

LODGED

2003 JAN -9 PM 3:09

FILED
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

1 WAYNE M. CARLIN (WC-2114), Regional Director
ANDREW M. CALAMARI (*pro hac vice*)
2 REBECCA A. MITCHELLS (State Bar No. 151683)
U.S. Securities and Exchange Commission
3 233 Broadway
New York, NY 10279
4 Telephone: (646) 428-1500
Facsimile: (646) 428-1980

5 THOMAS A. ZACCARO (State Bar No. 183241)
6 U.S. Securities and Exchange Commission
5670 Wilshire Boulevard, 11th Floor
7 Los Angeles, CA 90036-3648
Telephone: (323) 965-3998
8 Facsimile: (323) 965-3908

FILED
CLERK, U.S. DISTRICT COURT
JAN 15 2003
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

9 Attorneys for Plaintiff
SECURITIES AND EXCHANGE
10 COMMISSION

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

Priority
Send
Enter
Closed
JS-5/JS-6
JS-2/JS-3
Scan Only

14 SECURITIES AND EXCHANGE
COMMISSION,

15 Plaintiff,

16 vs.

17 ALLEN BOREN, ERIC CANO, PHILLIP
18 BORINI, CORRINE DAVIES and TIMOTHY
TUTTLE,

19 Defendants.

Case No. CV-01-04377-PA (Ex)

FINAL CONSENT JUDGMENT OF
PERMANENT INJUNCTION AND
OTHER RELIEF AS TO PHILLIP M.
BORINI

Date: n/a

Time: n/a

Before: Hon. Percy Anderson

ORIGINAL

ENTERED
CLERK, U.S. DISTRICT COURT
JAN 15 2003
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

25 THIS CONSTITUTES NOTICE OF ENTRY
26 AS REQUIRED BY FRCP, RULE 77(d).
27
28

1 Plaintiff Securities and Exchange Commission ("Commission"), having
2 commenced this action by filing a complaint on May 15, 2001 (the "Complaint"),
3 charging Defendant Phillip M. Borini ("Borini") with violations of Section 10(b) of
4 the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b)], and
5 Rule 10b-5 [17 C.F.R. §§ 240.10b-5], and, pursuant to Section 20(e) of the
6 Exchange Act [15 U. S. C. § 78t(e)], with aiding and abetting violations of
7 Sections 13(a), 13(b)(2)(A) and 13(b)(5) of the Exchange Act [15 U. S. C. §§
8 78m(a), 78m(b)(2)(A), 78m(b)(5)] and Rules 12b-20, 13a-1, 13a-13 and 13b2-1
9 [240.12b20, 240.13a-1, 240.13a-13, 240.13b2-1], and Borini having executed the
10 annexed Consent of Phillip M. Borini ("Consent"), having withdrawn his answer
11 to the Complaint, having admitted to the jurisdiction of this Court over him and
12 over the subject matter of this action, having waived the entry of findings of fact
13 and . conclusions of law pursuant to Rule 52 of the Federal Rules of Civil
14 Procedure and the right to a jury trial, and, without admitting or denying the
15 allegations in the Complaint (except as to jurisdiction, which are admitted), having
16 consented to the entry of this Final Consent Judgment of Permanent Injunction
17 And Other Relief As To Phillip M. Borini ("Final Judgment") and having waived
18 any right to appeal from this Final Judgment, without further notice, it is now:

19 **I.**

20 **ORDERED, ADJUDGED AND DECREED** that Borini be and hereby is
21 permanently enjoined and restrained, directly or indirectly, singly or in concert, in
22 connection with the purchase or sale of any security, by the use of any means or
23 instrumentality of interstate commerce, or of the mails, or any facility of any
24 national securities exchange, from:

- 25 (1) employing any device, scheme or artifice to defraud;
- 26 (2) making any untrue statement of material fact or omitting to state a
27 material fact necessary in order to make the statements made, in light
28 of the circumstances under which they were made, not misleading; or

- 1 (3) engaging in any act, practice or course of business which operates or
2 would operate as a fraud or deceit upon any person, in violation of
3 Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-
4 5 thereunder, 17 C.F.R. § 240.1b-5.

