

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff.

v.

SCOTT EVANS and BRIAN WHITE,

Defendants.

98 **98 CIV. 1204**

**FINAL JUDGMENT  
AGAINST DEFENDANT  
BRIAN WHITE**

# 98,0395

Plaintiff Securities and Exchange Commission ("Commission") having filed a Complaint, and Defendant Brian White ("White"), in the attached Consent and Undertakings of Brian White ("Consent"), having entered a general appearance herein, having admitted the 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 of the Complaint, except as to jurisdiction, which he admits, and those findings set forth in Paragraphs III and X, which he admits solely for the purpose of any bankruptcy filing by or against him and the scope of his securities trades, having consented to the entry of this Final Judgment, and it further appearing that this Court has jurisdiction over White and the subject matter hereof, and the Court being fully advised in the premises:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that White, his agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who

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receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, violating Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- (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,

in connection with the purchase or sale of any security.

## II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that White, his agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or

invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (a) trading in the securities sought or to be sought in such tender offer while in possession of material, nonpublic information relating to said tender offer which they know or have reason to know was acquired directly or indirectly from the offering person, the issuer of the securities sought or to be sought by such tender offer, or any officer, director, partner, employee or other person acting on behalf of the offering person or such issuer, without disclosing such information and its source within a reasonable time prior to trading; or
- (b) communicating material, nonpublic information relating to a tender offer, which information they know or have reason to know is nonpublic and know or have reason to know that was acquired directly or indirectly from the offering person, the issuer of the securities sought or to be sought in the tender offer, or any person acting on behalf of the offering person or such issuer, to any other person under circumstances in which it is reasonably foreseeable that such communication is likely to result in a violation of Rule 14e-3, promulgated under Section 14(e) of the Exchange Act.

### III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that:

White shall pay the sum of \$25,250.78 by February 20, 1998. \$14,261.30 of this sum constitutes disgorgement of all of the alleged profits made by White from trading in the securities alleged in the Complaint, and the remaining \$10,989.48 constitutes prejudgment interest thereon. White shall be jointly and severally liable with Scott Evans for the payment of these amounts. The funds paid by White shall be held and treated in accordance with the provisions set forth in Paragraph IV below.

This settlement is contingent upon the accuracy of White's sworn representations in his Consent that he did not trade, directly or indirectly, any securities of NCR Corporation other than those traded through Scott Evans's account at Boyle Securities, Inc. (account number 160-9309) between November 9, 1990, and December 3, 1990, and that he did not trade, directly or indirectly, any securities of Digital Microwave Corporation or Teradata Corporation at all. If at any time following the entry of this Final Judgment the Commission obtains information indicating that White's representations to the Commission concerning his securities trades were false, 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 White, petition this Court for an order requiring White to pay the remaining portion of disgorgement, prejudgment interest, and postjudgment interest that may be owed under the circumstances. In connection with any such petition, the only issues shall be whether the representations made by White in his Consent were false, misleading, inaccurate, or

incomplete in any material respect as of the time such representations were made, and the amount of additional disgorgement, prejudgment interest, and postjudgment interest that may be owed under the circumstances. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering White 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. White may not, by way of defense to such petition, challenge the validity of his Consent, this Final Judgment, contest the allegations in the Complaint filed by the Commission, or contest the amount of disgorgement and interest that has already been ordered.

#### IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the funds to be paid by White pursuant to Paragraph III of this Final Judgment shall be paid in the following manner:

- (a) the funds shall be paid into the registry of this Court by United States postal money order, certified check, or bank cashier's check payable to the "Clerk, United States District Court, Southern District of New York," whereupon the Financial Deputy Clerk, is directed hereby to deposit said certified check or money order into an interest bearing account (the "Account") with the Court Registry Investment System ("CRIS");
- (b) simultaneous with making any payment pursuant to subparagraph (a) above, White shall transmit copies of any United States postal money

order, certified check, or bank cashier's check to David L. Kornblau, Assistant Chief Litigation Counsel, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 8-8, Washington, D.C. 20549, under a cover letter that identifies White as the defendant in this action, the civil action number assigned to the Complaint, the District Court in which the Complaint and this Final Judgment were filed, and the Commission's internal case number (HO-2561);

