

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GRANT R. CURTIS, LEO MANGAN, TIMOTHY
MASLEY, JAMES W. NEAREN, RAIMOND IRMA
PEDRO DIBRITO GOMEZ, DONALD E.
KESSLER, DAVID R. BEHANNA, ANDREA VARSI,
JONATHAN D. LYONS, KENNETH A. ORR,
LILLIAN M. VINCI, ANN MARIE NOEL,
MICHAEL V. LIPKIN, JOSHUA S. SHAINBERG,
PHILLIP J. MILLIGAN, AND ROBERT L. SHATLES,

Defendants.

CV 99 7357

CADEN

GERSHON 1

**FINAL JUDGMENT OF PERMANENT INJUNCTION
AND OTHER RELIEF AS TO ANDREA VARSI**

Plaintiff Securities and Exchange Commission ("Commission"), having commenced this action by filing a Complaint For Injunctive And Other Relief on November 10, 1999, alleging that defendant Andrea Varsi ("Varsi") violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 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 Rules 13b2-1 and 13b2-2, 17 C.F.R. §§ 240.13b2-1 and 240.13b2-2, promulgated under Section 13(b) of the Exchange Act, and 15 U.S.C. § 78m(b), and that, as a controlling person of Windswept Environmental Group, Inc. ("Windswept"), defendant Varsi is liable pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a), for Windswept's violations of Sections 13(a) and 13(b) of the Exchange Act, 15 U.S.C. §§ 78m(a) and 78m(b), and Rules 12b-20, 13a-13

A TRUE COPY
ATTEST
DATED JUN 18 2003
ROBERT C. HEINEMANN
CLERK
BY.....
DEPUTY CLERK

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and 13b2-1 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-13 and 240.13b2-1, and defendant Varsi having executed the annexed Consent To Final Judgment Of Permanent Injunction And Other Relief As To Andrea Varsi ("Consent"), having waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, having admitted the jurisdiction of this Court over him and over the subject matter of this action, and, without admitting or denying the allegations contained in the Complaint, except as to jurisdiction, having consented to the entry of this Final Judgment Of Permanent Injunction And Other Relief As To Andrea Varsi ("Final Judgment") without further notice:

I.

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

- (A) employing any device, scheme or artifice to defraud; or
- (B) obtaining money or property by means of an 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
- (C) 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).

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Varsi be and hereby is permanently enjoined and restrained 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:

- (A) employing any device, scheme, or artifice to defraud;
- (B) 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
- (C) 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 Varsi, while he directly or indirectly controls any issuer within the meaning of Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a), be and hereby is permanently enjoined and restrained from acting or omitting to act if such act or omission would result or results in such issuer:

- (A) failing to file with the Commission any report required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and the rules and regulations promulgated thereunder; or

(B) filing with the Commission a report required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and the rules and regulations promulgated thereunder that (1) contains an untrue statement of material fact; (2) fails to include, in addition to the information required to be stated in such report, such further material information as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading; or (3) fails to disclose any information required to be disclosed therein, in violation of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), or Rules 12b-20 or 13a-13, 17 C.F.R. §§ 240.12b-20 or 240.13a-13, unless defendant Varsi acted in good faith and did not directly or indirectly induce the act or omission constituting such violation(s) within the meaning of Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Varsi be and hereby is permanently enjoined and restrained from, directly or indirectly, singly or in concert, falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A), in violation of Rule 13b2-1, 17 C.F.R. § 240.13b2-1, promulgated under Section 13(b) of the Exchange Act, 15 U.S.C. § 78m(b).

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Varsi be and hereby is permanently enjoined and restrained from, directly or indirectly, singly or in concert, while an officer or director of an issuer,

(A) making or causing to be made a materially false or misleading statement, or

(B) omitting to state, or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements are made, not misleading,

to an accountant in connection with (1) any audit or examination of the financial statements of such issuer required to be made pursuant to the rules and regulations of the Exchange Act, 17 C.F.R. §§ 240.0-1 et seq., or (2) the preparation or filing of any document or report required to be filed with the Commission, in violation of Rule 13b2-2, 17 C.F.R. § 240.13b2-2, promulgated under Section 13(b) of the Exchange Act, 15 U.S.C. § 78m(b).

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Varsi shall pay \$5,000 as a civil penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d). Such payment shall be made to the United States Treasury within thirty (30) days from the date of the entry of this Final Judgment, by cashier's check, certified check, U.S. postal money order, or bank money order payable to the order of the "United States Securities and Exchange Commission." The payment shall be transmitted to the Comptroller, Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, D.C. 20549, under cover of a letter identifying the name and civil action number of this litigation and the name of the Defendant and identifying the payment as a civil penalty. A copy of the cover letter and payment shall be simultaneously transmitted to: Senior Associate Regional Director (Enforcement), U.S. Securities and Exchange Commission, Northeast Regional Office, 7 World Trade Center, New York, New York 10048, Attn: David Rosenfeld, Esq.

VII.

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

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the annexed Consent of defendant Varsi be, and hereby is, incorporated herein with the same force 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, including, but not limited to, implementing and enforcing the terms and conditions of this Final Judgment.

X.

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

XI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff

Commission may effect service of this Final Judgment, and all other papers in this action, upon defendant Varsi by delivering a copy to defendant Varsi's attorney, John Siffert, Esq., at Lankler, Siffert & Wohl, 500 Fifth Avenue, New York, New York 10110, or any other attorney entering an appearance for defendant Varsi in this action.

