. § 275.204-2.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Giacchetto is individually liable for disgorgement of \$13,086,181.40, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest from April 3, 2000 to the present in the amount of \$1,290,151.24, for a total of \$14,376,332.64, and that plaintiff and the Chapter 7 Bankruptcy Trustee for the Estate of the Cassandra Group, Inc. in the Bankruptcy case entitled *In re The Cassandra Group*, No. 00-41807 (Bankr. S.D.N.Y., filed July 21, 2000) (the "Bankruptcy Trustee") shall each be entitled to execute on this judgment. Any payment that Defendant Giacchetto makes to victims in satisfaction, in whole or in part, of the restitution obligations imposed on him in the criminal action known as *United States v. Giacchetto*, 00 Cr. 431 (RPP), shall reduce Defendant Giacchetto's obligation to make the disgorgement payment required by this judgment *Pro tanto*. Any payment that Defendant Giacchetto makes to satisfy his disgorgement obligation, in whole or in part, shall be made payable by Defendant Giacchetto, or may be made on his behalf, in the following manner:

A. Defendant Giacchetto shall pay his disgorgement plus prejudgment interest to Robert L. Geltzer, Esq., the Chapter 7 Bankruptcy Estate of the Cassandra Group, Inc. Such payment(s) shall be made by cashier's check, certified check or postal money order drawn to the order of "Robert L. Geltzer, Esq. as Chapter 7 Bankruptcy trustee for The Cassandra Group, Inc.," or in any other form deemed acceptable to Mr. Geltzer, and delivered to Mr. Geltzer at the law firm of Tandler, Biggins & Geltzer, 1556

Third Avenue, Suite 505, New York, New York 10128, or in any other manner agreeable to the Commission, if the Bankruptcy case described in this judgment

B. Simultaneously with making any payment pursuant to subparagraph A above, copies of the cashier's check, certified check or postal money order, front and back, as well as any accompanying correspondence, shall be transmitted to Alexander M. Vasilescu, Esq., Senior Trial Counsel and Janet Ulman, Esq., Staff Attorney, U.S. Securities and Exchange Commission, Northeast Regional Office, Seven World Trade Center, New York, New York 10048. Such transmission shall be made under cover of a letter that identifies the defendant, the name and civil action number of the litigation, the name of this Court and the Commission case number "NY-6643."

v.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Giacchetto pay a civil penalty of ~~\$100,000.00~~ pursuant to Section 20(d) of the Securities Act of 1933 (15 U.S.C. § 77d) Section 21(d)(3) and 21A of the Securities Exchange Act of 1934 (15 U.S.C. § 78u(d)(3) and 78u-1) and Section 209(e) of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-9(e)), and that plaintiff have execution therefor. The payment of civil penalties shall be made in the following manner:

A. Defendant Giacchetto shall pay the civil penalties ordered by this Court to the United States Treasury by cashier's check, certified check or postal money order payable to the order of the Securities and Exchange Commission. The payment shall be transmitted to the Comptroller, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

B. Simultaneously with making payment pursuant to subparagraph A above, copies of the cashier's check, certified check or postal money order, front and back, as well as any accompanying correspondence, shall be transmitted to Alexander M. Vasilescu, Esq., Senior Trial Counsel and Janet Ulman, Esq., Staff Attorney, U.S. Securities and Exchange Commission, Northeast Regional Office, Seven World Trade Center, New York, New York 10048. Such transmission shall be made under cover of a letter that identifies the defendant, the name and civil action number of the litigation, the name of this Court and the Commission case number "NY-6643."

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the provisions of the annexed exhibits, and the same hereby are, incorporated in this Final Judgment with the same force and effect as if fully set forth herein.

VII.

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

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commission may effect service of this Final Judgment, and all other papers in this action, upon Defendant Giacchetto by delivering a copy to Defendant Giacchetto's criminal attorney, Roland Riopelle, Esq., Boies, Schiller & Flexner LLP, 570 Lexington Avenue, New York, New York 10022, or any attorney entering an appearance for Defendant Giacchetto in this action.

IX.

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

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, there being no just reason to delay, the Clerk of the Court is hereby directed to enter this Final Judgment forthwith pursuant to Rule 54(c) of the Federal Rules of Civil Procedure.

XI.

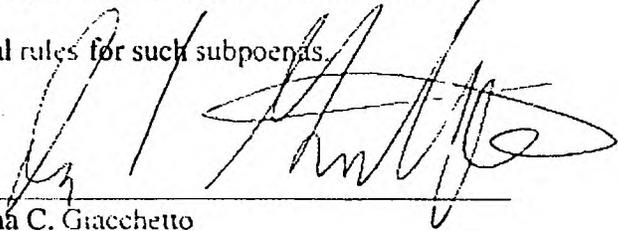
**CONSENT TO FINAL JUDGMENT BY CONSENT
AS TO DEFENDANT DANA C. GIACCHETTO**

1. Defendant Dana C. Giacchetto (i) enters a general appearance; (ii) consents to the Court's jurisdiction over defendant and the subject matter of this action; (iii) without admitting or denying the allegations of the Complaint, consents to entry of the Final Judgment as to Dana C. Giacchetto submitted with this Consent; (iv) waives findings of fact and conclusions of law; (v) agrees that the Final Judgment may be presented and entered without further notice; (vi) waives notice of entry and service of the Final Judgment; (vii) waives any right to appeal from the Final Judgment; (viii) acknowledges that this Consent and the Final Judgment embody the entire agreement resolving this action; and (ix) acknowledges that this Consent and the Final Judgment do not bind any agency of government other than Plaintiff Securities and Exchange Commission and, consistent with 17 CFR §202.5(f), waives any claim of double jeopardy based on settlement of this action.

2. Defendant Dana C. Giacchetto (i) understands the SEC's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint." 17 CFR §202.5(e); (ii) agrees not to make or permit any public statement, in itself or indirectly denying the allegations of the Complaint

or creating the impression that the Final Judgment is without factual basis; and (iii) agrees that if Defendant breaches this agreement, the SEC may move the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this provision affects Defendant's right to take legal or factual positions in litigation in which the SEC is not a party, or Defendant's testimonial obligations in any matter.

3. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the SEC or to which the SEC is a party, Defendant Dana C. Giacchetto (i) will accept service by mail of subpoenas for documents or testimony at depositions, hearings or trials and (ii) waives the territorial limits on service contained in Fed. R. Civ. P. 45 or applicable local rules for such subpoenas.


Dana C. Giacchetto

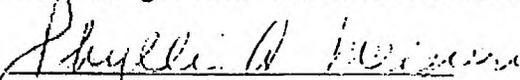
Acknowledged by

STATE OF

ss.:

COUNTY OF

On this 26 day of March, 2001, before me personally appeared Dana C. Giacchetto, to me known to be the person who executed the foregoing Consent, and he acknowledged to me that he executed the same.

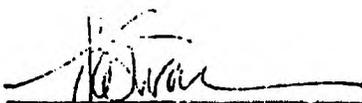

NOTARY PUBLIC

PHYLLIS A. MALGIERI
Notary Public, State of New York
No. 43-4802265
Qualified in Richmond County
Commission Expires June 30, 2002

My Commission expires: 30 2002

SO ORDERED

June
Dated: March 26, 2001
New York, New York


UNITED STATES DISTRICT JUDGE pm