

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

45

RECEIVED
JUL 25 2002
CHAMBERS OF
WILLIAM H. PAULEY III
U.S.D.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,
v.

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

Defendants.

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U. S. DISTRICT COURT
FILED
JUL 29 2002
S. D. OF N. Y.

**FINAL CONSENT JUDGMENT OF PERMANENT INJUNCTION
AND OTHER RELIEF AS TO ALEX SHEYFER**

Plaintiff Securities and Exchange Commission ("Commission") having commenced this action by filing a Complaint charging defendant Alex Sheyfer ("Sheyfer") with violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a), Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78j(b) and 78o(a), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; and Sheyfer, having entered a general appearance; having consented to the Court's jurisdiction over Sheyfer and the subject matter of this action; having consented to entry of this Final Judgment without further notice without admitting or denying the allegations of the Complaint; having waived findings of fact and conclusions of law; and having waived any right to appeal from this Judgment, it is now

I.

ORDERED, ADJUDGED AND DECREED that Sheyfer be and hereby is permanently enjoined and restrained, directly or indirectly, singly or in concert, from offering for sale any security for which a registration statement is not in effect by

1. making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or
2. carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale

in violation of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. 77e(a) and 77e(c).

II.

FURTHER ORDERED, ADJUDGED AND DECREED that Sheyfer 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).

III.

FURTHER ORDERED, ADJUDGED AND DECREED that Sheyfer 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.

IV.

FURTHER ORDERED, ADJUDGED AND DECREED that Sheyfer be and hereby is permanently enjoined and restrained, directly or indirectly, singly or in concert, making use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances or commercial bills), while acting as a

broker or dealer engaged in the business of effecting transactions in securities for accounts of others, but not registered as a broker or dealer in accordance with Section 15(b) of the Exchange Act, in violation of Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a).

V.

FURTHER ORDERED, ADJUDGED AND DECREED that Sheyfer pay disgorgement in the amount of \$1,405,936.25 as a result of the conduct alleged in the Complaint, together with pre-judgment interest in the amount of \$348,057.29, for a total amount of \$1,753,993.54. Based upon Sheyfer's sworn representations in his Statement of Financial Condition dated February 11, 2002, and other documents submitted to the Commission, payment of disgorgement and pre-judgment interest thereon is waived, contingent upon the accuracy and completeness of his Statement of Financial Condition.

VI.

FURTHER ORDERED, ADJUDGED AND DECREED that based on Sheyfer's sworn representations in his Statement of Financial Condition dated February 11, 2002, and other documents submitted to the Commission, the Court is not ordering Sheyfer to pay a civil penalty. The determination not to impose a civil penalty and to waive payment of disgorgement and pre-judgment interest thereon is contingent upon the accuracy and completeness of Sheyfer's Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Sheyfer'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 Sheyfer, petition the Court for

an order requiring Sheyfer to pay the unpaid portion of the disgorgement, prejudgment and post judgment interest thereon, and 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 Sheyfer 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 Sheyfer 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. Sheyfer may not, by way of defense to such petition: (1) challenge the validity of the Consent or the Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of disgorgement, prejudgment and post judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and prejudgment and post judgment interest; (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.

VII.

FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, this Final Judgment is binding upon Sheyfer, 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.

VIII.

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.

IX.

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.

X.

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 ALEX SHEYFER

1. Defendant Alex Sheyfer ("Sheyfer"), having read and understood the terms of the Final Consent Judgment Of Permanent Injunction And Other Relief As To Alex Sheyfer ("Final Judgment"), enters a general appearance, consents to the jurisdiction of this Court over Sheyfer 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. Sheyfer agrees 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.

3. Sheyfer waives any right he may have to appeal from the Final Judgment.

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

6. Sheyfer 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 Commission or any member, officer, attorney, agent, or representative thereof, to induce him to enter into this Consent.

7. Sheyfer also acknowledges that no promise or representation has been made by plaintiff Commission or its staff with regard to: (1) any criminal liability that may have arisen or may arise from the facts underlying this action; or (2) immunity from any such criminal liability.

8. Sheyfer 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. Sheyfer 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), Sheyfer waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Sheyfer 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.

11. Sheyfer acknowledges that neither this Consent nor the Final Judgment precludes plaintiff Commission from instituting administrative proceedings against Sheyfer based upon or

relating to any of the matters alleged in the Complaint herein or upon the entry of the Final Judgment.

12. Sheyfer agrees and undertakes to disgorge \$1,405,936.25, representing gains from the conduct alleged in the Complaint, and prejudgment interest thereon in the amount of \$348,057.29; provided, however, that payment of such disgorgement and prejudgment interest thereon is waived, based upon Sheyfer's sworn representations in his Statement of Financial Condition dated February 11, 2002, and other documents submitted to the Commission.

13. Sheyfer acknowledges that the Court is not imposing a civil penalty or requiring payment of disgorgement and prejudgment interest thereon based upon the accuracy and completeness of his Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Sheyfer'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, Sheyfer understands and agrees that the Commission may, at its sole discretion and without prior notice to Sheyfer, petition the Court for an order requiring Sheyfer to pay the unpaid portion of the disgorgement, pre-judgment and post-judgment interest thereon, and 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 Sheyfer 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 Sheyfer 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. Sheyfer 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, prejudgment and post judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and prejudgment and post judgment interest; (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.

14. Sheyfer 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, Sheyfer 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 Sheyfer 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 Sheyfer's right to take legal positions in litigation in which the Commission is not a party, or Sheyfer's testimonial obligations in any matter.

15. Sheyfer 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 Sheyfer

to defend against this action. For these purposes, Sheyfer agrees that Sheyfer is not the prevailing party in this action since the parties have reached a good faith settlement.

16. Sheyfer 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: June 18, 2002

By:

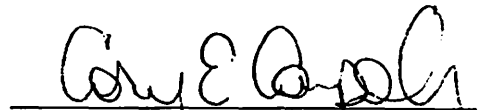


ALEX SHEYFER

STATE OF New York
COUNTY OF New York

ss.:

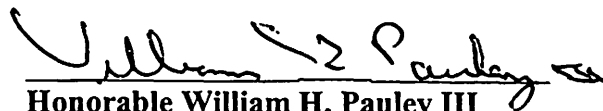
On this 18 day of June, 2002, before me personally appeared Alex Sheyfer, to me known to be the person who executed the foregoing Consent.



NOTARY PUBLIC
CORY E. CAMPOLI
Notary Public, State of New York
No. 01CA5057347
Qualified in Queens County
Commission Expires March 18, 2008

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:

Alex Sheyfer
637 Johnston Terrace
Staten Island, NY 10309

Counsel for Defendant Alex Sheyfer :

Barry Fallick, Esq.
Rochman Platzner Fallick & Sternheim, LLP
666 Third Avenue
New York, NY 10017