

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D. N.Y.  
LONG ISLAND OFFICE

-----  
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- v. -

FRANK DUCA,

Defendant,

and

JAN JUSKO

Relief Defendant.

FINAL JUDGMENT OF  
PERMANENT INJUNCTION  
AND OTHER EQUITABLE RELIEF  
BY CONSENT AGAINST  
FRANK DUCA HON. JOANNA C. BREWSTER

10 1996

TIME A.M.

P.M.

TO

Plaintiff, Securities and Exchange Commission ("Commission"), having filed a Complaint against defendant Frank Duca ("Duca") for permanent injunctive and other equitable relief ("Complaint") on November 8, 1995, and defendant Duca, in his attached Consent incorporated herein, having entered a general appearance, having admitted the in personam jurisdiction of this Court over him and the jurisdiction of this Court 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 of the Complaint, having consented, without trial, argument or adjudication of any issue of fact or law, to the entry of this Final Judgment of Permanent Injunction and Other Equitable Relief By Consent Against Frank Duca ("Final Judgment"), it is hereby:

11

I.

**ORDERED, ADJUDGED AND DECREED** that the annexed Consent of Frank Duca be, and hereby is, incorporated herein with the same force as if fully set forth herein.

II.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that defendant Duca hereby is permanently enjoined from, directly or indirectly, singly or in concert, violating Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)] or 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], by, in the offer or sale, or in connection with the purchase or sale, of securities and by use of the means or instrumentalities of interstate commerce, any means or instruments of transportation or communication in interstate commerce, the mails, or any facility of any national securities exchange:

- A. employing any device, scheme, or artifice to defraud;
- B. obtaining money or property by means of, or otherwise making, any untrue statement of a material fact or omitting to state any 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. engaging in any transactions, acts, practices or courses of business which operate or would operate as a fraud or deceit upon any persons.

III.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that defendant Duca pay disgorgement in the amount of \$262,287, representing his gain from the conduct alleged in the Complaint, plus prejudgment interest thereon. Based upon Duca's sworn representations in his Statement of Financial Condition dated March 7, 1996, and submitted to the Commission, payment of all of the disgorgement and prejudgment interest thereon is waived, contingent upon the accuracy and completeness of his Statement of Financial Condition.

IV.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, based upon Duca's sworn representations in his financial statement dated March 7, 1996 and submitted to the Commission, the Court is not ordering Duca to pay a civil penalty pursuant to the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 [15 U.S.C. § 78u(d)]. The determination not to impose a civil penalty and to waive payment of all of the disgorgement and prejudgment interest thereon is contingent upon the accuracy and completeness of Duca's Statement of Financial Condition. If, at any time following the entry of this Final Judgment, the Commission obtains information indicating that Duca's representations to the Commission concerning

his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Duca, petition this Court, for an order requiring Duca to pay disgorgement, prejudgment and postjudgment interest thereon, and a civil penalty. In connection with any such petition, the only issues shall be whether the financial information provided by Duca was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, and the amount of civil penalty to be imposed. In its petition, the Commission may move this Court, to consider all available remedies, including, but not limited to, ordering Duca to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment, and the Commission may also request additional discovery. Duca may not, by way of defense to such petition, challenge the validity of the Consent or this Final Judgment, contest the allegations in the Complaint filed by the Commission, the amount of disgorgement and interest, or assert that disgorgement or the payment of a civil penalty should not be ordered.

V.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that this Final Judgment is binding upon defendant Duca, 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).

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
SECURITIES AND EXCHANGE COMMISSION, : 95 Civ. 4475  
Plaintiff, :  
- v. - : CONSENT OF  
FRANK DUCA, : FRANK DUCA  
Defendant, :  
and :  
JAN JUSKO :  
Relief Defendant. :  
-----x

A. Defendant Frank Duca ("Duca"), having read and understood the terms of the annexed Final Judgment of Permanent Injunction and Other Equitable Relief By Consent Against Frank Duca ("Final Judgment"), waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and hereby consents to the entry of the annexed Final Judgment without further notice and without admitting or denying the allegations contained in the Complaint of plaintiff Securities and Exchange Commission ("Commission").

