

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

FILED
CHARLOTTE, N.C.
01 SEP 19 PM 3:12

U.S. DISTRICT COURT
W. DIST. OF N.C.

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

PATRICK L. SWISHER and
SWISHER INTERNATIONAL, INC.
Defendants.

Civil Action No.

3:01cv521-MU

FINAL JUDGMENT AS TO
PATRICK L. SWISHER

Plaintiff Securities and Exchange Commission ("Commission"), having commenced this action by filing its Complaint alleging that Defendant Patrick L. Swisher ("Swisher") violated Sections 17(a)(2) and (3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)(2) and (3)], and Sections 10(b), 13(b)(5), 16(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(b)(5), and 78p(a)], and Rules 10b-5, 13b2-1, 13b2-2, 16a-2 and 16a-3 [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.13b2-2, 240.16a-2, and 240.16a-3] promulgated thereunder, and Defendant Swisher, having in his Consent and Undertaking of Patrick L. Swisher ("Consent"), which is attached hereto and expressly incorporated herein, acknowledged service of process, entered a general appearance, admitted the jurisdiction of this Court over him and over the subject matter of this action, waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, waived filing of an Answer to the Complaint, waived any right he might have to appeal from the entry of this Final Judgment as to Patrick L. Swisher ("Final Judgment") and, without admitting or denying the allegations of the Complaint, except as to jurisdiction which he admits, consented to the entry without further notice of this Final Judgment,

(a) permanently restraining and enjoining him from engaging in acts, practices or courses of

MD

6

business which constitute or would constitute violations of 17(a)(2) and (3) of the Securities Act [15 U.S.C. §77q(a)(2) and (3)], and Sections 10(b), 13(b)(5), and 16(a) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(b)(5), and 78p(a)], and Rules 10b-5, 13b2-1, 13b2-2, 16a-2 and 16a-3 [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.13b2-2, 240.16a-2 and 240.16a-3] promulgated thereunder;

- (b) ordering Swisher to pay disgorgement, including prejudgment interest thereon, in the amount of \$229,627; and;
- (c) ordering Swisher to pay a civil penalty in the amount of \$162,000 pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act.; and
- (d) ordering that Swisher be prohibited for a period of five (5) years from the date of this Final Judgment from acting as an officer or director of any issuer having a class of equity securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. 78o(d)], pursuant to Section 20(e) of the Securities Act [15 U.S.C. §77t(e)], Section 21(d)(2) of the Exchange Act [15 U.S.C. §77u(d)(2)] and the Court's equitable jurisdiction;

and it further appearing that this Court has jurisdiction over Defendant Patrick L. Swisher and the subject matter of this action, and the Court being fully advised in the premises, and there being no just reason for delay:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Swisher, his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of the Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Section 10(b) of the

Exchange Act [15 U.S.C. §§ 78j(b)] and Exchange Act Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by, directly or indirectly, singly or in concert, 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 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.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Swisher and his 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)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)] 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 --

-- 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

-- engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Patrick L. Swisher and his 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 directly or indirectly violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)], or Rules 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§240.13b2-1 and 13b2-2], by

-- knowingly circumventing or knowingly failing to implement a system of internal accounting controls, or knowingly falsifying any book, record, or account described in 15 U.S.C. § 13(b)(2); or

-- directly or indirectly falsifying or causing to be falsified, any book, record or account subject to 15 U.S.C. § 13(b)(2)(A); or

-- as director or officer of an issuer, directly or indirectly --

-- making or causing to be made a materially false or misleading statement; or

-- 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 were made, not misleading to an accountant in connection with

-- any audit or examination of the financial statements of the issuer required to be made pursuant to Section 13(b)(2) of the Exchange Act [15 U.S.C. §78m(b)(2)] and rules promulgated thereunder or

-- the preparation or filing of any document or report required

to be filed with the Commission pursuant to Section 13(b)(2) of the Exchange Act [15 U.S.C. §78m(b)(2)] and rules promulgated thereunder or otherwise.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Swisher and his 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 directly or indirectly violating Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)], and Rules 16a-2 and 16a-3 promulgated thereunder [17 C.F.R. §§240.16a-2 and 240.16a-3], by--

-- as a person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security (other than an exempted security) which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l], or who is a director or an officer of the issuer of such security,

-- failing to file, at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)], or within ten days after he becomes such beneficial owner, director, or officer, a statement with the Commission (and, if such security is registered on a national securities exchange, also with the exchange) of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, failing to file with the Commission (and if such security is registered on a national securities exchange, also with the exchange) a statement indicating his ownership at the close