**CONSENT TO FINAL JUDGMENT OF PERMANENT INJUNCTION
AND OTHER RELIEF AS TO DEFENDANT ANDREA VARSİ**

1. Defendant Andrea Varsi ("Varsi"), being fully apprised of his rights, having had the opportunity to confer with legal counsel, having read and understood the terms of the Final Judgment Of Permanent Injunction And Other Relief As To Andrea Varsi ("Final Judgment"), appears and admits the in personam jurisdiction of this Court over him and the subject matter jurisdiction of this Court, waives 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 contained in the Complaint of plaintiff Securities and Exchange Commission ("Commission"), except as to jurisdiction, hereby consents to the entry, without further notice, of the Final Judgment.

2. Defendant Varsi agrees that this Consent To Final Judgment Of Permanent Injunction And Other Relief As To Andrea Varsi ("Consent") shall be incorporated by reference in and made part of the Final Judgment to be presented to the Court for signature, filing and entry contemporaneously herewith.

3. Defendant Varsi waives any right he may have to appeal from the Final Judgment.

4. Defendant Varsi acknowledges that any willful violation of any of the terms of the Final Judgment may place him in contempt of this Court and subject him to civil or criminal sanctions.

5. Defendant Varsi acknowledges that he enters into this Consent voluntarily, and that this Consent and the Final Judgment embody the entire understanding of the parties. Defendant Varsi acknowledges and agrees that this proceeding, and his consent to the entry of the Final Judgment, are for the purposes of resolving this civil action only, that no tender, offer,

promise, threat or representation of any kind has been made by plaintiff Commission or any member, officer, attorney, agent, or representative thereof, with regard to: (A) this civil action, that is not explicitly stated in this Consent and the Final Judgment; (B) any administrative proceeding brought or to be brought before the Commission involving the Final Judgment or the facts underlying this action; (C) any other Commission civil action or administrative proceeding not involving the facts underlying this action; (D) any administrative, civil or criminal liability arising from the facts underlying this action in any action or proceeding brought or to be brought by any third party, other agency or criminal authority; or (E) immunity from any such administrative, civil or criminal action or proceeding.

6. Defendant Varsi 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 administrative, civil, or criminal jurisdiction, if the Commission has not already done so.

7. Defendant Varsi acknowledges and agrees that his consent to the entry of the Final Judgment is for the purposes of resolving this civil action only, in conformity with the provisions of 17 C.F.R. § 202.5(f), and do not resolve, extend to, affect or preclude any other proceeding which may be brought against him. Among other things, defendant Varsi waives any right he may have to assert that, under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, the relief sought or consented to in this civil action, including the seeking or imposition of any remedy or civil penalty herein, bars any criminal action, or that any criminal action bars the relief consented to in this action.

8. Defendant Varsi agrees and undertakes to pay a civil penalty in the amount of \$5,000.

9. Defendant Varsi understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings," 17 C.F.R. § 202.5(e). In compliance with this policy, defendant Varsi agrees not to take any action or 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. If defendant Varsi breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to the Court's active docket. Nothing in this provision affects defendant Varsi's: (i) testimonial obligations; or (ii) right to take legal positions in litigation in which the Commission is not a party.

10. Defendant Varsi hereby consents and agrees that the Final Judgment may be presented by the Commission to the Court for signature and entry without further notice and delay.

11. Defendant Varsi agrees that, promptly after the Final Judgment has been entered by the Court, he will execute and return to the Commission an acknowledgment of receipt of the Final Judgment.

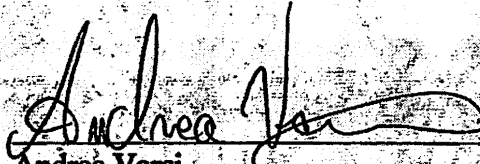
12. Defendant Varsi agrees that this Court shall retain jurisdiction of this matter for all purposes, including the implementation, modification and enforcement of the Final Judgment.

13. Defendant Varsi agrees that first class and certified mail to his attorney, John Siffert, Esq., at Lankler, Siffert & Wohl, 500 Fifth Avenue, New York, New York 10110, or any other attorney entering an appearance for defendant Varsi in this action, shall be deemed personal

service for all correspondence, service and notices as to any matters related to the Final Judgment, unless defendant Varsi notifies the Commission of any alternative address by certified mail at the following address: Associate Regional Director (Enforcement), U.S. Securities and Exchange Commission, Northeast Regional Office, 7 World Trade Center, New York, New York 10048, Attn: David Rosenfeld, Esq.

14. Defendant Varsi acknowledges that this Consent embodies the entire understanding of the parties concerning resolution of this action.

Dated: November 9, 1999


Andrea Varsi

Acknowledged by:

STATE OF New York)
COUNTY OF New York) ss.:

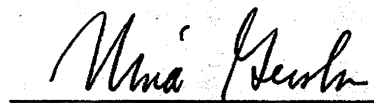
On this 9th day of November, 1999, before me personally appeared Andrea Varsi, to me known to be the person who executed the foregoing Consent, and he acknowledged to me that he executed the same.


NOTARY PUBLIC

ADELE D. CARMEL
Notary Public, State of New York
No. 01CA5011798
Qualified in New York
Commission Expires June 15, 192001

My Commission expires:

SO ORDERED.


United States District Judge

Dated: November 19, 1999
Brooklyn, New York