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2004 JUN -3 PM 12: 27

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04 MAY 21 PM 12: 54

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL
FILED

MAY 26 2004

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Submitting Counsel are directed
to serve this order upon all other
parties in this action

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DONNE CORPORATION,
SHERMAN S. SMITH, SHAWN
SMITH, and BRUCE ANDERSON,

Defendants.

Civil Action No. C 02-04238 SI

~~PROPOSED~~ FINAL JUDGMENT
OF CIVIL PENALTIES AGAINST
DEFENDANT SHAWN SMITH

Plaintiff Securities and Exchange Commission ("Commission"), having filed and served upon Defendant Shawn Smith a Summons and Complaint in this action; Shawn Smith having admitted service upon him of the Summons and Complaint in this action and the jurisdiction of this Court over him and over the subject matter of this action; Shawn Smith having been fully advised and informed of his right to a judicial determination of this matter; Shawn Smith having waived the entry of findings of fact and conclusions of law as provided by Rule 52 of the Federal Rules of Civil Procedure; Shawn Smith having consented to the entry of this Final Judgment Of Civil Penalties ("Final Judgment"), without admitting or denying the allegations in the Complaint, except as specifically set forth in the Consent Of Defendant Shawn Smith To Entry Of Final Judgment Of Civil

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1 Penalties (“Consent”); no notice of hearing upon the entry of this Final Judgment
2 being necessary; and this Court being fully advised:

3 **I.**

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Shawn
5 Smith is assessed, and shall pay to the Commission for delivery to the United
6 States Treasury, civil penalties in the amount of \$20,000, pursuant to Section
7 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the
8 Exchange Act, 15 U.S.C. § 78(d)(3). Shawn Smith shall pay \$20,000 in civil
9 penalties, plus postjudgment interest, pursuant to a three-year payment plan, based
10 upon his sworn representations in his Statement of Financial Condition dated
11 December 8, 2003, and other documents submitted to the Commission. Shawn
12 Smith shall make quarterly installments of \$1,666, plus postjudgment interest on
13 each quarterly payment, beginning ninety (90) days after the entry of this Final
14 Judgment. Each payment shall be made by cashier’s check, certified check or
15 postal money order, payable to Securities and Exchange Commission, and mailed
16 or delivered to the Office of Financial Management, Securities and Exchange
17 Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria,
18 Virginia 22312, under cover of a letter which identifies the defendant, the name
19 and case number of this litigation, and the name of the Court. A copy of each
20 cover letter shall be simultaneously transmitted to counsel for the Commission at
21 its Los Angeles office, located at 5670 Wilshire Boulevard, 11th Floor, Los
22 Angeles, California 90036.

23 **II.**

24 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court
25 is not imposing a higher civil penalty and allowing him to pay the civil penalty
26 pursuant to a three-year payment plan based on Shawn Smith’s sworn
27 representations in his Statement of Financial Condition dated December 8, 2003,
28 and other documents and information submitted to the Commission. If at any time

1 following the entry of the Final Judgment the Commission obtains information
2 indicating that Shawn Smith's representations to the Commission concerning
3 Shawn Smith's assets, income, liabilities, or net worth were fraudulent,
4 misleading, inaccurate, or incomplete in any material respect as of the time such
5 representations were made, the Commission may, at its sole discretion and without
6 prior notice to Shawn Smith, petition the Court for an order requiring Shawn
7 Smith to pay the maximum civil penalty allowable under the law. In connection
8 with any such petition, the only issue shall be whether the financial information
9 provided by Shawn Smith was fraudulent, misleading, inaccurate, or incomplete in
10 any material respect as of the time such representations were made. In any such
11 petition, the Commission may move the Court to consider all available remedies,
12 including but not limited to ordering Shawn Smith to pay funds or assets, directing
13 the forfeiture of any assets, or sanctions for contempt of the Final Judgment. The
14 Commission may also request additional discovery. Shawn Smith may not, by
15 way of defense to such petition: (1) challenge the validity of this Consent or Final
16 Judgment; (2) contest the allegations in the complaint; (3) assert that payment of a
17 civil penalty should not be ordered; or (4) assert any defense to liability or remedy,
18 including but not limited to any statute of limitations defense.