of the calendar month and such changes in his ownership as have occurred during such calendar month.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Swisher shall disgorge a total of \$229,627, \$162,000 of which represents Armand's improper gain from sales of Swisher International, Inc. securities as alleged in the Complaint, and \$67,627 of which represents prejudgment interest thereon.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Swisher shall pay a civil penalty in the amount of \$162,000 pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Swisher be prohibited for a period of five (5) years from the date of this judgment from acting as an officer or director of any issuer that has a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports with the Commission pursuant to Section 15 of the Exchange Act [15 U.S.C. § 78o], pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 77u(d)(2)] and the Court's equitable jurisdiction.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Swisher shall deliver into the Registry of the Court within thirty (30) business days of the entry of the Final Judgment a certified or cashiers check in the amount of \$229,627, representing the sum total of the disgorgement and prejudgment interest amounts, as described in paragraph V, above. Such payment shall thereafter be distributed pursuant to a Court approved plan for distribution of disgorged assets that the Commission shall propose. Defendant Swisher shall not be entitled to service of the plan proposed by the Commission, and shall not have the right to be heard with respect to the Court's consideration of the plan. In no event shall any of the funds paid into the Registry of the Court revert directly or indirectly to him or his successors, heirs, or assigns.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Swisher shall deliver within thirty (30) business days of the entry of the Final Judgment in this action a certified or cashiers check in the amount of \$162,000 representing the penalty pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act, as described in paragraph VI, above, to the Office of the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312. The check shall be made payable to the "SECURITIES AND EXCHANGE COMMISSION" and bare on its face the caption "SEC v. SWISHER (HO-3511)." Defendant Swisher shall also deliver a photocopy of the check within ten business days of the entry of the Final Judgment in this action to Thomas C. Newkirk Esq., Associate Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C., 20549-0801.

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the disgorged funds paid into the Registry of the Court shall be held in an interest-bearing account with the Court Registry Investment System (CRIS). Interest earned on the account shall be credited to the account and shall thereafter be treated in the same manner as principal. The Clerk of the Court shall deduct from the income earned on the investment a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office at or equal to ten percent (10%) of the income earned on the investment so held.

XI.

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

XII.

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

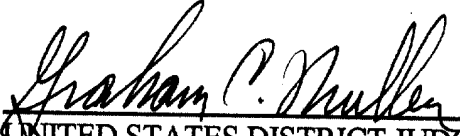
XIII.

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

XIV.

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

Dated: 18 Sept, 2001


UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

PATRICK L. SWISHER and
SWISHER INTERNATIONAL, INC.

Defendants.

Civil Action No. 3:01 CV 521-MU

**CONSENT AND UNDERTAKING OF
PATRICK L. SWISHER**

1. Defendant Patrick L. Swisher ("Swisher") acknowledges service upon him of the Summons and Complaint filed by plaintiff Securities and Exchange Commission ("Commission") in this action; enters a general appearance; waives service of process; consents to the venue of this action; admits the jurisdiction of this Court over him and over the subject matter of this action; and waives the filing of an Answer.

2. Defendant Swisher, without admitting or denying the allegations in the Complaint, except as to jurisdiction which he admits, consents to the entry of the Final Judgment as to Patrick L. Swisher ("Final Judgment") in the form annexed hereto and incorporated by reference herein,

- (a) permanently restraining and enjoining him from engaging in acts, practices or courses of business which constitute or would constitute violations of Sections 17(a)(2) and (3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)(2) and (3)], and Sections 10(b), 13(b)(5), and 16(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(b)(5), and 78p(a)], and Rules 10b-5, 13b2-1, 13b2-2, 16a-2 and 16a-3 [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.13b2-2, 240.16a-2 and 240.16a-3] promulgated thereunder;

- (b) ordering Swisher to pay disgorgement, including prejudgment interest thereon, in the amount of \$229,627; and
 - (c) ordering Swisher to pay a civil penalty in the amount of \$162,000 pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act.
 - (d) prohibiting Swisher for a period of five (5) years from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)], pursuant to Section 20(e) of the Securities Act, Section 21(d)(2) of the Exchange Act and the Court's equitable jurisdiction;
3. Defendant Swisher waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.
 4. Defendant Swisher waives any right he might have to appeal from the entry of the Final Judgment.
 5. Defendant Swisher acknowledges that this Consent and Undertaking ("Consent") is entered into freely, voluntarily, and of his own accord, and that no threats or promises have been made by the Commission or by any member, officer, employee, agent or representative thereof, to induce him to enter into this Consent.
 6. Defendant Swisher agrees that this Consent shall be incorporated into the Final Judgment with the same force as if fully set forth therein.
 7. Defendant Swisher agrees and undertakes to disgorge \$229,627, \$162,000 of which represents Armand's improper gain from sales of Swisher International securities as alleged in the Complaint, and \$67,627 of which represents prejudgment interest thereon.
 8. Defendant Swisher agrees and undertakes to pay a civil penalty in the amount of \$162,000 pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

9. Defendant Swisher agrees and undertakes to deliver into the Registry of the Court a cashiers or certified check in the amount of \$229,627, representing the sum total of the disgorgement and prejudgment interest amounts as described in paragraph 7, above. Such payment shall thereafter be held in an interest-bearing account in the Court Registry Investment System (CRIS) until it is distributed in accordance with a Court approved plan for distribution of disgorged assets to be proposed by the Commission. Defendant Swisher shall not be entitled to service of the plan proposed by the Commission, and shall not have the right to be heard with respect to the Court's consideration of such plan. Defendant Swisher further agrees that in no event shall any of the funds paid into the Registry of the Court revert directly or indirectly to him or his successors, heirs or assigns. While the payment is held in the CRIS, the Clerk of the Court shall deduct from the income on the investment a fee equal to ten percent (10%) of the income earned, but not exceeding the fee authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office.

