

**ORIGINAL**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
ENTERED

**JUN 20 2001**

Michael N. Milby, Clerk of Court

**SECURITIES AND EXCHANGE COMMISSION,**

Plaintiff,

vs.

**RON J. MESSENGER,  
JAMES T. RUSH,  
SCOTT K. BARTON and  
GARY HUBSCHMAN,**

Defendants.

**H** Case No. **-01-2022**

**AGREED FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER  
EQUITABLE RELIEF AGAINST GARY HUBSCHMAN**

Plaintiff Securities and Exchange Commission ("Commission"), having filed its Complaint in this matter, and Defendant Gary Hubschman ("Hubschman"), through and according to the terms of his Stipulation and Consent ("Consent"), having waived service of the Summons and having admitted service of the Complaint, 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, having entered into the Consent voluntarily, with no threats, promises of immunity or assurances having been made by the Commission or by any of its members, officers, agents or representatives to induce him to enter into the Consent, having consented, solely for the purpose of settling these proceedings and without admitting or denying any of the allegations in the Commission's Complaint, except as to jurisdiction as set forth above, to entry without further notice of this Final Judgment of Permanent Injunction

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and Other Equitable Relief ("Final Judgment") permanently enjoining Hubschman from engaging in transactions, acts, practices and courses of business which constitute and would constitute violations of section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §77q(a), sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§78j(b) and 78m(b)(5), and Commission Rules 10b-5, 13b2-1 and 13b2-2, 17 C.F.R. §§240.10b-5, 240.13b2-1 and 240.13b2-2, and from aiding and abetting violations of sections 13(a) and 13(b)(2)(A) of the Exchange Act, 15 U.S.C. §§78m(a) and 78m(b)(2)(A), and Commission Rules 12b-20, 13a-1 and 13a-13, 17 C.F.R. §§240.12b-20, 240.13a-1 and 240.13a-13; it further appearing that this Court has jurisdiction over Hubschman and the subject matter of this action and that no further notice of hearing for the entry of this Final Judgment need be given, and the Court being fully advised in the premises:

I.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Hubschman and his agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with him 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 violating section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Commission Rule 10b-5, 17 C.F.R. §240.10b-5, directly or indirectly, in connection with the purchase or sale of a security, by making use of any means or instrumentality of interstate commerce, of the mails or of any facility of any national securities exchange:

- (a) to use or employ any manipulative or deceptive device or contrivance;
- (b) to employ any device, scheme or artifice to defraud;

(c) to make any untrue statement of a material fact or 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; and/or

(d) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

## II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Hubschman and his agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with him 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, in the offer or sale of a security, from violating section 17(a) of the Securities Act, 15 U.S.C. §77q(a), by making use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme or artifice to defraud;

(b) to obtain 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; and/or

(c) to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any purchaser.

## III.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Hubschman and his agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with him 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 violating section 13(b)(5) of the Exchange Act, 15 U.S.C. §78m(b)(5), and Commission Rules 13b2-1 and 13b2-2, 17 C.F.R. §240.13b2-1 and 240.13b2-2, directly or indirectly;

(a) by knowingly circumventing or knowingly failing to implement a system of internal accounting controls;

(b) by knowingly falsifying a book, record or account described in section 13(b)(2) of the Exchange Act, 15 U.S.C. §78m(b)(2);

(c) by 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); or

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

(e) by 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

(1) any audit or examination of the financial statements of the issuer required to be made; or

(2) the preparation or filing of any document required to be filed with the Commission.

#### IV.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Hubschman and his agents, servants, employees, attorneys and all other 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 aiding and abetting violations of sections 13(a) and 13(b)(2) of the Exchange Act, 15 U.S.C. §§78m(a) and 78m(b)(2), and Commission Rules 12b-20, 13a-1 and 13a-13, 17 C.F.R. §§240.12b-20, 240.13a-1 and 240.13a-13, by aiding and abetting any issuer's

(a) failure to file with the Commission

(1) such information and documents as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 12 of the Exchange Act, 15 U.S.C. §78l, and

(2) such annual reports, certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports, as the Commission may prescribe;

(b) failure to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(c) failure to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that --

(1) transactions are executed in accordance with management's general or specific authorization;

(2) transactions are recorded as necessary (A) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (B) to maintain accountability for assets;

(3) access to assets is permitted only in accordance with management's general or specific authorization; and

(4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences;

(d) failure to add such further material information, if any, as may be necessary to make required statements, in the light of the circumstances under which they are made not misleading, to that information expressly required to be included in a statement or report;

(e) failure to file in a timely fashion with the Commission annual reports on the appropriate form of authorized or prescribed for each fiscal year;

(f) failure to file in a timely fashion quarterly reports, as required by Commission Rule 13a-13, 17 C.F.R. §240.13a-13.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that within thirty (30) days of the Court's entry of this Final Judgment, Hubschman shall pay a civil penalty pursuant to section 20(d) of the Securities Act, 15 U.S.C. §77t(d), and section 21(d)(3) of the Exchange Act, 15 U.S.C. §78u(d)(3), in the amount of \$75,000.00. Payment shall be made by certified check, United States Postal Service money order, bank cashier's check or bank money order made payable to the Securities and Exchange Commission. The check or money order and a cover letter identifying Hubschman and this civil action shall be delivered to the Office of the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549-0609. Copies of the cover letter and of the check or money order shall be sent to

Spencer C. Barasch, Associate District Administrator, Securities and Exchange Commission,  
Fort Worth District Office, 801 Cherry Street, Suite 1900, Fort Worth, TX 76102-6819.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Stipulation and Consent filed herein be, and the same is hereby, incorporated in this Final Judgment with the same force and effect as if fully set forth herein.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this action for all purposes, including for purposes of entertaining any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court, including but not limited to the relief requested by the Commission in its Complaint.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Final Judgment may be served upon Hubschman in person or by mail either by the United States marshal, by the Clerk of the Court or by any member of the staff of the Commission.

