

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

**GREGORY J. MISFELDT, GREGORY L. TYRER,
JODI L. KNUEPPEL and MARK R. SONDAY,**

Defendants.

FILED
U.S. DISTRICT COURT E.D.N.Y.
AUG 26 2004

P.M. _____
TIME A.M. _____

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JOHNSON

**FINAL JUDGMENT
OF PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF
BY CONSENT AGAINST
GREGORY L. TYRER**

MANN, M.J.

Plaintiff Securities and Exchange Commission (the "Commission") having commenced this action by filing a Complaint ("Complaint") on May 28, 2003 against Defendant Gregory L. Tyrer ("Tyrer"), for injunctive and other equitable relief charging Tyrer with violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, and Tyrer having executed the Consent of Defendant Gregory L. Tyrer to Final Judgment of Permanent Injunctive and Other Equitable Relief ("Consent"), dated March 2, 2003, annexed hereto and incorporated herein, having admitted to the service of the Summons and Complaint on him, having admitted to the in personam jurisdiction of this Court over him and over the subject matter of this action, having waived 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 Commission's Complaint, except as to jurisdiction, which are admitted, and having consented to the entry of this Final Judgment of Permanent Injunction and Other Equitable Relief By Consent Against Gregory L. Tyrer ("Final Judgment"); without further notice:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Tyrer be and hereby is permanently enjoined and restrained, 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, from:

- (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 the light of the circumstances under which they were made, not misleading; and
- (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 promulgated thereunder, 17 C.F.R. § 240.10b-5.

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Tyrer shall pay \$1,405,648.01 representing disgorgement of \$1,063,452.40 plus prejudgment interest thereon of \$342,195.61. All restitution payments made in connection with *United States v. Gregory L. Tyrer*, 03 Cr. 536 shall be credited against the disgorgement and prejudgment interest to be paid by Tyrer pursuant to this paragraph.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, this Final Judgment shall be binding upon Tyrer, his

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.

IV.

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

V.

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 Judgment.

VI.

The Court expressly determines that there is no just reason for delay in the entry of this Final Judgment. 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 forthwith.

**CONSENT OF DEFENDANT GREGORY L. TYRER TO FINAL JUDGMENT
OF PERMANENT INJUNCTIVE AND OTHER EQUITABLE RELIEF**

1. Defendant Gregory L. Tyrer ("Tyrer"), upon the advice of counsel and being fully apprised of his rights, having read and understood the terms of the annexed Final Judgment Of Permanent Injunction and Other Equitable Relief by Consent Against Defendant Gregory L. Tyrer ("Final Judgment"), appears and admits to the in personam and 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 further notice, trial or argument, and without admitting or denying the allegations against him contained in the Complaint of Plaintiff Securities and Exchange Commission ("Commission"), filed on May 28, 2003, except as to jurisdiction, which are admitted, hereby consents to the entry of the annexed Final Judgment.

2. Tyrer agrees that this Consent of Defendant Gregory L. Tyrer to Final Judgment of Permanent Injunctive and Other Equitable Relief (the "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. Tyrer waives any right he may have to appeal from the Final Judgment.

4. Tyrer agrees that he will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection he may have based thereon.

5. Tyrer acknowledges that any willful violation of any of the terms of the Final Judgment may place him in contempt of this Court and subject him to civil or criminal sanctions, or both.

6. Tyrer acknowledges that he enters into this Consent voluntarily, and agrees that this proceeding, and his 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 the Commission or any member, officer, attorney, agent or representative thereof, to induce him to enter into this Consent.

7. Tyrer acknowledges further that no promise or representation has been made by the Commission or its staff with regard to: (a) any criminal liability arising from the facts underlying this action; or (b) immunity from any such criminal liability.

8. Tyrer acknowledges that he has been informed and understands that the 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.

9. Tyrer acknowledges that, in conformity with the provisions of 17 C.F.R. § 202.5(f), his Consent and the entry of the annexed Final Judgment do not resolve, affect or preclude any other proceeding that has been or may be brought against him or anyone else. Among other things, Tyrer waives any right he 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.

10. Tyrer 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.

11. Tyrer 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, Tyrer 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 Tyrer 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 Tyrer's: (a) testimonial obligations; or (b) right to take legal or factual positions in litigation in which the Commission is not a party.

12. Tyrer undertakes to disclose truthfully to the Commission and its representatives all information concerning his own activities and the activities of others on any matters about which the Commission may inquire, and he undertakes further to attend all meetings at which his presence is reasonably requested with respect to the matters about which the Commission may inquire and to appear and testify truthfully at any trial, hearing or court or administrative proceeding with respect to any matters about which the Commission may request his testimony. Tyrer undertakes further to provide to the Commission any documents, records, or other tangible evidence in his possession, custody, or control, relating to the matters about which the staff may inquire. Tyrer agrees that he will not assert the Fifth Amendment as a bar to providing any of the information required hereunder.

13. Tyrer hereby waives any rights under the Equal Access to Justice Act or any other

provision of law to pursue reimbursement of attorney's fees or other fees, expenses or costs expended by Tyrer to defend against this action. For these purposes, Tyrer agrees that Tyrer is not the prevailing party in this action since the parties have reached a good faith settlement.

14. Tyrer acknowledges that this Consent embodies the entire understanding of the parties concerning the settlement of this action.

15. Tyrer agrees that this Court shall retain jurisdiction of this matter for purposes of implementing and enforcing the terms and conditions of the Final Judgment and for all other purposes.

16. Tyrer hereby consents and agrees that the annexed Final Judgment may be presented by the Commission to the Court for signature and entry without further notice or delay.

17. Tyrer agrees to execute and provide to the Commission a written declaration pursuant to 28 U.S.C. § 1746 acknowledging his receipt of the Final Judgment no later than ten (10) business days after a copy of the Final Judgment has been forwarded to him.

Dated: February 2, Wisconsin
March 2, 2003

Gregory L. Tyrer
 Gregory L. Tyrer

STATE OF WISCONSIN)
)
 COUNTY OF) ss.:

The foregoing instrument was acknowledged before me on this 2 day of March, 2003, by Gregory L. Tyrer, who is personally known to me or has produced a WA driver's license as identification and who did take an oath.

glt

Notary Public

State of Wisconsin

Commission No. _____

Commission No. _____
My commission expires on is permanent

SO ORDERED:

Brooklyn, New York

Dec. 3, 2003

UNITED STATES DISTRICT JUDGE