

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ILAN ARBEL AND DAVID P. MELILLO,

Defendants.

C.V. No. 01-5985 (ILG)

**FINAL JUDGMENT AS TO DAVID P. MELILLO**

Plaintiff Securities and Exchange Commission (“Commission”), having filed a Complaint for injunctive and other relief on September 4, 2001 (“Complaint”), charging Defendant David P. Melillo (“Melillo” or “Defendant”) with violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and Rule 10b-6 thereunder, 17 C.F.R. § 240.10b-6, and Melillo, having executed the annexed Consent of Defendant David P. Melillo (“Consent”) admitting the jurisdiction of this Court over him and over the subject matter of this action, waiving 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, except as to jurisdiction, which are admitted, consents to the entry of this Final Judgment As To Defendant David P. Melillo (“Final Judgment”). Therefore, without further notice:

A TRUE COPY	
ATTEST	
DATED	NOV 13 2008
ROBERT C. HEINEMANN	
BY	Yvonne Hejnowell
	CLERK
	DEPUTY CLERK

(20)

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant, Defendant's agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to 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; or
- (c) 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 HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant, Defendant's agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], in the offer or sale of any security by the 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 of 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) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant, Defendant's agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and Section 101 of Regulation M [17 C.F.R. § 242.101], by, in connection with a distribution of securities, directly or indirectly, bidding for, purchasing, or attempting to induce any person to bid for or purchase, the security that is the subject of the distribution, or any reference security, during the applicable restricted period, which is defined as:

- (1) for any security with an average daily trading volume value of \$100,000 or more of an issuer whose common equity securities have a public float value of \$25 million or more, the period beginning on the later of one business day prior to the

determination of the offering price or such time that a person becomes a distribution participant, and ending upon such person's completion of participation in the distribution;

- (2) for all other securities, the period beginning on the later of five business days prior to the determination of the offering price or such time that a person becomes a distribution participant, and ending upon such person's completion of participation in the distribution; and
- (3) in the case of a distribution involving a merger, acquisition, or exchange offer, the period beginning on the day proxy solicitation or offering materials are first disseminated to security holders, and ending upon the completion of the distribution,

while acting as an underwriter, prospective underwriter, broker, dealer, or other person who has agreed to participate or is participating in the distribution, or as an affiliated purchaser of such distribution participant, in the absence of an applicable exception under Rules 101(b) or 101(c) of Regulation M [17 C.F.R. § 242.101(b) or 101(c)], or exemption under Rule 101(d) [17 C.F.R. § 242.101(d) .1

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<sup>1</sup> On December 18, 1996, the Commission adopted Regulation M, which became effective on March 4, 1997, and replaced Rule 10b-6. Securities Exchange Act Release No. 38067 (December 20, 1996), 62 FR 520. Among other things, Regulation M deemed Rules 101 and 102 as successor rules to Rule 10b-6. Accordingly, this Final Consent Judgment, at Paragraph III., orders that Melillo be permanently enjoined and restrained from violating Rule 101 of Regulation M.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$485,000, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$340,102, for a total of \$825,102 ("Final Disgorgement Amount"). Defendant agrees to pay the Final Disgorgement Amount; provided, however, that Defendant shall be permitted to offset against the Final Disgorgement Amount any restitution ordered by the Court and actually paid by Defendant from the related criminal proceeding captioned United States v. Ilan Arbel, et. al., Q1 CR 917 (ILG) (E.D.N.Y.) Defendant shall satisfy this obligation by paying \$825,102 within thirty days of the entry of the Final Judgment, together with a cover letter identifying David P. Melillo as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. All payments shall be made by postal money order, certified check, bank cashier's check or bank money order made payable to the order of the "United States Securities and Exchange Commission." The payments shall be transmitted to the Comptroller, Securities and Exchange Commission Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312, under cover of letter identifying the name and civil action number of this litigation and the name of David P. Melillo. A copy of the cover letter and payment shall be simultaneously transmitted to Wayne Carlin, Esq., Regional Director, U.S. Securities and Exchange Commission, 233 Broadway, 13th Floor, New York, New York 10279, Attn. James C. Gange, Esq.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that based on Defendant's sworn representations in his Statement of Financial Condition dated May 16, 2002, his Declaration dated June 10, 2003, and other documents and information submitted to the Commission, the Court is not ordering Defendant to pay a civil penalty. The determination not to impose a civil penalty is contingent upon the accuracy and completeness of Defendant's Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Defendant's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant, petition the Court for an order requiring Defendant to pay the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of this Consent or the Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of

disgorgement, pre-judgment interest, or a civil penalty should not be ordered; (4) contest the amount of the Final Disgorgement Amount; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

VII.

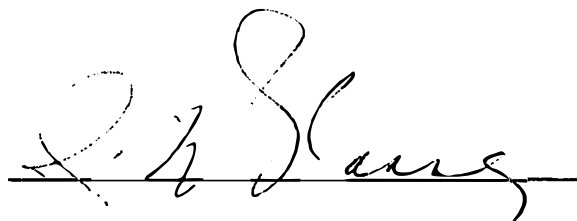
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated:

Oct. 10, 2003



UNITED STATES DISTRICT JUDGE