

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

FILED  
KENNETH J. MURPHY  
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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WEST DIV CINCINNATI

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

- against - :

MARK E. GATCH AND  
HENRY BENJAMIN SCHMIDT, :

Defendants. :  
-----X

Case No. C-1-97-599

Judge Beckwith

Magistrate Judge Sherman

FINAL JUDGMENT  
OF PERMANENT  
INJUNCTION  
AGAINST  
MARK E. GATCH

Judge	4818
Mag.	BD
Journal	
Issue	CMTC
Docketed	7

Plaintiff Securities and Exchange Commission (the "Commission"), having commenced this action by filing a Complaint on June 24, 1997 alleging, *inter alia*, that defendant Mark E. Gatch ("Gatch") violated Sections 5 and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e 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 Sections 203(a), 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-3(a), 80b-6(1), 80b-6(2), and 80b-6(4), and Rule 206(4)-2 thereunder, 17 C.F.R. § 275.206(4)-2; and defendant Gatch, having executed his Consent of Mark E. Gatch ("Consent"), which was filed simultaneously with this Final Judgment of Permanent Injunction Against Mark E. Gatch ("Final Judgment") and is incorporated herein by reference, in which, without admitting or denying the allegations of the Complaint, he admits the *in personam* jurisdiction of this Court over him, this Court's jurisdiction over the subject matter of this action, and service of the Summons and Complaint

on him, waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and consents to the entry, without further notice, of this Final Judgment:

I.

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

- (a) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell securities through the use or medium of any prospectus or otherwise, unless a registration statement is in effect as to such securities;
- (b) carrying such securities or causing them to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of delivery after sale, unless a registration statement is in effect as to such securities; or
- (c) making use of any means or instruments 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 securities, unless a registration statement has been filed as to such securities, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act of 1933 [15 U.S.C. §77h]

("Securities Act"),

in violation of Section 5 of the Securities Act, 15 U.S.C. § 77e.

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Gatch be and hereby is permanently restrained and enjoined from, directly or indirectly, singly or in concert, in the offer or sale of any securities, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails:

- (1) employing any device, scheme, or artifice to defraud;
- (2) obtaining money or property by means of any untrue statement of a material fact or any omission 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,
- (3) 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 Gatch be and hereby is permanently restrained and enjoined 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:

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

### III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Gatch be and hereby is permanently restrained and enjoined from, directly or indirectly, singly or in concert, making use of the mails or any means or instrumentality of interstate commerce in connection with his business as an investment adviser, without registering as an investment adviser in accordance with Section 203 of the Advisers Act, 15 U.S.C. §80b-3, in violation of Section 203(a) of the Advisers Act, 15 U.S.C. §80b-3(a).

### IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Gatch be and hereby is permanently restrained and enjoined from, directly or indirectly, singly or in concert, by use of the mails or any means or instrumentality of interstate commerce, while acting as an investment adviser, from:

- (1) employing any device, scheme, or artifice to defraud any client or prospective

client; or,

- (2) engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client,

in violation of Sections 206(1) and (2) of the Advisers Act, 15 U.S.C. §§80b-6(1) and (2).

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Gatch be and hereby is permanently restrained and enjoined from, directly or indirectly, singly or in concert, by use of the mails or any means or instrumentality of interstate commerce:

- (1) engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative, or,
- (2) doing any act or taking action, directly or indirectly, with respect to any funds or securities in an investment adviser's custody or possession in which any client has any beneficial interest, unless:

- (a) all such securities of each such client are segregated, marked to identify the particular client who has the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss; and,
- (b) (i) all such funds of such clients are deposited in one or more bank accounts which contain only clients' funds; (ii) such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients; and (iii) the investment adviser maintains a separate record for each such

account which shows the name and address of the bank where such account is maintained, the dates and amounts of deposits in and withdrawals from such account, and the exact amount of each client's beneficial interests in such account; and,

(c) such investment adviser, immediately after accepting custody or possession of such funds or securities from any client, notifies such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, gives each such client written notice thereof; and,

(d) such investment adviser sends to each client, not less frequently than once every three months, an itemized statement showing the funds and securities in the custody or possession of the investment adviser at the end of such period, and all debits, credits and transactions in such client's account during such period; and,

(e) all such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent public accountant at a time which shall be chosen by such accountant without prior notice to the investment adviser, and a certificate of such accountant stating that an

examination of such funds and securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form ADV-E and transmitted to the Commission promptly after each examination, in violation of Section 206(4) of the Advisers Act, 15 U.S.C. §80b-6(4), and Rule 206(4)-2 thereunder, 17 C.F.R. § 275.206(4)-2.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that based upon defendant Gatch's sworn representations in his Statement of Financial Condition dated March 13, 1997 and submitted to the Commission, a civil penalty pursuant to the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, 15 U.S.C. §§ 78u(d)(3) and 80b-3(i), shall not be imposed. The determination not to impose a civil penalty is contingent upon the accuracy and completeness of defendant Gatch's Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that defendant Gatch'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 defendant Gatch, petition this Court for an order requiring defendant Gatch to pay a civil penalty. In connection with any such petition, the only issues shall be whether the financial information provided by defendant Gatch 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 defendant Gatch 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. Defendant Gatch 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, or assert that the payment of a civil penalty should not be ordered.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Final Judgment is binding upon defendant Gatch, 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, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent be, and the same hereby is, incorporated in this Final 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.

X.

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 58 of the Federal Rules of Civil Procedure.

*M. P. Submitt*  
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UNITED STATES DISTRICT JUDGE

Dated: September 22, 1997

**PARTIES AND COUNSEL TO BE NOTIFIED OF JUDGMENT**

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