

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOC # 3

SECURITIES AND EXCHANGE COMMISSION,

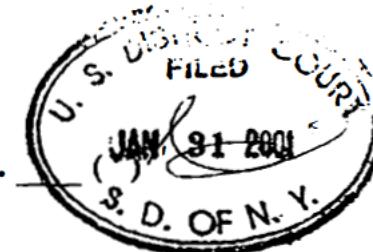
Plaintiff,

v.

AURORA FOODS INC., et al.,

Defendants.

01 Civ.



**FINAL CONSENT JUDGMENT OF PERMANENT INJUNCTION
AND OTHER RELIEF AS TO TAMMY FANCELLI**

Plaintiff Securities and Exchange Commission ("Commission"), having filed a Complaint on January 23, 2000, charging, among others, Defendant Tammy Fancelli ("Fancelli") with violations of Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(b)(5)], and Rules 10b-5 and 13b2-1 [17 C.F.R. §§ 240.10b-5, 240.13b2-1], and Fancelli having executed the annexed Consent of Tammy Fancelli ("Consent"), having admitted to the jurisdiction of this Court over her and over the subject matter of this action, having admitted to receiving service of the Summons and Complaint in this action, having waived the filing of an answer pursuant to Rule 12 of the Federal Rules of Civil Procedure and 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 contained in the Complaint (except as to jurisdiction, which are admitted) having consented to the entry of this Final Consent Judgment of Permanent Injunction And Other Relief As To Tammy Fancelli ("Final Judgment"), without further notice:

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I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Fancelli be and hereby is permanently enjoined from, directly or indirectly, singly or in concert,

- (A) engaging in acts, practices and courses of business that constitute violations, or aiding and abetting violations, of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5];
- (B) knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account described in Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)], in violation of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]; or
- (C) falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §78m(b)(2)(A)], in violation of Rule 13b2-1 [17 C.F.R. §240.13b2-1].

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, within ~~sixty (60)~~ days of the entry of this Final Judgment, Fancelli shall pay ~~\$20,000~~ to the United States Treasury ("Treasury") as a civil penalty pursuant to Section 21(d) of the Exchange Act, 15 U.S.C. §77u(d). Such payment shall be made by cashier's check, certified check, U.S. postal money order, or bank money order payable to the order of the "United States 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, under cover of letter identifying the name and civil action number of this litigation and the name of Defendant and identifying the payment as a civil penalty. A copy of the cover letter and payment shall be

simultaneously transmitted to Wayne M. Carlin, Esq., Regional Director, U.S. Securities and Exchange Commission, Northeast Regional Office, 7 World Trade Center, 13th Floor, New York, New York 10048, Attn: Mark K. Schonfeld, Esq.

III.

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

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff Commission may effect service of this Final Judgment, and all other papers in this action, upon defendant Fancelli by sending a copy via first class mail to her counsel, David Winters of Winters & Merckle, 500 South Front Street, Suite 900, Columbus, Ohio 43215, unless Fancelli notifies the Commission otherwise by letter addressed to counsel for the Securities and Exchange Commission, Northeast Regional Office, 7 World Trade Center, New York, New York 10048, Attn: Mark K. Schonfeld, Esq.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the annexed Consent of Defendant Fancelli shall be, and hereby is, incorporated herein with the same force as if fully set forth herein.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this action for all purposes, including, but not limited to, implementing and enforcing the terms and conditions of this Final Judgment.

VII.

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

CONSENT OF TAMMY FANCELLI

1. Defendant Tammy Fancelli (“Fancelli”), being fully apprised of her rights, having had the opportunity to confer with legal counsel, having read and understood the terms of the Final Consent Judgment of Permanent Injunction and Other Relief As To Defendant Tammy Fancelli (“Final Judgment”), appears and admits the jurisdiction of this Court over her and over the subject matter of this action, waives the filing of an answer pursuant to Rule 12 of the Federal Rules of Civil Procedure, and 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 contained in the Complaint of Plaintiff Securities and Exchange Commission (“Commission”), except as to jurisdiction (which are admitted), hereby consents to the entry, without further notice, of the Final Judgment.

