

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

★ OCT 18 2002 ★

ENTERED

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

No. 02-CV-1524 (DRH)

v.

PAUL SKULSKY, JEFFREY SKULSKY,  
EDWARD R. CAPUANO, CINDY L. EISELE,  
JOSEPH CASUCCIO, JEFFREY J. SCHNEIDER,  
AARON CHAITOVSKY, ROBERT GLASS,  
ASHLEY NEMIROFF, ROCCO SICLARI,  
GEORGE A. CARHART, HOWARD ZELIN,  
CARL D. DELIA, CRAIG A. BRANDWEIN,  
AND DONALD CATAPANO,

Defendants.

~~PROPOSED~~  
FINAL CONSENT  
JUDGMENT OF  
PERMANENT INJUNCTION  
AND OTHER RELIEF  
AS TO DEFENDANT  
AARON CHAITOVSKY

The plaintiff Securities and Exchange Commission ("Commission"), having duly commenced this action by filing its Complaint, and Defendant Aaron Chaitovsky ("Chaitovsky"), having in his Consent of Defendant Aaron Chaitovsky ("Consent") entered a general appearance herein, having admitted the service of the summons and Complaint upon him, having admitted the jurisdiction of this Court over him and over the subject matter of this action, having waived the filing of an Answer to the Complaint 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 any of the allegations of the Complaint, except as to jurisdiction, which he admits, having consented to the entry of this Final Consent Judgment of Permanent Injunction and Other Relief as to Defendant Chaitovsky ("Final Judgment"), permanently restraining and enjoining Defendant Chaitovsky from violating Sections 10A and 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15

U.S.C. §§ 78j-1 and 78j(b), and Rule 10b-5, thereunder, 17 C.F.R. § 240.10b-5, and (ii) from violating, directly or indirectly, Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a) and Rules 12b-20 and 13a-1, 17 C.F.R. §§ 240.12b-20 and 240.13a-1, and it further appearing that this Court has jurisdiction over Defendant Chaitovsky and the subject matter hereof, and the Court being fully advised in the premises:

**I.**

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant Chaitovsky 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, and by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- (1) employing any device, scheme or artifice to defraud;
- (2) 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

- (3) 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, 17 C.F.R. § 240.10b-5, thereunder.

## **II.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Chaitovsky be, and hereby is, permanently enjoined and restrained from, directly or indirectly, singly or in concert, in the course of conducting an audit of an issuer's financial statements and having detected or become aware of information that an illegal act (whether or not perceived to have a material effect on the financial statements of the issuer) has occurred or may have occurred, failing in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission, to

- (A) (i) determine whether it is likely that an illegal act has occurred; and
- (ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and
- (B) inform the appropriate level of the management of the issuer and assure that the audit committee of the issuer, or the board of directors of the issuer in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of such accountant in the course of the audit, unless the illegal act is clearly, inconsequential,

in violation of Section 10A of the Exchange Act, 15 U.S.C. § 78j-1.

### **III.**

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

Chaitovsky be, and hereby is, permanently enjoined and restrained from, directly or indirectly, singly or in concert:

(A) failing to file with the Commission any report required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. §78m(a), and the rules and regulations promulgated thereunder, or

(B) filing with the Commission a report required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. §78m(a), and the rules and regulations promulgated thereunder that (1) contains an untrue statement of material fact; (2) fails to include, in addition to the information required to be stated in such report, such further material information as may be necessary to make the required statements, in light of the

circumstances under which they are made, not misleading; or (3) fails to disclose any information required to be disclosed therein,

in violation of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20, and 13a-1, 17 C.F.R. §§ 240.12b-20 and 240.13a-1.

### **IV.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the annexed

Consent of Defendant Chaitovsky be, and hereby is, incorporated herein with the same force as if fully set forth herein.

**V.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Chaitovsky shall pay civil penalties in the amount of \$35,000 pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), in connection with the activities described in the Commission's Complaint. Such payment shall be made to the United States Treasury in the manner described in Paragraph VI below.

**VI.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Chaitovsky shall, within 10 days of the entry of this Final Judgment, pay a civil money penalty in the amount of \$35,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; (D) submitted under cover letter that identifies defendant Chaitovsky as a defendant in this action, the name and civil action number of this litigation, the name of this Court and the Commission case number "NY-6667"; and (E) simultaneously with making this payment, a copy of the money order or check, front and back, as well as any accompanying correspondence, shall be transmitted to Wayne Carlin, Regional Director, U.S. Securities and Exchange Commission, Northeast Regional Office, 233 Broadway, New York, New York 10279, Attention: Jonathan Roberts, Esq.