- (c) the funds deposited into the Account shall be held by the CRIS until further order of the Court. In no event shall any of the funds revert, directly or indirectly, to White, his heirs or assigns;
- (d) interest earned on the funds shall be credited to the funds and thereafter be treated in the same manner as principal;
- (e) in accordance with the guidelines set by the Director of the Administrative Office of the United States Court, the Clerk of the Court is directed, without further order of this Court, to deduct from the income earned on the funds a fee equal to 10 percent of the income earned on the investment so held. Such fee shall not exceed that authorized by the Judicial Conference of the United States;
- (f) the Commission may prepare and submit a plan of distribution for the Court's consideration. Such plan may provide for the appointment of a Fund Administrator to conserve the funds and to oversee a Court

approved plan of distribution to persons having valid claims under the federal securities laws arising out of the activities complained of in the Complaint. At such time a Fund Administrator may be appointed, the Clerk of the Court shall transfer the funds from the registry of the Court to the control of the Fund Administrator. Irrespective of the submission of a plan of distribution or appointment of a Fund Administrator, the Commission may move the Court for the appointment of a Tax Accountant to prepare and file approximate tax returns for the Fund (as defined below).

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the funds paid by White pursuant to Paragraph III above are intended to be a "qualified settlement fund" (the "Fund") within the meaning of the regulations issued under Section 468B(g) of Internal Revenue Code of 1986, as amended. The Tax Accountant or Fund Administrator may be designated the administrator of the Fund, pursuant to Treas. Reg. § 1.468B-2(k)(3)(i), and shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2, including but not limited to (i) obtaining a taxpayer identification number, (ii) timely filing of applicable federal, state, and local tax returns and paying taxes reported thereon, and (iii) satisfying any information reporting or withholding requirements imposed on distributions from the Fund. White shall cooperate with the Tax Accountant or Fund Administrator in fulfilling the Fund's obligations under Treas. Reg. § 1.468B-2.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all creditors of or persons asserting claims against White, and all persons acting on behalf of such creditors or claimants, are restrained and enjoined while the Fund is held by the CRIS or the Fund Administrator from:

- (a) commencing, prosecuting, or continuing any suit or proceeding against the CRIS, the Fund, or the Fund Administrator;
- (b) seeking to enforce any judgment against the CRIS, the Fund, or the Fund Administrator;
- (b) using self-help or execution or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding, taking possession of, interfering with, or creating or enforcing a lien upon any property owned by, in the possession of, or to be transferred to the CRIS, the Fund or the Fund Administrator pursuant to this Final Judgment; or
- (d) doing anything whatsoever to interfere with the registry of the Court's or the Fund Administrator's carrying out their duties under this Final Judgment or any subsequent order of the Court, or to harass the Fund Administrator, or to interfere in any manner with the exclusive jurisdiction of this Court over the CRIS or the Fund.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that at such time as said monies are paid by White to the Court, White relinquishes all legal and equitable right, title, and interest in those assets and no part of such monies shall be returned to White, his heirs, successors, or assigns. The Commission may thereafter propose a plan of distribution of the disgorged monies, which plan shall be subject to Court approval, with primary consideration being given to making disgorged funds available to persons having valid claims under the federal securities laws arising out of the activities alleged in the Complaint.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that White, his agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, and each of them, be and hereby are enjoined from destroying, mutilating, concealing, altering, or disposing of any books, records, contracts, receipts, agreements, or other documents, which relate to, pertain to, or contain evidence of funds or other assets of White presently held by him (or which he accumulates after this Final Judgment), under his control, or over which he exercises actual or apparent investment or other authority (including signatory authority), in whatever form such assets may presently exist and wherever located. This anti-destruction-of-documents order shall remain in effect until such time as this civil case has been finally resolved.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the annexed Consent is incorporated by reference herein with the same force and effect as if fully set forth herein.

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that it is the intent of White and the Commission that this Final Judgment be given preclusive effect in any bankruptcy case filed by or against White. To effectuate this intent, White admits, solely for the purpose of such bankruptcy proceedings, that this Final Judgment establishes all the factual elements necessary to enable a court to make a finding that it is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

XI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that White shall comply fully with his undertakings as set forth in the annexed Consent.

XII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

There being no just reason for delay, the Clerk of the Court hereby is directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment forthwith.

*J. Denise Cole*  
UNITED STATES DISTRICT JUDGE

Dated: *February 20*, 1998  
New York, New York

CERTIFIED AS A TRUE COPY ON  
THIS DATE *5/3/2005*  
BY *[Signature]*  
( ) Clerk  
() Deputy

*Rec'd + Placed into Case*  
*3/25/98* *D*  
THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON *12/24/98*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

SCOTT EVANS and BRIAN WHITE,

Defendants.