5 **II.**

6 **FURTHER ORDERED, ADJUDGED AND DECREED** that Borini be and
7 hereby is permanently enjoined and restrained from, directly or indirectly, singly
8 or in concert, engaging in acts, practices or courses of business that consist of

- 9 (1) failing to file with the Commission any report required to be filed
10 with the Commission pursuant to Section 13 (a) of the Exchange Act
11 [15 U.S.C. §78m(a)] and the rules and regulations promulgated
12 thereunder; or
13 (2) filing with the Commission a report required to be filed with the
14 Commission pursuant to Section 13(a) of the Exchange Act [15
15 U.S.C. §78m(a)] and the rules and regulations promulgated
16 thereunder that (1) contains an untrue statement of material fact; (2)
17 fails to include, in addition to the information required to be stated in
18 such report, such further material information as may be necessary to
19 make the required statements, in light of the circumstances under
20 which they are made, not misleading; or (3) fails to disclose any
21 information required to be disclosed therein, in violation of Section
22 13(a) of the Exchange Act [15 U.S.C. §78m(a)], or Rules 12b-20,
23 13a-1 and 13a-13 [17 C.F.R. §§240.12b-20, 240.13a-1 and 240.13a-
24 13].

25 **III.**

26 **FURTHER ORDERED, ADJUDGED AND DECREED** that Borini be
27 and hereby is permanently enjoined and restrained, directly or indirectly, singly or
28 in concert, from knowingly circumventing or knowingly failing to implement a

1 system of internal accounting controls or knowingly falsifying any book, record or
2 account described in Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. §
3 78m(b)(2)(A), in violation of Section 13(b)(5) of the Exchange Act, 15 U.S.C. §
4 78m(b)(5) and Rule 13b2-1, 17 C.F.R. § 240.13b2-1.

5 **IV.**

6 **FURTHER ORDERED, ADJUDGED AND DECREED** that within ten
7 (10) days of the entry of this Final Judgment, Borini or his Escrow Agent shall pay
8 \$50,000 to the United States Treasury ("Treasury") as a civil penalty pursuant to
9 Section 21(d) of the Exchange Act, 15 U.S.C. § 77u(d). Such payment shall be
10 made by cashier's check, certified check, U.S. postal order or bank money order
11 payable to the order of the "United States Securities and Exchange Commission."
12 The payment shall be transmitted to the Comptroller, Securities & Exchange
13 Commission, 450 Fifth St., N.W., Washington, D.C. 20549, under cover letter
14 identifying the name and civil action number of this action, the name of Defendant
15 Phillip M. Borini and the payment as a civil penalty. A copy of the cover letter
16 and payment shall be simultaneously transmitted to Rebecca A. Mitchells,
17 Securities & Exchange Commission, 233 Broadway, New York, NY 10279.

18 **V.**

19 **FURTHER ORDERED, ADJUDGED AND DECREED** that, pursuant to
20 Rule 65(d) of the Federal Rules of Civil Procedure, this Final Judgment is binding
21 upon Borini his agents, servants, employees, attorneys and any persons in active
22 concert or participation with him or them who receive actual notice of this Final
23 Judgment by personal service or otherwise.

24 **VI.**

25 **FURTHER ORDERED, ADJUDGED AND DECREED** that Borini
26 comply with the following agreements and undertakings referenced in his Consent:
27 Borini undertakes and agrees to cooperate fully with the Commission in any
28 and all investigations, litigations or other proceedings relating to or arising from

1 the matters described in the Complaint. In connection with such cooperation,
2 Borini agrees and undertakes:

- 3 (1) To produce, without service of a notice or subpoena, any and all
4 documents and other information requested by the Commission's
5 staff;
- 6 (2) To be interviewed by the Commission's staff at such times as the staff
7 reasonably may direct;
- 8 (3) To allow the Commission to use, without restriction, the contents of
9 any proffer Borini has made, or hereafter may make, to the United
10 States Attorney's Office in connection with the matters at issue in the
11 Complaint;
- 12 (4) To appear and testify without service of a notice or subpoena in such
13 investigations, depositions, hearings or trials as may be requested by
14 the Commission's staff; and
- 15 (5) That in connection with any testimony of Borini to be conducted at
16 deposition, hearing or trial pursuant to a notice or subpoena, Borini:
- 17 (A) Agrees that any such notice or subpoena for Borini's
18 appearance and testimony may be addressed to his counsel
19 identified in paragraph V11 below and served by mail; and
- 20 (B) Agrees that any such notice or subpoena for Borini's
21 appearance and testimony in an action pending in a United
22 States District Court may be served, and may require
23 testimony, beyond the territorial limits imposed by the Federal
24 Rules of Civil Procedure.

