

FILED
HARRISBURG

MAY 26 2004

MARY E. D'ANDREA, CLERK
Per MA
DEPUTY CLERK

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

FRANK M. BERGONZI,
MARTIN L. GRASS, and
FRANKLIN C. BROWN,

Defendants. :

CIVIL ACTION
No. 1:CV 02-1084
(Rambo, J.)

FINAL JUDGMENT AS TO FRANK M. BERGONZI

The Securities and Exchange Commission (the "Commission") having filed a Complaint and Defendant Frank M. Bergonzi ("Bergonzi") having entered a general appearance; consented to the Court's jurisdiction over him and the subject

matter of this action; consented to the entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Bergonzi, and Bergonzi's agents, servants, employees, attorneys, 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 enjoined and restrained from violating, directly or indirectly, 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], 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:

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

3. 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

Bergonzi, and Bergonzi's agents, servants, employees, attorneys, 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 enjoined and restrained from violating, directly or indirectly, Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], 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:

1. to employ any device, scheme, or artifice to defraud;
2. to obtain 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. 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 FURTHER ORDERED, ADJUDGED AND DECREED that Bergonzi, and Bergonzi's agents, servants, employees, attorneys, 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 enjoined and restrained from violating, directly or indirectly, Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)], by knowingly circumventing or knowingly failing to implement a system of internal accounting controls, or knowingly falsifying any book, record, or account described in Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)], and from violating, directly or indirectly, Rule 13b2-1 [17 C.F.R. § 240.13b2-1], 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. § 78(b)(2)(A)].

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Bergonzi, while a director or officer of an issuer, and Bergonzi's agents, servants, employees, attorneys, 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 enjoined and restrained from violating, directly or indirectly,

Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2], by making or causing to be made a materially false or misleading statement, or 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 pursuant to Commission regulations or (2) the preparation or filing of any document or report required to be filed with the Commission.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Bergonzi, and Bergonzi's agents, servants, employees, attorneys, 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 enjoined and restrained, directly or indirectly, from controlling any person who violates Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. 240 §§ 240.12b-20, 240.13a-1, and 13a-13], by acting or omitting to act if such act or omission would result or results in such issuer failing to file with the Commission such annual and quarterly reports as the Commission has prescribed or failing to include, in addition to the information

expressly required to be included in such reports, such further material information as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading, unless Bergonzi acts in good faith and does not directly or indirectly induce the act or omission constituting the violation.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Bergonzi, and Bergonzi's agents, servants, employees, attorneys, 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 enjoined and restrained, directly or indirectly, from controlling any person who violates 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)], by acting or omitting to act if such act or omission would result or results in such issuer failing to (a) 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; or (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with

generally accepted accounting principles, or any other criteria applicable to such statements, and to maintain accountability for assets; (iii) access to reports is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences, unless Bergonzi acts in good faith and does not directly or indirectly induce the act or omission constituting the violation.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Bergonzi is prohibited from serving or acting as an officer or director of any issuer that has a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VIII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that based on Bergonzi's sworn representations in his Statement of Financial Condition dated June 18, 2003, and other documents and information submitted to

the Commission, the Court is not ordering Bergonzi to pay a civil penalty and payment of disgorgement in the amount of \$299,774.00, representing his ill-gotten gains as a result of the conduct alleged in the Complaint, together with pre-judgment interest in the amount of \$119,066.70, is waived. The determination not to impose a civil penalty and to waive payment of disgorgement and pre-judgment interest is contingent upon the accuracy and completeness of Bergonzi's Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Bergonzi'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 Bergonzi, petition the Court for an order requiring him to pay full disgorgement and pre-judgment and post-judgment interest thereon. In connection with any such petition, the only issue shall be whether the financial information provided by Bergonzi 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 Bergonzi 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. Bergonzi 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 and post-judgment interest should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

IX.

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 Bergonzi shall comply with all of the undertakings and agreements set forth therein.

X.

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.

XII.

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.

XIII.

