

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	02 Civ. 253 (SWK)
	:	
JEAN BAPTISTE JEAN PIERRE,	:	
GABRIEL TOKS PEARSE, and	:	
DARIUS L. LEE,	:	
	:	
Defendants.	:	
	:	

FINAL JUDGMENT OF PERMANENT INJUNCTION  
AND OTHER RELIEF AS TO GABRIEL TOKS PEARSE

Plaintiff Securities and Exchange Commission (“Commission”), having commenced this action by filing a Complaint for injunctive and other relief on January 10, 2002, alleging that defendant Gabriel Toks Pearse (“Pearse”) violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§77e(a), 77e(c), and 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, and defendant Pearse having executed the annexed Consent to Final Judgment of Permanent Injunction and Other Relief as to Gabriel Toks Pearse (“Consent”), having waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, having admitted the jurisdiction of this Court over him and over the subject matter of this action, and, without admitting or denying the allegations contained in the Complaint, except as to jurisdiction, having consented to the entry of this Final Consent Judgment of Permanent Injunction and Other Relief as to Gabriel Toks Pearse (“Final Consent Judgment”), without further notice:

I.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that defendant Pearse be and hereby is permanently enjoined from, directly or indirectly, singly or in concert:

- (A) making use of any means or instrument of transportation or communication in interstate commerce or of the mails to sell any security of any issuer, through the use or medium of any prospectus or otherwise, unless and until a registration statement is in effect as to such securities; or
- (B) carrying or causing to be carried through the mails or in interstate commerce, by any means or instrument of transportation, for the purpose of sale or for delivery after sale, any security of any issuer, unless and until a registration statement is in effect as to such securities; or
- (C) making use of any means or instrument 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 of any issuer, unless and until a registration statement has been filed with the Commission as to such securities, or while a registration statement as to such securities 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,

in violation of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§77e(a), 77e(c).

II.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that defendant

Pearse be and hereby is permanently enjoined from, directly or indirectly, singly or in concert, in the offer or sale of any security, by the use of any means or instrument of transportation or communication in interstate commerce or by use of the mails:

- (A) employing any device, scheme or artifice to defraud; or
- (B) obtaining money or property by means of an 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
- (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).

III.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that defendant

Pearse be and hereby is permanently enjoined and restrained 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 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.

**IV.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that defendant Pearse shall disgorge ill-gotten gains of \$5,700, plus pre-judgment interest of \$1,517.75, for a total of \$7,217.75.

**V.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that defendant Pearse shall pay a civil penalty of \$25,000 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d). Pursuant to Section 308 of the Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, § 308, 116 Stat. 745, the civil penalty shall be added to the disgorgement fund (collectively, with the disgorgement ordered in paragraph IV, the “Pearse Disgorgement Sum”).

**VI.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Pearse shall make payment of the Disgorgement Sum in the following installments: (1) \$1,000.00 shall be paid within 15 days of the entry of this Final Consent Judgment; (2) an additional \$1,560.89 shall be paid within 91 days of the entry of this Final Consent Judgment; (3) an additional \$1,560.89 shall be paid within 182 days of the entry of this Final Consent Judgment; (4) an

additional \$1,560.89 shall be paid within 273 days of the entry of this Final Consent Judgment; (5) an additional \$1,560.89 shall be paid within 365 days of the entry of this Final Consent Judgment; (6) an additional \$1,560.89 shall be paid within 456 days of the entry of this Final Consent Judgment; (7) an additional \$1,560.89 shall be paid within 547 days of the entry of this Final Consent Judgment; (8) an additional \$1,560.89 shall be paid within 638 days of the entry of this Final Consent Judgment; (9) an additional \$1,560.89 shall be paid within 730 days of the entry of this Final Consent Judgment; (10) an additional \$1,560.89 shall be paid within 821 days of the entry of this Final Consent Judgment; (11) an additional \$1,560.89 shall be paid within 912 days of the entry of this Final Consent Judgment; (12) an additional \$1,560.89 shall be paid within 1,003 days of the entry of this Final Consent Judgment; (13) an additional \$1,560.89 shall be paid within 1,095 days of the entry of this Final Consent Judgment; (14) an additional \$1,560.89 shall be paid within 1,186 days of the entry of this Final Consent Judgment; (15) an additional \$1,560.89 shall be paid within 1,277 days of the entry of this Final Consent Judgment; (16) an additional \$1,560.89 shall be paid within 1,368 days of the entry of this Final Consent Judgment; (17) an additional \$1,560.89 shall be paid within 1,460 days of the entry of this Final Consent Judgment; (18) an additional \$1,560.89 shall be paid within 1,551 days of the entry of this Final Consent Judgment; (19) an additional \$1,560.89 shall be paid within 1,642 days of the entry of this Final Consent Judgment; (20) an additional \$1,560.89 shall be paid within 1,733 days of the entry of this Final Consent Judgment; and (21) an additional \$1,560.89 shall be paid within 1,825 days of the entry of this Final Consent Judgment.