## **VII.**

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

Chaitovsky comply with the following agreements and undertakings set forth in his Consent:

- (A) To produce, without service of a notice or subpoena, any and all documents and other information requested by the Commission's staff;
- (B) To be interviewed by the Commission's staff at such times as the staff reasonably may direct;
- (C) To allow the Commission to use, without restriction, the contents of any proffer Defendant Chaitovsky has made, or hereafter may make, to the United States Attorney's Office and/or the Commission in connection with the matters at issue in the Complaint; and
- (D) That in connection with any testimony of Defendant Chaitovsky to be conducted at deposition, hearing or trial pursuant to a notice or subpoena:
  - (i) that any such notice or subpoena for Defendant Chaitovsky's appearance and testimony may be addressed to his counsel, Charles Ross, Esq., Brafman & Ross, 767 Third Avenue, New York, New York 10017, and served by mail; and
  - (ii) that any such notice or subpoena for Defendant Chaitovsky's appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

**VIII.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that this Final Judgment is binding upon Defendant Chaitovsky, his officers, agents, servants, 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).

**IX.**

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

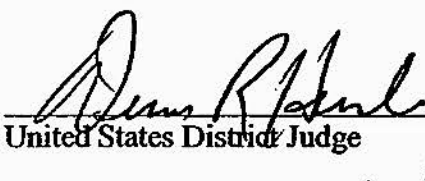
**X.**

**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 Chaitovsky by regular mail.

**XI.**

There being no just reason for delay, the Clerk of the Court is hereby directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure to enter this Final Judgment of Permanent Injunction and Other Relief as to Defendant Aaron Chaitovsky forthwith.

Dated: Sept 18 New York  
Oct 18, 2002

  
United States District Judge



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

PAUL SKULSKY, JEFFREY SKULSKY, :  
EDWARD R. CAPUANO, CINDY L. EISELE, :  
JOSEPH CASUCCIO, JEFFREY J. SCHNEIDER, :  
AARON CHAITOVSKY, ROBERT GLASS, :  
ASHLEY NEMIROFF, ROCCO SICLARI, :  
GEORGE A. CARHART, HOWARD ZELIN, :  
CARL D. DELIA, CRAIG A. BRANDWEIN, :  
AND DONALD CATAPANO, :

Defendants. :  
-----X

No. 02-CV-1524

**CONSENT OF  
DEFENDANT  
AARON CHAITOVSKY**

1. Defendant Aaron Chaitovsky, being fully apprised of his rights, having read and understood the terms of the Final Judgment of Permanent Injunction and Other Relief By Consent as to Aaron Chaitovsky ("Final Judgment"), of which this Consent of Aaron Chaitovsky ("Consent") is made a part, hereby admits the service of the summons and Complaint on him, the *in personam* jurisdiction of this Court over him, and the jurisdiction of this Court over the subject matter of this action, 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 the plaintiff Securities and Exchange Commission ("Commission"), consents to the entry of the annexed Final Judgment without further notice whereby Defendant Chaitovsky consents to entry of a permanent injunction from (i) violating



Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b) and 78m(b)(5), and Rules 10b-5 and 13b2-1 thereunder, 17 C.F.R. §§ 240.10b-5, 240.13b2-1, and (ii) against violating, directly or indirectly, Sections 13(a) and 13(b)(2) of the Exchange Act, 15 U.S.C. §§ 78m(a) and 78m(b)(2), and Rules 12b-20, 13a-1, and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13.

2. Defendant Chaitovsky agrees that this Consent shall be incorporated in, and made part of, the Final Judgment to be presented to the Court for signature, filing, and entry contemporaneously herewith.

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

4. Defendant Chaitovsky enters into this Consent voluntarily and acknowledges that this Consent and Final Judgment embody the entire understanding of the parties concerning the settlement of this action. Defendant Chaitovsky acknowledges and agrees that this proceeding, and his consent to the entry of the Final Judgment, are for the purpose of resolving this civil action only, and that no tender, offer, promise, inducement, or threat of any kind has been made by plaintiff Commission or any of its members, officers, agents or representatives to induce him to enter into this Consent.