IX.

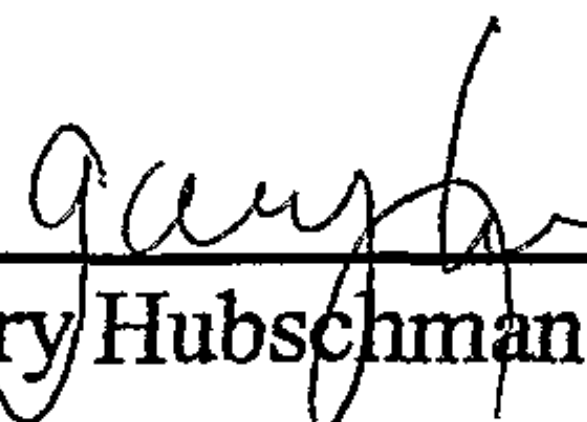
IT IS FINALLY ORDERED, ADJUDGED AND DECREED that, pursuant to the Court's express determination that there is no just reason for delay and pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is hereby directed to enter judgment accordingly.

DATED and SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

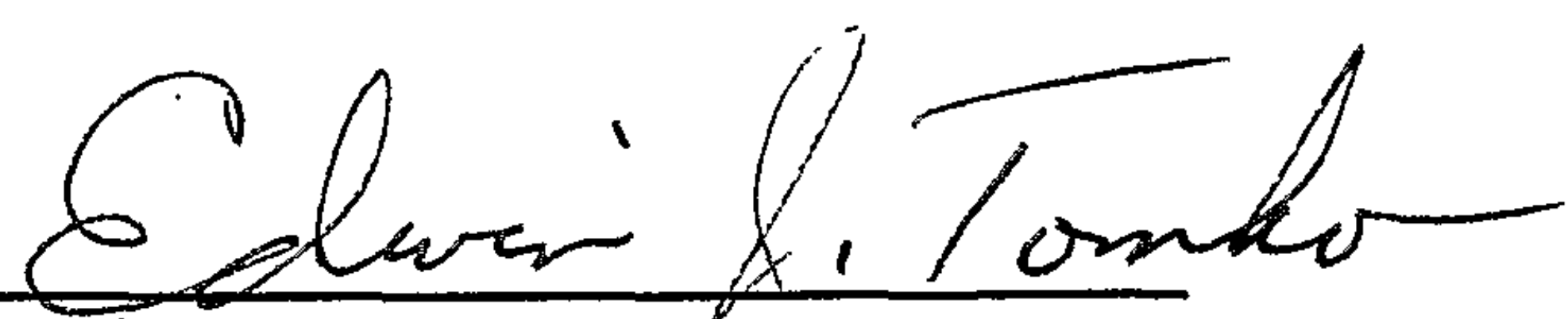
SIGNED  
JUN 19 2001  
Judge Lynn N. Hughes

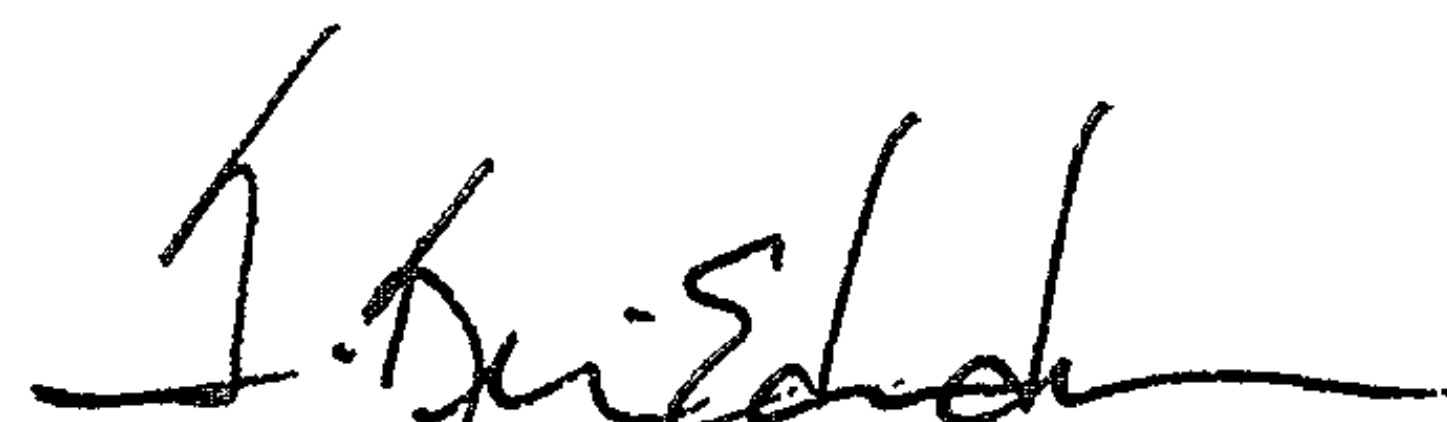
  
United States District Judge

Agreed As To Form And Substance:

  
\_\_\_\_\_  
Gary Hubschman

Approved As To Form:

  
\_\_\_\_\_  
Edwin J. Tomko  
**AKIN, GUMP, STRAUSS, HAUER & FELD, LLP**  
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Attorney for Gary Hubschman

  
\_\_\_\_\_  
J. Kevin Edmondson  
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