25 **VII.**

26 **FURTHER ORDERED, ADJUDGED AND DECREED** that plaintiff may
27 effect service of this Final Judgment and all other papers in this action upon Borini
28 by sending a copy via first class mail to his counsel, Ellyn S. Garofalo, Esq. of

1 O'Neill Lysaght & Sun, LLP, 100 Wilshire Blvd., Suite 700, Santa Monica, CA
2 90401-1142, unless Borini notifies the Commission otherwise by letter addressed
3 to U.S. Securities & Exchange Commission, 233 Broadway, 13f Floor, New
4 York, NY 10279, attn: Rebecca A. Mitchells, Esq.

5 **VIII.**

6 **FURTHER ORDERED, ADJUDGED AND DECREED** that the attached
7 Consent is incorporated herein with the same force and effect as if fully set forth
8 herein.

9 **IX.**

10 **FURTHER ORDERED, ADJUDGED AND DECREED** that this Court
11 shall retain jurisdiction of this action for all purposes including, but not limited to,
12 implementing and enforcing the terms and conditions of this Final Judgment.

13 **X.**

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

18
19 ///
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONSENT OF PHILLIP M. BORINI

I, Phillip M. Borini, defendant in the above-entitled action, being fully apprised of my rights, having had the opportunity to confer with legal counsel, having read and understood the terms of the Final Consent Judgment of Permanent Injunction and Other Relief as to Phillip M. Borini ("Final Judgment"), hereby:

1. Admit to the jurisdiction of this Court over me in this action and over the subject matter of this action, and agree that this Court shall retain jurisdiction of this action to implement and enforce the terms and conditions of the Final Judgment for all purposes,
2. Withdraw my answer to the Complaint filed in this action,
3. Waive the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure and the right to a jury trial,
4. Consent to the entry of this Final Judgment without further notice and without admitting or denying the allegations contained in the Complaint except as to jurisdiction, which are admitted,
5. Agree that this 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,
6. Waive any right that I may have to appeal from this Final Judgment,
7. Acknowledge that any willful violation of any of the terms of the Final Judgment may place me in contempt of this Court and subject me to civil or criminal sanctions,
8. Acknowledge that I enter into this Consent voluntarily, that this Consent and the Final Judgment embody the entire understanding between plaintiff Commission and me, and 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, to induce me to enter into this Consent,
9. Acknowledge that no promise or representation has been made by

1 plaintiff Commission or its staff with regard to any criminal liability that may have
2 arisen or may arise from the facts underlying this action or immunity from any
3 such criminal liability,

4 10. Acknowledge that I have been informed and understand that plaintiff
5 Commission, at its sole and exclusive discretion, may refer or grant access to this
6 matter, or any information or evidence gathered in connection therewith or derived
7 therefrom, to any person or entity having appropriate administrative, civil or
8 criminal jurisdiction,

9 11. Acknowledge and agree that this proceeding and Consent are for the
10 purposes of resolving this proceeding only, in conformity with the provisions of 17
11 C.F.R. § 202.5(f), and do not resolve, affect or preclude any other proceeding that
12 may be brought against me. Consistent with the provisions of 17 C.F.R. §
13 202.5(0, 1 waive any claim I may to assert that, under the Double Jeopardy Clause
14 of the Fifth Amendment to the United States Constitution, the relief sought or
15 consented to in this civil action, including the seeking or imposition of any remedy
16 or civil penalty herein, bars any criminal action, or that any criminal action bars
17 the relief consented in this action. I further acknowledge that the Court's entry of a
18 permanent injunction may have collateral consequences under federal or state law
19 and the rules and regulations of self-regulatory organizations, licensing boards,
20 and other regulatory organizations. Such collateral consequences include, but are
21 not limited to, a statutory disqualification with respect to membership or
22 participation in, or association with a member of, a self-regulatory organization.
23 This statutory disqualification has consequences that are separate from any
24 sanction imposed in an administrative proceeding,

25 12. Acknowledge that neither this Consent nor the Final Judgment
26 precludes plaintiff Commission from instituting administrative proceedings against
27 me based upon or relating to any of the matters alleged in the Complaint or upon
28 the entry of the Final Judgment,

1 13. Understand and agree to comply with the Commission's policy "not to
2 permit a defendant or respondent to consent to a judgment or order that imposes a
3 sanction while denying the allegations in the complaint or order for proceedings,"
4 as set forth in 17 C.F.R. § 202.5. To comply with this policy, I agree not to take
5 any action or permit to be made any public statement denying, directly or
6 indirectly, any allegation in the Complaint or creation the impression that the
7 Complaint is without factual basis. If I breach this agreement, the Commission
8 may petition the Court to vacate the Final Judgment and restore this action to its
9 active docket. Nothing in this provision affects my right to take legal positions in
10 litigation in which the Commission is not a party or my testimonial obligations in
11 any matter.