5. Defendant Chaitovsky acknowledges that any willful 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 and criminal sanctions.

6. Defendant Chaitovsky 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 civil, administrative or criminal jurisdiction or authority. In this connection, Defendant Chaitovsky acknowledges that no representations regarding the above have been made so as to induce him to enter into this Consent.

7. Defendant Chaitovsky acknowledges and agrees that this Consent and the entry of the Final Judgment are for the purpose of resolving this civil action 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 Defendant Chaitovsky. Among other things, Defendant Chaitovsky waives any right he may have to assert that under the Double Jeopardy Clause of the United States Constitution, the relief consented to in this action, including the imposition of any remedy or civil penalty herein, bars any criminal action, or that any criminal action bars the relief consented to in this civil action. Defendant Chaitovsky 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 Chaitovsky 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, Defendant Chaitovsky agrees not to take any action or 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 Chaitovsky breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this case to its active docket. Nothing in this provision affects Defendant Chaitovsky's (i) testimonial obligations, or (ii) right to take legal positions in litigation in which the Commission is not a party.

9. Defendant Chaitovsky 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 Chaitovsky to defend against this action. For these purposes, Defendant Chaitovsky agrees that he is not the prevailing party in this action since the parties have reached a good faith settlement.

10. Defendant Chaitovsky agrees to pay civil penalties in the amount of \$35,000, in connection with the activities described in the Commission's Complaint. Such payment shall be made to the United States Treasury in the manner described in Paragraph 11 below.

11. Defendant Chaitovsky agrees to, within 10 days of the entry of this Final Judgment, pay a civil money penalty in the amount of \$35,000 to the United States Treasury. Such payment shall be: (1) made by United States postal money order, certified check, bank cashier's check or bank money order; (2) made payable to the Securities and Exchange Commission; (3) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; (4) submitted under cover letter that identifies Defendant Chaitovsky as a defendant in this action, the name and civil action number of this litigation, the name of this Court and the Commission case number "NY-6667"; and (5) simultaneously with making this payment, a copy

of the money order or check, front and back, as well as any accompanying correspondence, shall be transmitted to Wayne Carlin, Regional Director, U.S. Securities and Exchange Commission, Northeast Regional Office, 233 Broadway, New York, New York 10279, Attention: Jonathan Roberts, Esq.

12. Defendant Chaitovsky undertakes and agrees to cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Complaint. In connection with such cooperation, Defendant Chaitovsky agrees and undertakes:

- (i) To produce, without service of a notice or subpoena, any and all documents and other information requested by the Commission's staff;
- (ii) To be interviewed by the Commission's staff at such times as the staff reasonably may direct;
- (iii) To allow the Commission to use, without restriction, the contents of any proffer Defendant Chaitovsky has made, or hereafter may make, to the United States Attorney's Office and/or the Commission in connection with the matters at issue in the Complaint; and
- (iv) That in connection with any testimony of Defendant Chaitovsky to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Defendant Chaitovsky:
  - (a) Agrees that any such notice or subpoena for Defendant Chaitovsky's appearance and testimony may be addressed to his counsel, Charles Ross, Esq., Brafman & Ross, 767 Third Avenue, New York, New York 10017, and served by mail; and

(b) Agrees that any such notice or subpoena for Defendant Chaitovsky's appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

13. Defendant Chaitovsky agrees to execute and return promptly acknowledgements of receipt of the Final Judgment once the Final Judgment has been entered by the Court and forwarded to him for that purpose.

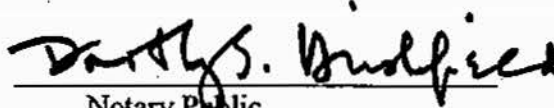
14. Defendant Chaitovsky agrees that the annexed Final Judgment may be presented by the Commission to the Court for signature and entry without further notice.

15. Defendant Chaitovsky 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 for all purposes.

  
Aaron Chaitovsky

State of New York           )  
  )  
County of                    )       ss:

On this 9<sup>th</sup> day of October, 2002, before me personally appeared Aaron Chaitovsky, to me known and known to be the person who executed the foregoing consent.

  
Notary Public

DOROTHY S. HIRSHFIELD  
NOTARY PUBLIC, State of New York  
No. 5027324  
Qualified in Queens County  
Commission Expires May 9, 2006

SO ORDERED

  
UNITED STATES DISTRICT JUDGE

Dated: October 9, 2002  
Central Islip New York

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