Pearse shall make these payments of the Pearse Disgorgement Sum to the "Clerk of

the Court – Southern District of New York” at the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007-1312, under cover of a letter that identifies Pearse and the name and civil action number of this litigation (SEC v. Jean Pierre, et al., 02 CV 253 (SWK)), and the installment being made. The funds to be paid shall be deposited into an interest-bearing money market account with the Court Registry Investment System (the “CRIS Account”). By making these payments, Pearse relinquishes all legal and equitable right, title, and interest in such funds, and in no event shall any portion of the account be returned to Pearse, his successors, or his assigns. Interest earned on the funds in the CRIS Account shall be credited to the CRIS Account and shall thereafter be treated in the same manner as principal, except that, in accordance with the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the interest earned on the money in the CRIS Account a fee equal to ten percent of the interest earned on the funds. Further, funds in the CRIS Account shall be held until further Order of the Court, and shall be disbursed in accordance with a plan of equitable distribution to victims of Coyle to be submitted by the Commission and approved by the Court.

Simultaneously with making such payments, 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 David Rosenfeld, Assistant Regional Director, United States Securities and Exchange Commission, 233 Broadway, New York, New York 10279.

**VII.**

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

**VIII.**

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

**IX.**

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

**X.**

**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 Consent Judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

**XI.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that plaintiff Commission may effect service of this Final Consent Judgment, and all other papers in this action, by sending a copy via first class mail to defendant Pearse, 111 Woodruff Avenue, Apt.

6E, Brooklyn, NY 11226, or any attorney entering an appearance for defendant Pearse in this action.

**CONSENT TO FINAL JUDGMENT OF PERMANENT INJUNCTION  
AND OTHER RELIEF AS TO GABRIEL TOKS PEARSE**

1. Defendant Gabriel Toks Pearse (“Pearse”), being fully apprised of his rights, having had the opportunity to confer with legal counsel, and having read and understood the terms of the Final Consent Judgment of Permanent Injunction and Other Relief as to Gabriel Toks Pearse (“Final Consent Judgment”), appears and admits the *in personam* jurisdiction of this Court over him and the subject matter jurisdiction of this Court, waives 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, hereby consents to the entry of the Final Consent Judgment without further notice.

2. Defendant Pearse agrees that this Consent to Final Judgment of Permanent Injunction and Other Relief as to Gabriel Toks Pearse (“Consent”) shall be incorporated by reference in, and made part of, the Final Consent Judgment to be presented to the Court for signature, filing and entry contemporaneously herewith.

3. Defendant Pearse waives any right he may have to appeal from the Final Consent Judgment.

4. Defendant Pearse acknowledges that any willful violation of any of the terms of the Final Consent Judgment may place him in contempt of this Court and subject him to civil or criminal sanctions.

5. Defendant Pearse acknowledges and agrees that this proceeding, and his consent to the entry of the Final Consent Judgment, are for the purposes of resolving this civil action only, 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 with regard to: (A) this civil action, that is not explicitly stated in this Consent and the Final Consent Judgment; (B) any administrative proceeding brought or to be brought before the Commission involving the Final Consent Judgment or the facts underlying this action; (C) any other Commission civil action or administrative proceeding not involving the facts underlying this action; (D) any administrative, civil or criminal liability arising from the facts underlying this action in any action or proceeding brought or to be brought by any third party, other agency or criminal authority; or (E) immunity from any such administrative, civil or criminal action or proceeding.