B. Defendant Duca agrees that this Consent shall be incorporated by reference in, and made part of, the annexed Final Judgment to be entered against him.

C. Defendant Duca waives any right he may have to appeal from the annexed Final Judgment.

D. Defendant Duca enters into this Consent voluntarily and acknowledges that no tender, offer, promise or threat of any kind has been made by plaintiff Commission or any of its members, officers, agents or representatives in consideration of this Consent.

E. Defendant Duca further acknowledges that a 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.

F. Defendant Duca further 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. In this connection, defendant Duca acknowledges that no representations regarding the above have been made so as to induce him to enter into this Consent.

G. Defendant Duca acknowledges that no promise or representation has been made by plaintiff Commission or its staff with regard to: (1) any criminal liability that may have arisen or that may arise from the facts underlying this action; or (2) immunity from such criminal liability.

H. Defendant Duca understands that it is the Commission's policy, set forth in 17 C.F.R. §202.5(e), not to permit a defendant to consent to a judgment or order that imposes a sanction while

denying the allegations in the Complaint. Defendant Duca further understands that the plaintiff Commission's acceptance of this Consent is based upon his compliance with this policy.

I. Defendant Duca agrees to accept service by regular mail of all process with respect to this matter, and any proceeding or action in connection therewith or deriving therefrom, including process relating to any depositions, hearings, trials or other court or administrative proceedings or investigations.

J. Defendant Duca agrees and undertakes to cooperate in all respects with plaintiff Commission, by providing the Commission with all requested and reasonable assistance, including promptly producing documents to the Commission, answering interrogatories, appearing at reasonable times and upon reasonable notice for, and providing accurate, truthful and complete responses during, interviews, depositions, court hearings and any administrative proceedings brought by the Commission.

K. Defendant Duca agrees to disgorge \$262,287, representing his gains from the conduct alleged in the complaint, plus prejudgment interest thereon; provided, however, that payment of such disgorgement and prejudgment interest is waived based upon Duca's sworn Statement of Financial Condition dated March 7, 1996, and submitted to the Commission.

L. Defendant Duca acknowledges that the Court is not imposing a civil penalty pursuant to the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 [15 U.S.C. § 78u(d)] or requiring payment of the disgorgement and prejudgment interest

thereon based upon the accuracy and completeness of Duca's sworn representations to the Commission concerning his assets, income, liabilities, and net worth, as described in his sworn Statement of Financial Condition dated March 7, 1996, and submitted to the Commission. Duca further consents that if, at any time following the entry of the Final Judgment, the Commission obtains information indicating that Duca's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Duca, petition this Court, or any other court of competent jurisdiction, for an order requiring Duca to pay the disgorgement of \$262,287, prejudgment and postjudgment interest thereon, and a civil penalty. In connection with any such petition, the only issues shall be whether the financial information provided by Duca was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, and the amount of civil penalty to be imposed. In any such petition, the Commission may move the Court to consider all available remedies, including, but not limited to, order Duca to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of the Court's Final Judgment, and the Commission may also request additional discovery. Duca may not, by way of defense to such petition, challenge the validity of this Consent or the Final Judgment, contest the allegations in the Complaint filed by the Commission,

the amount of disgorgement and interest, or assert that disgorgement or payment of a civil penalty should not be ordered.

M. Defendant Duca further acknowledges that this Consent embodies the entire understanding of the parties.

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

O. Defendant Duca 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.

Frank Duca  
Frank Duca

State of New York )  
County of NY ) ss.:

On this 27 day of March, 1996, before me personally appeared Frank Duca, to me known and known to be the person who executed the foregoing Consent.

Kim Kennedy  
Notary Public

KIM KENNEDY  
Notary Public, State of New York  
No. 01KE4836163  
Qualified in New York County  
Commission Expires Oct. 31, 1997

VI.

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

VII.

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

DATED: July 17, 1996

Joanna Seybert  
Joanna Seybert  
U.S.D.J.

(CM)