12 14. Waive any rights under the Equal Access to Justice Act, the Small
13 Business Regulatory Enforcement Fairness Act of 1996 or any other provision of
14 law to pursue reimbursement of attorney's fees or other fees, expenses or costs
15 expended by me to defend against this action. For these purposes, I agree that I am
16 not the prevailing party in this action because plaintiff Commission and I have
17 reached a good faith settlement,

18 15. Agree to cooperate fully with plaintiff Commission with regards to the
19 plaintiff's continued litigation of this action until all claims against all defendants
20 have been fully and finally resolved. My cooperation is as set forth in the Final
21 Judgment and includes responding truthfully and completely to any and all
22 questions or inquiries that may be put to me, whether in interviews, at trial or
23 other Court proceedings; attending all meetings, trial or other proceedings with
24 regards to this action at which my presence is requested by plaintiff Commission
25 or compelled by subpoena or Court order; and, producing voluntarily any and all
26 documents, records or other tangible evidence relating to the matter about which
27 the plaintiff inquiries related to this action.

28 16. Agree to execute and return promptly any acknowledgment of receipt

1 of the Final Judgment once it has been entered by the Court and forwarded to me
2 for this purpose.

3 17. Consent and agree that the Final Judgment may be presented by the
4 plaintiff Commission to the Court for signature and entry without further notice
5 and delay.

6
7 Dated: January 7th, 2003



8 Phillip M. Borini

9 State of California

10 County of Los Angeles }

ss.:

11 On this 7th day of January, 2003, before me personally
12 appeared Phillip M. Borini, to me known an crown to me to be the person who
executed the foregoing Consent.

13 Jacqueline A. Wicker
14 Notary Public



15 **ORDER**

16 Based upon the foregoing Consent of Phillip M. Borini, the documents of
17 record in this action and for good cause appearing, this Final Judgment of
18 Permanent Injunction and Other Relief As To Phillip M. Borini is hereby
19 APPROVED.

20 IT IS SO ORDERED.

21
22 Dated: 1/14, 2003



23 Hon. Perry Anderson
24 United States District Judge

PROOF OF SERVICE BY U.S. MAIL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, Leonard N. Schmidt, declare as follows:

I am over the age of 18 years and not a party to this action. I am employed by the U.S. Securities and Exchange Commission and my business address is 233 Broadway, 13th Floor, New York, NY 10279, telephone (646) 428-1500, facsimile (646) 428-1978.

On January 8, 2003, I served copies of the foregoing document entitled **Final Consent Judgment of Permanent Injunction and Other Relief as to Phillip M. Borini** by placing said copies in sealed envelopes, which I then placed for collection and mailing with the U.S. Postal Service following ordinary business practices. I am readily familiar with my employer's practice for collection and processing of correspondence for mailing with the U.S. Postal Service. Such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business. I addressed the sealed envelopes containing the above-entitled document to the following:

- | | |
|--|--|
| Ellyn S. Garofalo
O'Neill Lysaght & Sun LLP
100 Wilshire Blvd., Suite 700
Santa Monica, CA 90401-1142 | Attorney for Defendants Phillip Borini
and Timothy Tuttle |
| Eric Cano
3835R Thousand Oaks Blvd. #295
Westlake Village, CA 91362 | Pro Se Defendant |
| Allen Boren
P.O. Box 9850
Canoga Park, CA 91304 | Pro Se Defendant |

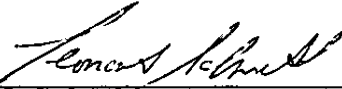
///

1 And a courtesy copy to:

2 George W. Buehler, Esq.
3 Geragos & Geragos
350 S. Grand Ave., 39th Floor
4 Los Angeles, CA 90071-3480

Attorney for Defendant Allen Boren
in related action

5 I declare under penalty of perjury that the foregoing is true and correct to the
6 best of my knowledge and that this declaration was executed on January 8, 2003 in
7 New York, NY.



8
9 Leonard N. Schmidt

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28