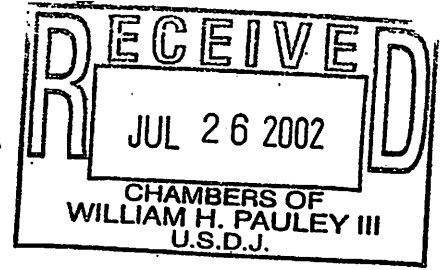


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DOC # 48



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,  
v.

: 02 Civ. 0306 (WHP)

MAX C. TANNER, DENNIS EVANS, MARK A.  
TAYLOR, SR., KEVIN KIRKPATRICK, KENNETH  
KURTZ, KEVIN J. RUGGIERO, MICHAEL  
BOSTON, ALEX SHEYFER, and ALEXANDER  
ZALMENENKO,

Defendants.



#05,1395

**FINAL JUDGMENT OF PERMANENT INJUNCTION  
AND OTHER RELIEF AS TO DEFENDANT KENNETH KURTZ**

Plaintiff Securities and Exchange Commission ("Commission") having commenced this action by filing a Complaint charging defendant Kenneth Kurtz ("Kurtz") 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Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and Kurtz, having withdrawn his answer and any affirmative defenses to the Complaint, having executed the annexed Consent To Final Judgment Of Permanent Injunction And Other Relief As To Defendant Kenneth Kurtz ("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 Defendant Kenneth Kurtz ("Final Judgment") without further notice, having consented to the Court's jurisdiction over him and the subject matter of this action, and having waived any right to appeal from this Judgment, it is now

**I.**

**ORDERED, ADJUDGED AND DECREED** that Kurtz be and hereby is permanently enjoined and restrained, directly or indirectly, singly or in concert, 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, from:

1. employing any device, scheme, or artifice to defraud;
2. obtaining money or property by means of any untrue statement of material fact or any omission 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
3. 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.**

**FURTHER ORDERED, ADJUDGED AND DECREED** that Kurtz be and hereby is permanently enjoined and restrained, 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, from:

1. employing any device, scheme, or artifice to defraud;
2. 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
3. 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.

**FURTHER ORDERED, ADJUDGED AND DECREED** that Kurtz shall pay the sum of \$153,773, representing disgorgement of profits in the amount of \$150,000 for his conduct alleged in the complaint plus prejudgment interest thereon in the amount of \$3,773. Such payment shall be made in the manner described in Paragraph IV below.

### IV.

**FURTHER ORDERED, ADJUDGED AND DECREED** that the monies to be paid pursuant to Paragraph III of this Final Judgment, shall be paid in the following manner:

1. Kurtz shall satisfy the \$153,773 disgorgement obligation as follows: (1) within 30 days from the date of entry of this Final Judgment, Kurtz shall pay \$40,000, plus post-judgment interest on that amount from the date of entry of this Final Judgment until paid in full, at the post-judgment interest rate set forth at 28 U.S.C. §§ 1961(a) & (b) (hereinafter the "Post-Judgment Interest Rate"); (2) Kurtz shall pay \$105,000 of the remaining \$113,773 in disgorgement in seven consecutive monthly installments of \$15,000 each ("Monthly

Installment”), plus post-judgment interest on each Monthly Installment from the date of entry of this Final Judgment until paid in full, at the Post-Judgment Interest Rate, as follows: (i) the first \$15,000 Monthly Installment shall be paid within 60 days from the date of entry of the Final Judgment; (ii) the second \$15,000 Monthly Installment shall be paid within 90 days from the date of entry of the Final Judgment; (iii) the third \$15,000 Monthly Installment shall be paid within 120 days from the date of entry of the Final Judgment; (iv.) the fourth \$15,000 Monthly Installment shall be paid within 150 days from the date of entry of the Final Judgment; (v.) the fifth \$15,000 Monthly Installment shall be paid within 180 days from the date of entry of the Final Judgment; (vi.) the sixth \$15,000 Monthly Installment shall be paid within 210 days from the date of entry of the Final Judgment; (vii.) the seventh \$15,000 Monthly Installment shall be paid within 240 days from the date of entry of the Final Judgment; and (3) Kurtz shall pay the remaining disgorgement (\$8,773), plus post-judgment interest on that payment amount from the date of entry of this Final Judgment until paid in full, at the Post-Judgment Interest Rate, within 270 days of entry of the date of the Final Judgment.