6. Defendant Pearse acknowledges that he 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. Defendant Pearse acknowledges and agrees that this proceeding and his Consent are for the purposes of resolving this proceeding only, in conformity with the provisions of 17 C.F.R. 202.5(f), and do not resolve, affect, or preclude any other proceeding which may be brought against him. Consistent with the provisions of 17 C.F.R. 202.5(f), defendant Pearse waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant Pearse acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory

organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding.

8. Defendant Pearse agrees and undertakes to disgorge \$5,700, representing his illicit gains from the conduct alleged in the Complaint, plus prejudgment interest thereon in the amount of \$1,517.75, for a total of \$7,217.75.

9. Defendant Pearse agrees and undertakes to pay a civil penalty as a result of the conduct alleged in the Amended Complaint of \$25,000.

10. Defendant Pearse agrees and undertakes to pay the disgorgement and civil penalty in the installments outlined in Paragraph VI of the attached Final Consent Judgment.

11. Defendant Pearse 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 allegation in the complaint or order for proceedings," (17 C.F.R. §202.5(e)). In compliance with this policy, defendant Pearse 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 defendant Pearse breaches this agreement, the Commission may petition the Court to vacate the Final Consent Judgment and restore this action to the Court's active docket. Nothing in this provision affects defendant Pearse's: (i) testimonial obligations; or (ii) right to take legal positions in litigation in which the Commission is not a party.

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

13. Defendant Pearse hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996 or any other provision of law to pursue reimbursement of attorney's fees or other fees, expenses or costs expended by Pearse to defend against this action. For these purposes, Defendant Pearse agrees that Defendant Pearse is not the prevailing party in this action since the parties have reached a good faith settlement.

14. Defendant Pearse agrees that, promptly after the Final Consent Judgment has been entered by the Court, he will execute and return to the Commission an acknowledgment of receipt of the Final Consent Judgment.

15. Defendant Pearse agrees that this Court shall retain jurisdiction of this matter for all purposes, including the implementation, modification and enforcement of the Final Consent Judgment.

16. Defendant Pearse waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

17. Defendant Pearse will not oppose enforcement of the Final Consent Judgment on the grounds that, if any exist, that the Final Consent Judgment fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure.

18. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a

party, Pearse (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Pearse's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (iv) consents to personal jurisdiction over Pearse in any United States District Court for purposes of enforcing any such subpoena.

19. Defendant Pearse agrees that first-class and certified mail to him at 111 Woodruff Avenue, Apt. 6E, Brooklyn, New York 11226, or any attorney entering an appearance for defendant Pearse in this action, shall be deemed personal service for all correspondence, service and notices as to any matters related to the Final Consent Judgment, unless defendant Pearse notifies the Commission of any alternative address by certified mail at the following address: David Rosenfeld, Assistant Regional Director, U.S. Securities and Exchange Commission, Northeast Regional Office, 233 Broadway, New York, New York 10279.

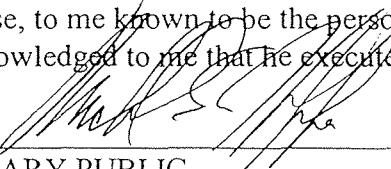
Dated: Feb 07, 2003

  
\_\_\_\_\_  
Gabriel Toks Pearse

Acknowledged by:

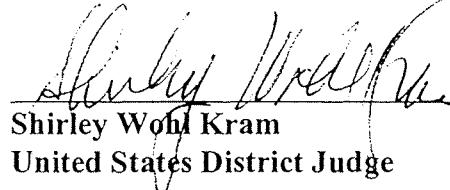
STATE OF NEW YORK )  
ss.:  
COUNTY OF BROOKLYN

On this 4<sup>th</sup> day of MARCH, 2003, before me personally appeared Gabriel Toks Pearse, to me known to be the person who executed the foregoing Consent, and he acknowledged to me that he executed the same.

  
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NOTARY PUBLIC

MICHAEL E. HOFFER  
Notary Public, State of New York  
No. 01HO4637711  
Qualified in Westchester County  
Commission Expires March 30, 2006

SO ORDERED.

  
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Shirley Wohl Kram  
United States District Judge

Dated: March 19, 2003  
New York, New York