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

Dated: May 26, 2004

John H. Schulze
UNITED STATES DISTRICT JUDGE

CERTIFICATION OF ENTRY OF JUDGMENT

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

Plaintiff:

Securities and Exchange Commission
Northeast Regional Office
Attn: Caren Nelson Pennington, Esq.
Assistant Regional Director
233 Broadway
New York, New York 10279
(646) 428-1845
(646) 428-1973 (fax)

Defendant:

Franklyn M. Bergonzi
By: Bruce A. Hiler, Esq.
O'Melveny & Myers LLP
1625 Eye Street, NW
Washington DC 20006-4001
(202) 383-5372
(202) 383-5414 (fax)

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**FRANK M. BERGONZI,
MARTIN L. GRASS, and
FRANKLIN C. BROWN,**

Defendants.

**CIVIL ACTION
No. 1:CV 02-1084
(Rambo, J.)**

CONSENT OF FRANK M. BERGONZI

1. Defendant Frank M. Bergonzi ("Bergonzi") acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over him and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Bergonzi admits), Bergonzi hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Bergonzi from violation 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), 78m(b)(5)] and Rules 10b-5, 13b2-1, and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1 and 240.13b2-2], and, as a controlling person, Sections 13(a) and 13(b)(2) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13]; and
- (b) prohibits Bergonzi from serving or acting as an officer or director of any issuer that has a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

3. Bergonzi waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

4. Bergonzi waives the right, if any, to appeal from the entry of the Final Judgment.

5. Bergonzi acknowledges that the Court is not imposing a civil penalty or requiring payment of \$299,774.00 of disgorgement and \$119,066.70 of pre-judgment interest, based on Bergonzi's sworn representations in Bergonzi's Statement of Financial Condition dated June 18, 2003, and other documents and information submitted to the Commission. Bergonzi further consents that if at any time following the entry of the Final Judgment the Commission obtains information indicating that Bergonzi's representations to the Commission concerning Bergonzi's 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 Bergonzi may, at its sole discretion and without prior notice to Bergonzi, petition the Court for an order requiring him to pay the unpaid portion of the disgorgement and pre-judgment and post-judgment interest thereon. In connection with any such petition, the only issue shall be whether the financial information provided by Bergonzi was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In any such petition, the Commission may move the Court to consider all

available remedies, including but not limited to ordering Bergonzi to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of the Court's Final Judgment. The Commission may also request additional discovery. Bergonzi 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; (3) assert that payment of disgorgement, pre-judgment or post-judgment interest should not be ordered; (4) contest the amount of disgorgement or pre-judgment or post-judgment interest; or (5) assert any defense to liability or remedy, including but not limited to any statute of limitations defense.

6. Bergonzi enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employees, agent, or representative of the Commission to induce him to enter into this Consent.

7. Bergonzi agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Bergonzi will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Bergonzi waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will

constitute notice to Bergonzi of its terms and conditions. Bergonzi further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Bergonzi has received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Bergonzi in this civil proceeding. Bergonzi acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Bergonzi waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Bergonzi 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. Bergonzi 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, Bergonzi agrees: (i) 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; and (ii) that upon the filing of this Consent, Bergonzi hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If Bergonzi 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 Bergonzi's: (i) testimonial obligations; or (ii) right to take legal positions in litigation in which the Commission is not a party.

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

13. In connection with this action and any related judicial or administrative proceeding commenced by the Commission or to which the Commission is a party, Bergonzi (i) agrees to appear and to be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearing, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Bergonzi's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and applicable local rules, provided that the party requesting the testimony reimburses Bergonzi's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Bergonzi in any United States District Court for purposes of enforcing any such subpoena.

14. Bergonzi agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

15. Bergonzi agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

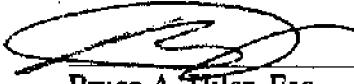
Dated: 11/19/2003, 2003

By: Franklyn M. Bergonzi
FRANKLYN M. BERGONZI

On this 19th day of NOV, 2003, Franklyn M. Bergonzi, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Jessica A. Lutz
NOTARY PUBLIC
Commission expires:

Approved as to form:


Bruce A. Hiler, Esq.
O'Melveny & Myers LLP
Attorney for Franklyn M. Bergonzi