**V.**

**FURTHER ORDERED, ADJUDGED AND DECREED that:**

1. Kurtz shall pay the amounts referenced in paragraph IV of this Final Judgment into the registry of this Court by cashier's check or certified check drawn to the order of "Clerk, United States District Court, S.D.N.Y.," whereupon the Clerk of this Court is hereby directed to deposit said check into the account for this case with the Court Registry Investment System (the "C.R.I.S. Account"). Kurtz shall submit each check referenced in paragraph IV of this Final Judgment to: Clerk, United States District Court, United States Courthouse, 500 Pearl Street,

New York, NY 10007. Simultaneously with making such payments, Kurtz shall transmit copies of the cashier's check or certified check, front and back, as well as any accompanying correspondence, to Jack Kaufman, Esq., Senior Trial Counsel, U.S. Securities and Exchange Commission, Northeast Regional Office, 233 Broadway, New York, New York 10279. Such transmission shall be made under cover of a letter that identifies the defendant, the name and civil action number of the litigation, the name of this Court and the Commission case number ("NY-6492");

2. Funds in the C.R.I.S. Account shall be held until further order of the Court, and shall be disbursed in accordance with a plan of distribution to be submitted by the Commission and approved by the Court. In no event shall any portion of the C.R.I.S. Account be returned to Kurtz, his agents, successors or assigns;

3. Interest earned on the C.R.I.S. Account shall be credited to the C.R.I.S. Account and shall thereafter be treated in the same manner as principal; and

4. Prior to making any disbursements from the C.R.I.S. Account, the Custodian of the C.R.I.S. Account is directed to deduct from the income 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 equal to ten percent (10%) of the income earned for deduction in the investment so held and without further order of the Court.

## VI.

**FURTHER ORDERED, ADJUDGED AND DECREED** that Kurtz shall pay a civil penalty of \$50,000 (the "penalty amount") pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77(t)(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78(u)(d)(3), plus post-

judgment interest on the \$50,000 penalty amount from the date of entry of this Final Judgment until paid in full, at the Post-Judgment Interest Rate. Such payment shall be made in the manner described in Paragraph VII below.

**VII.**

**FURTHER ORDERED, ADJUDGED AND DECREED** that the monies to be paid pursuant to Paragraph VI of this Final Judgment, shall be paid in the following manner:

1. Kurtz shall satisfy the \$50,000 penalty amount as follows: (1) Kurtz shall pay \$5,000 of the penalty amount, plus post-judgment interest on that amount from the date of entry of this Final Judgment until paid in full, at the Post-Judgment Interest Rate, within 270 days from the date of entry of the Final Judgment; (2) Kurtz shall pay the remaining \$45,000 of the penalty amount in three consecutive monthly installments of \$15,000 each ("Penalty Installment"), plus post-judgment interest on each Penalty Installment from the date of entry of this Final Judgment until paid in full, at the Post-Judgment Interest Rate, as follows: (i.) the first \$15,000 Penalty Installment shall be paid within 300 days from the date of entry of the Final Judgment; (ii.) the second \$15,000 Penalty Installment shall be paid within 330 days from the date of entry of the Final Judgment; and (iii.) the third \$15,000 Penalty Installment shall be paid within 360 days from the date of entry of the Final Judgment. Kurtz shall pay each payment referenced in this paragraph to the United States Treasury by cashier's check, certified check or postal money order payable to the order of the "United States Treasury." Each payment referenced in this paragraph shall be transmitted to the Comptroller, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Simultaneously with making payment pursuant to this paragraph, Kurtz shall transmit copies of the cashier's check, certified check or

postal money order, front and back, as well as any accompanying correspondence, to Jack Kaufman, Esq., Senior Trial Counsel, U.S. Securities and Exchange Commission, Northeast Regional Office, 233 Broadway, New York, New York 10279. Such transmission shall be made under cover of a letter that identifies the defendant, the name and civil action number of the litigation, the name of this Court and the Commission case number ("NY-6492").

**VIII.**

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

**IX.**

**FURTHER ORDERED, ADJUDGED AND DECREED** that the provisions of the annexed Consent be, and hereby are, incorporated herein with the same force as if fully set forth herein.

**X.**

**FURTHER ORDERED, ADJUDGED AND DECREED** that this Court shall retain jurisdiction of this matter for all purposes, including the implementation and enforcement of this Final Judgment.

**XI.**

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

**CONSENT OF FINAL JUDGMENT OF PERMANENT  
INJUNCTION AND OTHER RELIEF AS TO DEFENDANT KENNETH KURTZ**

1. Defendant Kenneth Kurtz ("Kurtz"), 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 Defendant Kenneth Kurtz ("Final Judgment"), withdraws his answer and any affirmative defenses to the Complaint, consents to the jurisdiction of this Court over Kurtz and over the subject matter of this action, 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, except as to jurisdiction, which is admitted, hereby consents to the entry, without further notice, of the Final Judgment.

2. Kurtz agrees that this Consent Of Final Judgment Of Permanent Injunction And Other Relief As To Defendant Kenneth Kurtz ("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. Kurtz waives any right he may have to appeal from the Final Judgment.

4. Kurtz 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. Kurtz acknowledges that the Final Judgment, including this Consent, embodies the entire understanding of the parties regarding this proceeding.

6. Kurtz acknowledges that he enters into this Consent voluntarily, and that no tender, offer, promise, threat or representation of any kind has been made by plaintiff Securities



and Exchange Commission ("Commission") or any member, officer, attorney, agent, or representative thereof, to induce him to enter into this Consent.

7. Kurtz also acknowledges that no promise or representation has been made by plaintiff Commission or its staff 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.