10. Defendant Swisher agrees and undertakes to deliver within thirty (30) business days of the entry of the Final Judgment a certified or cashiers check in the amount of \$162,000, representing a penalty pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act, as described in paragraph 8, above, to the Office of the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312. The check shall be made payable to the "SECURITIES AND EXCHANGE COMMISSION" and bear on its face the caption "SEC v. SWISHER (HO-3511)." Defendant Swisher also agrees to send a photocopy of the check within thirty (30) business days of the entry of the Final Judgment in this action to Thomas C. Newkirk, Esq., Associate Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0801.

11. Defendant Swisher agrees that he will not oppose the enforcement of the Final Judgment on the grounds, if any exist, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

12. Defendant Swisher agrees that the Commission may present the annexed Final Judgment to the Court for signature and entry without further notice.

13. Defendant Swisher waives service of the Final Judgment entered herein upon him and agrees that the entry of the Final Judgment by the Court and filing with the Clerk of Court will constitute notice to him of the terms and conditions of such Final Judgment.

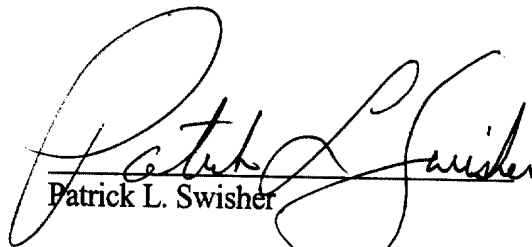
14. Defendant Swisher understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the Complaint or order for proceedings" (17 C.F.R. ¶ 202.5(e)). In compliance with this policy, defendant Swisher agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegations in the Complaint or creating the impression that the Complaint is without factual basis. If defendant Swisher breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this case to its active docket. Nothing in this provision affects defendant Swisher's testimonial obligations or right to take legal positions in litigation in which the Commission is not a party.

15. Consistent with the provisions of 17 C.F.R. ¶ 202.5(f), defendant Swisher waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein.

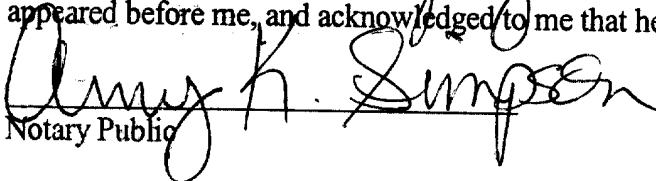
16. Defendant agrees that the Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated:

July 30th, 2001

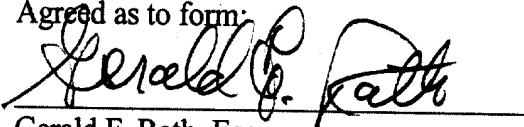

Patrick L. Swisher

On this 30 day of July, 2001, Patrick L. Swisher, being known to me, personally appeared before me, and acknowledged to me that he executed the foregoing Consent.


Notary Public

Commission Expires: My Commission Expires November 15, 2002

Agreed as to form:



Gerald F. Rath, Esq.
Bingham Dana LLP
Boston, MA 02110-1726

Counsel for Patrick Lee Swisher

United States District Court
for the
Western District of North Carolina
September 20, 2001

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:01-cv-00521

True and correct copies of the attached were mailed by the clerk to the following:

B. Frederic Williams Jr., Esq.
U.S. Attorney's Office
227 W. Trade St.
1700 Carillon Bldg.
Charlotte, NC 28202

Thomas C. Newkirk, Esq.
Securities and Exchange Commission
450 Fifth Street, N.W., Stop 4-2
Washington, DC 20549

Cheryl J. Scarboro, Esq.
Securities and Exchange Commission
450 Fifth Street NW
Washington, DC 20549-0808

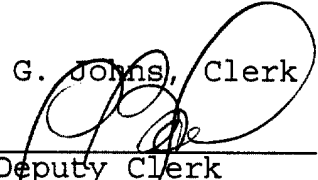
C. Joshua Felker, Esq.
Securities and Exchange Commission
450 Fifth Street NW
Washington, DC 20549-0808

N. Creola Harry, Esq.
Securities and Exchange Commission
450 Fifth Street NW
Washington, DC 20549-0808

Larry P. Ellsworth, Esq.
Securities and Exchange Commission
450 Fifth Street NW
Washington, DC 20549-0808

cc:
Judge ()
Magistrate Judge ()
U.S. Marshal ()
Probation ()
U.S. Attorney ()
Atty. for Deft. ()
Defendant ()
Warden ()
Bureau of Prisons ()
Court Reporter ()
Courtroom Deputy ()
Orig-Security ()
Bankruptcy Clerk's Ofc. ()
Other _____ ()

Date: 9/20/01

Frank G. Johns, Clerk
By:  _____
Deputy Clerk