2. Fancelli agrees that this Consent of Tammy Fancelli (“Consent”) shall be incorporated by reference in and made part of the Final Judgment to be presented to the Court for signature, filing and entry contemporaneously herewith.

3. Fancelli waives any right she may have to appeal from the Final Judgment.

4. Fancelli acknowledges that any willful violation of any of the terms of the Final Judgment may place her in contempt of this Court and subject her to civil or criminal penalties.

5. Fancelli acknowledges that she enters into this Consent voluntarily, and that this Consent and the Final Judgment embody the entire understanding of the parties. Fancelli acknowledges and agrees that this proceeding, and her consent to the entry of the Final Judgment, are for the purposes of resolving this civil action only, and that no tender, offer,

promise, threat or representation of any kind has been made by Plaintiff Commission or any member, officer, attorney, agent, or representative thereof, to induce her to enter into this Consent.

6. Fancelli acknowledges that she has been informed and understands that Plaintiff Commission, at its sole and exclusive discretion, may refer or grant access to this matter, or any information or evidence gathered in connection therewith or derived therefrom, to any person or entity having appropriate administrative, civil, or criminal jurisdiction, if the Commission has not already done so.

7. Fancelli acknowledges and agrees that her consent to the entry of the Final Judgment is for the purposes of this action only, in conformity with the provisions of 17 C.F.R. § 202.5(f), and does not resolve, affect or preclude any other proceeding which may be brought against her. Among other things, Fancelli waives any right she may have to assert that, under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, the relief sought or consented to in this civil action, including the seeking or imposition of any remedy or civil penalty herein, bars any criminal action, or that any criminal action bars the relief consented to in this action.

8. Defendant Fancelli understands and agrees to comply with the Commission'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 or order for proceedings" (17 C.F.R. § 202.5(e)). In compliance with this policy, Fancelli agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating the impression that the Complaint is without factual basis. If Fancelli breaches this agreement, the Commission may petition the Court to vacate the Final Judgment

and restore this action to its active docket. Nothing in this provision affects Fancelli's: (i) testimonial obligations; or (ii) right to take legal positions in litigation in which the Commission is not a party.

9. Fancelli agrees to execute and return promptly acknowledgment of receipt of the Final Judgment once the Final Judgment has been entered by the Court and forwarded to her for this purpose.

10. Fancelli consents that this Court shall retain jurisdiction of this action for the purpose of implementing and enforcing the terms and conditions of the annexed Final Judgment and for all other purposes.

11. Fancelli agrees that first class and certified mail to her attorney, David Winters of Winters & Merckle, 500 South Front Street, Suite 900, Columbus, Ohio 43215, shall be deemed personal service for all correspondence, service and notices as to any matter related to this Consent and the Final Judgment, unless Fancelli notifies the Commission otherwise by letter at the following address: Wayne M. Carlin, Esq., Regional Director, U.S. Securities and Exchange Commission, Northeast Regional Office, 7 World Trade Center, New York, New York 10048, Attn: Mark K. Schonfeld, Esq.

12. Fancelli hereby consents and agrees that the Final Judgment may be presented by the Commission to the Court for signature and entry without further notice and delay.

Tammy Fancelli
TAMMY FANCELLI

STATE OF Ohio)
COUNTY OF Franklin) ss.:

On this 19th day of January, 2001, before me personally appeared TAMMY FANCELLI, to me known and known to me to be the person who executed the foregoing Consent.

Marla Baughman
NOTARY PUBLIC

STATE OF Ohio)
COUNTY OF Franklin) ss.:



MARLA BAUGHMAN
Notary Public, State of Ohio
My Commission Expires 03-28-05

SO ORDERED:

Albie Zellner

UNITED STATES DISTRICT JUDGE

Date: January 19, 2001
New York, New York

msd

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON 2/5/01