8. Kurtz 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.

9. Kurtz acknowledges and agrees that this proceeding and his Consent are for the purposes of resolving this proceeding only, in conformity with the provisions of 17 C.F.R. 202.5(f), and do not resolve, affect, or preclude any other proceeding which may be brought against him. Consistent with the provisions of 17 C.F.R. 202.5(f), Kurtz waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Kurtz acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and

regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding.

10. Kurtz acknowledges that neither this Consent nor the Final Judgment precludes plaintiff Commission from instituting administrative proceedings against Kurtz based upon or relating to any of the matters alleged in the Complaint herein or upon the entry of the Final Judgment.

11. Kurtz agrees and undertakes to disgorge \$150,000, representing gains from the conduct alleged in the Complaint, and prejudgment interest thereon in the amount of \$3,773. Kurtz agrees and undertakes to pay \$50,000 as a civil monetary penalty pursuant to Section 20(d) of the Securities Act and Section 21(d)(3)(A) of the Exchange Act. In addition, Kurtz shall pay post-judgment interest on the outstanding balance of the total obligation (\$203,773) from the date of entry of this Final Judgment until paid in full.

13. Kurtz 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. In compliance with this policy, Kurtz agrees not to take any action or to 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 Kurtz breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its

active docket. Nothing in this provision affects Kurtz's right to take legal positions in litigation in which the Commission is not a party, or Kurtz's testimonial obligations in any matter.

14. Kurtz hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996 or any other provision of law to pursue reimbursement of attorney's fees or other fees, expenses or costs expended by Kurtz to defend against this action. For these purposes, Kurtz agrees that Kurtz is not the prevailing party in this action since the parties have reached a good faith settlement.

15. Kurtz 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.

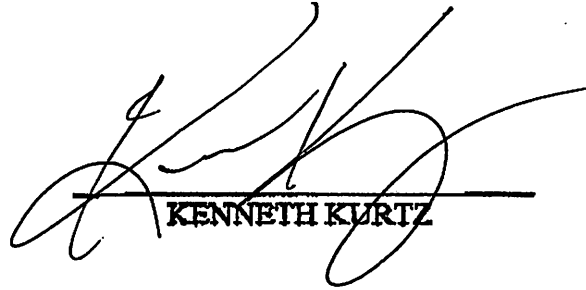
16. Kurtz agrees that this Court shall retain jurisdiction of this matter for all purposes, including the implementation, modification and enforcement of the Final Judgment.

17. Kurtz agrees that first-class mail to his attorney, Neil Kaplan, Clyde Snow Sessions & Swenson, One Utah Center, Suite 1300, 201 South Main Street, Salt Lake City, UT 84111, or any attorney entering an appearance for Kurtz 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 Kurtz notifies the Commission of any alternative address by certified mail at the following address: Jack Kaufman, Esq., Senior Trial Counsel, U.S. Securities and Exchange Commission, Northeast Regional Office, 233 Broadway, New York, New York 10279.

18. Kurtz 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.

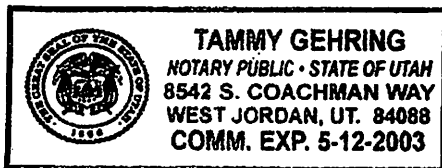
Dated: July 9, 2002

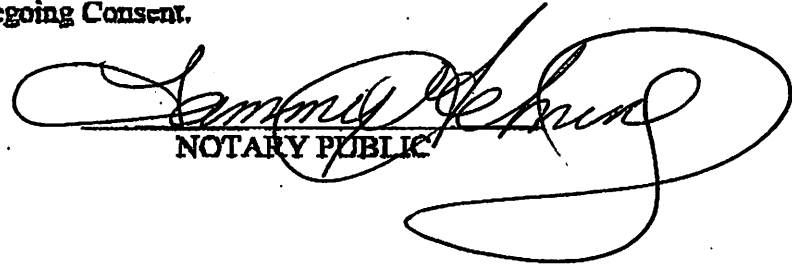
By:

  
KENNETH KURTZ

STATE OF UTAH )  
                  )  
COUNTY OF SALT LAKE )      ss.:

On this 9<sup>th</sup> day of July, 2002, before me personally appeared Kenneth Kurtz, to me known to be the person who executed the foregoing Consent.



  
NOTARY PUBLIC

SO ORDERED:

Dated: July 26, 2002  
New York, NY

  
Honorable William H. Pauley III  
UNITED STATES DISTRICT JUDGE

The parties entitled to be notified of the entry hereof and the names and addresses of their respective attorneys, if any, are:

Plaintiff:

United States Securities and Exchange Commission  
233 Broadway  
New York, New York 10279  
Att: Audry Weintrob  
(646) 428-1937

Defendant:

Kenneth Kurtz  
6099 South Heughs Canyon Way  
Salt Lake City, UT 844121

Counsel for Defendant Kenneth Kurtz

Neil Kaplan, Esq.  
Clyde Snow Sessions & Swenson  
One Utah Center, Suite 1300  
201 South Main Street  
Salt Lake City, UT 84111

Jeremy Temkin, Esq.  
Morvillo Abramowitz Grand Iason & Silberberg  
565 Fifth Avenue  
New York, NY 10017