

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

DAVID A. ZWICK and
TERRENCE J. O'DONNELL,

Defendants.

NO. 03-CV-2742 (JGK) (HBP)

FINAL JUDGMENT

The Securities and Exchange Commission ("SEC") having filed a complaint and defendants David A. Zwick and Terrence J. O'Donnell ("defendants") having filed answers to the complaint; the Court having heard this matter at trial and having considered the evidence and the arguments of the parties; the jury having rendered its verdict; and it appearing that the Court has jurisdiction over the parties and the subject matter hereof, and the Court being fully advised of the premises:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant Zwick is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit 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
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that defendant O'Donnell is restrained and enjoined for a period of five (5) years following the entry of this Final Judgment from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit 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
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that defendant Zwick is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of 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) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that defendant Zwick is liable for disgorgement of \$161,539.58, representing profits gained as a result of his fraudulent conduct, together with prejudgment interest thereon in the amount of \$138,609.64, for a total of \$300,149.22.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that defendant O'Donnell is liable for disgorgement of \$49,760.30, representing profits gained as a

result of his fraudulent conduct, together with prejudgment interest thereon in the amount of \$42,697.01, for a total of \$92,457.31.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that defendants Zwick and O'Donnell shall make payment in the amounts indicated in paragraphs III. and IV., above, within ten (10) business days after entry of this Final Judgment, by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The respective payments shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying David A. Zwick or Terrence J. O'Donnell as the payor defendant in this action; setting forth the title and civil action number of this action; and the name of this Court; and specifying that the payment is made pursuant to this Final Judgment. Defendants shall simultaneously send a copy of the payment and cover letter to the attention of Arthur S. Lowry, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-4030.

By making these payments, defendants relinquish all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to defendants. The SEC may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt, and through other collection procedures authorized by law, at any time after ten days following entry of this Final Judgment. In response to any such civil contempt motion by the SEC, the defendants may assert any legally permissible defense.

Defendants shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act, defendant Zwick shall pay a civil money penalty in the amount of \$75,000.

VIII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Section 21(d)(3) of the Exchange Act, defendant O'Donnell shall pay a civil penalty in the amount of \$25,000.

IX.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that defendants Zwick and O'Donnell shall make the above civil penalty payments at the same time as their respective payment of disgorgement and prejudgment interest by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The respective payments shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying David A. Zwick or Terrence J. O'Donnell as the payor defendant in this action; setting forth the title and civil action number of this action; and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendants shall simultaneously send a copy of the payment and cover letter to the attention of Arthur S. Lowry,

