

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,
450 Fifth Street, N.W.
Washington, D.C. 20549

Plaintiff,

v.

MICHELLE SOTNIKOW,
8 Milford Court
Plainview, NY 11803

Defendant.

98 2227

98 Civ. _____

FILED

SEP 22 1998

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

FINAL JUDGMENT AS TO MICHELLE SOTNIKOW

Plaintiff Securities and Exchange Commission ("Commission"), having filed a Complaint, and defendant Michelle Sotnikow ("Sotnikow"), in her Consent and Undertakings ("Consent"), filed herewith, having entered a general appearance, having acknowledged receipt of the Complaint, having admitted the jurisdiction of the Court over her and 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, solely for the purpose of this action, without admitting or denying the allegations of the Complaint (except as to personal and subject matter jurisdiction), having consented to the entry of this Final Judgment as to Michelle Sotnikow ("Final Judgment"); and it appearing that this Court has jurisdiction over Sotnikow and the subject matter hereof, and the Court being fully advised in the premises, **IT IS HEREBY:**

United States District Court
For the District of Columbia
A TRUE COPY
NANCY MAYER WHITTINGTON, Clerk
By *Calm P. Crean Jr.*
66103 Deputy Clerk

5

I.

ORDERED, ADJUDGED AND DECREED that Sotnikow and her agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them, and each of them, who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined from violating Sections 5(a) and 5(c) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §§ 77e(a) and 77e(c)] by,

(a) Unless a registration statement is in effect as to a security, directly or indirectly --

(1) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) carrying or causing to be carried through the mails or interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale [as prohibited by Section 5(a)]; or

(b) Directly or indirectly, 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 security, unless a registration statement has been filed as to such security, or while a 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 of examination under Section 8, 15 U.S.C. § 77h [as prohibited by Section 5(c)].

II.

FURTHER ORDERED, ADJUDGED AND DECREED that Sotnikow and her agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them, and each of them, who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] by,

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, directly or indirectly --

- (1) employing any device, scheme, or artifice to defraud; or
- (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 the 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.

III.

FURTHER ORDERED, ADJUDGED AND DECREED that Sotnikow and her agents, servants, employees, attorneys-in-fact, and those persons in active concert or

participation with them, and each of them, who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined from violating 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:

directly or indirectly, 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 the 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 connection with the purchase or sale of any security.

IV.

FURTHER ORDERED, ADJUDGED AND DECREED that Sotnikow pay disgorgement in the amount of \$474,308, representing monies or benefits that she derived from the conduct alleged in the Complaint, together with prejudgment interest thereon.

V.

FURTHER ORDERED, ADJUDGED AND DECREED that Sotnikow agrees and undertakes to take any and all actions directed by the Commission or the Court-appointed Receiver to transfer, assign, or deliver to the Court-appointed Receiver, or cause the transfer,

assignment, or delivery to the Court-appointed Receiver, within ten (10) days of the entry of the Final Judgment or at such other time as directed by the Commission or the Court-appointed Receiver, the following cash, securities, and other things of value: (1) one hundred ten thousand dollars (\$110,000); (2) all securities in Sotnikow's possession, custody or control, except for all shares held in the Prudential Equity Fund and all cash and securities held in Sotnikow's IRA account (#CR1-079570) at The Chase Manhattan Bank, including, but not limited to, all securities held at ED&F Man International, Inc., all Cybersense Systems Corp. securities, all Docunet securities, and all shares in the Prudential Utilities Fund; (3) all claims or causes of action Sotnikow has against M.H. Meyerson & Co., Inc., including, but not limited to, cash and securities in account number 632-35477; and (4) all cash held in the name of or for the benefit of Internetwork Communications. Sotnikow further agrees and undertakes to notify the Commission of each payment of cash and transfer, assignment, or delivery of securities or other things of value she makes pursuant to this Final Judgment by providing notice to: Erich T. Schwartz, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 7-6, Washington, D.C. 20549. Such payments of cash and delivery of securities or other things of value shall thereafter be distributed pursuant to a plan for distribution of disgorgement funds, to be filed by the Commission or the Court-appointed Receiver with the Court, but in no event shall any of the funds, securities, or other things of value paid, transferred, assigned, or delivered to the Court-Appointed Receiver be returned, directly or indirectly, to Sotnikow.

VI.

FURTHER ORDERED, ADJUDGED AND DECREED that upon the full performance of Sotnikow's obligations under Section V, and the actual payment, transfer, delivery, or assignment to the Court-appointed Receiver of good title to the cash, securities, automobiles, real estate, and other things of value listed in Section V, the collection of the remaining disgorgement shall be waived in reliance on the truthfulness and completeness of the representations in the Statement of Financial Condition of Michelle Sotnikow dated as of September 11, 1998 ("Financial Statement"), which was sworn to and submitted to the Commission. The Court is waiving collection of a portion of disgorgement as described in Section IV, based upon her financial condition as set forth in the Financial Statement. If at any time following the entry of the Final Judgment, the Commission or the Court-appointed Receiver obtains information indicating that any of Sotnikow's statements to the Commission or to the Court in this case, including, but not limited to, the representations in the Financial Statement, were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time when such representations were made, the Commission or the Court-appointed Receiver may, at their discretion, petition the Court for an order requiring Sotnikow to pay, in addition to the full amount of payment specifically set forth herein, such other illegal profits and proceeds that can be shown to have been received by or paid for the benefit of Sotnikow, together with prejudgment interest thereon. In any such petition, the Commission or the Court-appointed Receiver may move the Court to consider any and all available remedies, including, but not limited to, ordering Sotnikow to pay funds or assets, directing the forfeiture

of any assets, or sanctions for contempt of the Court's Final Judgment, and the Commission or the Court-appointed Receiver also may request additional discovery from Sotnikow. Sotnikow may not, by way of defense to such petition, challenge the validity of this Consent or the Final Judgment, or contest the allegations in the Complaint filed by the Commission.

VII.

FURTHER ORDERED, ADJUDGED AND DECREED that Sotnikow, in conjunction with and in addition to all other obligations ordered by this Final Judgment, shall cooperate in all respects with the efforts of the Commission and the Court-appointed Receiver to carry out the terms of this Final Judgment or as the Commission or the Court-appointed Receiver require in connection with any continuing investigation or litigation of the matters alleged in the Complaint or otherwise relating to ongoing nonpublic investigations including, but not limited to, those relating to Systems of Excellence, Inc. As part of that cooperation, Sotnikow shall, among other things, take any and all actions directed by the Commission or the Court-appointed Receiver to identify and effect the surrender of all of the proceeds of the fraud alleged in the Complaint held by the defendant or any other person, giving powers of attorney and assignments, and providing such testimony, information, and documents as is requested by the Commission or the Court-appointed Receiver.

VIII.

FURTHER ORDERED, ADJUDGED AND DECREED that Sotnikow and her agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them, and each of them, who receive actual notice of this Final Judgment by personal service or otherwise, are permanently enjoined for a period of three years from the date of this Final Judgment from destroying, mutilating, concealing, altering, or disposing of any items, including, but not limited to, any books, records, documents, contracts, agreements, assignments, obligations, tape recordings, computer media or other property, relating to the activities described in the Complaint.

IX.

FURTHER ORDERED, ADJUDGED AND DECREED that Sotnikow shall comply with the annexed Consent which is incorporated herein with the same force as if fully set forth in this Final Judgment.


X.

FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this action for all purposes, including implementation and enforcement of this Final Judgment.

XI.

There being no just reason for delay, 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.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

Dated: Sept. 21, 1998
Washington, D.C.