98 Civ.

**CONSENT AND  
UNDERTAKINGS OF  
DEFENDANT BRIAN  
WHITE**

1. Defendant Brian White ("White"), having been served duly with the Complaint in this action, enters a general appearance.

2. White, without admitting or denying any of the allegations of the Complaint, except as to personal and subject matter jurisdiction, which he admits, and those findings set forth below and in the attached Final Judgment, which he admits solely for the purpose of any bankruptcy filing by or against him and the scope of his securities trades, hereby consents to the entry of the Final Judgment attached hereto and incorporated by reference herein, which, *inter alia*:

- (a) permanently restrains and enjoins him from violation of Sections 10(b) and 14e-3 of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78j(b) and 78n(e)] and Rules 10b-5 and 14e-3 promulgated thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-3];
- (b) orders him to pay by February 20, 1998, the sum of \$25,250.78, constituting disgorgement of all of the alleged profits made by White

from trading in the securities alleged in the Complaint (\$14,261.30) plus  
prejudgment interest thereon (\$10,989.48).

3. White understands that this settlement is contingent upon the accuracy of his sworn representation in this Consent that he did not trade, directly or indirectly, any securities of NCR Corporation other than those traded through Scott Evans's account at Boyle Securities, Inc. (account number 160-9309) between November 9, 1990, and December 3, 1990, and that he did not trade, directly or indirectly, any securities of Digital Microwave Corporation or Teradata Corporation at all. If at any time following the entry of this Final Judgment the Commission obtains information indicating that White's representations to the Commission concerning his securities trades were false, 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 White, petition this Court for an order requiring White to pay the remaining portion of disgorgement, prejudgment interest, and postjudgment interest that may be owed under the circumstances. In connection with any such petition, the only issues shall be whether the representations made by White in his Consent were false, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, and the amount of additional disgorgement, prejudgment interest, and postjudgment interest that may be owed under the circumstances. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering White 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. White may not, by way of defense to such petition, challenge the validity of his Consent, this Final Judgment, contest the allegations in the Complaint filed by the Commission, or contest the amount of disgorgement and interest that has already been ordered.

4. White waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. White waives any right he may have to appeal from the entry of the Final Judgment.

6. White 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 he hereby waives any objection he may have based thereon.

7. White agrees that the Final Judgment may be presented by the Commission to the Court for signature and entry without further notice.

8. White waives service of the Final Judgment entered herein upon him and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court in the United States District Court for the Southern District of New York will constitute notice to him of the terms and conditions of the Final Judgment.

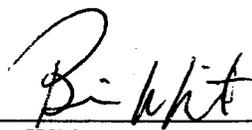
9. White agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

10. Consistent with the provisions of 17 C.F.R. § 202.5(f), White waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy herein.

11. White states that he enters into this Consent and Undertakings voluntarily, and that no offers, promises, inducements, or threats have been made by the Commission or any member, officer, agent, employee, or representative thereof to induce him to enter into this Consent and Undertakings.

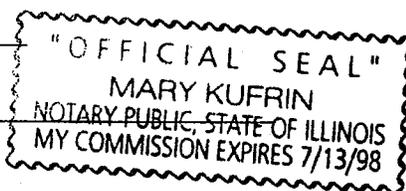
12. White understands and agrees to comply with the SEC's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." 17 C.F.R. §202.5(e). In compliance with this policy, White agrees: (i) 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; and (ii) that upon the filing of this Consent, White hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If White breaches this agreement, the SEC may petition the Court to vacate the Final Judgment and restore this case to its active docket. Nothing in this provision affects White's testimonial obligations or right to take legal positions in litigation in which the SEC is not a party.

13. White agrees that the Court shall retain jurisdiction over this matter for the purpose of enforcing the terms and conditions of the Final Judgment.

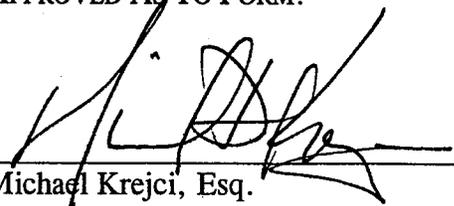
  
\_\_\_\_\_  
Brian White

On this 5th day of February, 1998, Brian White, being known to me and who executed the foregoing Consent and Undertakings of Brian White, personally appeared before me and did duly acknowledge to me that he executed the same.

  
\_\_\_\_\_  
Notary Public  
My Commission expires \_\_\_\_\_



APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael Krejci, Esq.  
DiBenedetto & Krejci  
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Clarendon Hills, Illinois 60514  
Attorney for Defendant Brian White  
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