19 **III.**

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
21 provisions of the Consent filed concurrently with this Final Judgment are
22 incorporated herein with the same force and effect as if fully set forth herein, and
23 that Shawn Smith shall comply with the Consent.

24 **IV.**

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this
26 Court shall retain jurisdiction over this action for all purposes, including to
27 determine the liability of any remaining defendants in this action, to implement,
28 enforce and carry out the terms of this Final Judgment and other orders and

1 decrees that may be entered, and to grant such other relief as this Court may deem
2 necessary and just.

3 V.

4 There being no just reason for delay, the Clerk of the Court is hereby
5 directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter
6 this Final Judgment.

7

8

9 DATED: MAY 21 2004

Susan Illston

The Honorable Susan Illston
UNITED STATES DISTRICT JUDGE

10

11

12 Submitted by:

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Jose F. Sanchez
Attorney for Plaintiff
Securities and Exchange Commission

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Approved as to form and content:

18

19

Defendant Shawn Smith

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1 **PROOF OF SERVICE**

2 I am over the age of 18 years and not a party to this action. My business address is:

3 U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire
4 Boulevard, 11th Floor, Los Angeles, California 90036-3648

5 Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

6 On May 19, 2004, I served the document entitled **[PROPOSED] FINAL**
7 **JUDGMENT OF CIVIL PENALTIES AGAINST DEFENDANT SHAWN**
8 **SMITH** upon the parties to this action addressed as stated on the attached service list:

9 **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for
10 collection and mailing today following ordinary business practices. I am readily
11 familiar with this agency's practice for collection and processing of
12 correspondence for mailing; such correspondence would be deposited with the
13 U.S. Postal Service on the same day in the ordinary course of business.

14 **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s),
15 which I personally deposited with the U.S. Postal Service. Each such
16 envelope was deposited with the U.S. Postal Service at Los Angeles,
17 California, with first class postage thereon fully prepaid.

18 **EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility
19 regularly maintained at the U.S. Postal Service for receipt of Express
20 Mail at Los Angeles, California, with Express Mail postage paid.

21 **HAND DELIVERY:** I caused to be hand delivered each such envelope to the
22 office of the addressee.

23 **FEDERAL EXPRESS BY AGREEMENT OF ALL PARTIES:** By placing
24 in sealed envelope(s) designated by Federal Express with delivery fees paid or
25 provided for, which I deposited in a facility regularly maintained by Federal
26 Express or delivered to a Federal Express courier, at Los Angeles, California.

27 **ELECTRONIC MAIL:** By transmitting the document by electronic mail to
the electronic mail address as stated on the attached service list.

FAX (BY AGREEMENT ONLY): By transmitting the document by facsimile
transmission. The transmission was reported as complete and without error.

(Federal) I declare that I am employed in the office of a member of the bar of
this Court, at whose direction the service was made. I declare under penalty of
perjury that the foregoing is true and correct.

24 Dated: May 19, 2004

Magnolia M. Marcelo
MAGNOLIA M. MARCELO

1 **SEC v. DONNE CORPORATION, et al.**
2 **United States District Court - Northern District of California**
3 **Case No. C 02-04238 SI**
 (LA-2422)

4 **SERVICE LIST**

5
6 Irving M. Einhorn, Esq.
7 Law Offices of Irving M. Einhorn
8 1710 10th Street
9 Manhattan Beach, CA 90266-6206
 Facsimile: (310) 798-5910
 Attorney for Defendant Sherman S. Smith

10
11 Donne Corporation
12 1836 Second Street
 Napa, CA 94559

13
14 Shawn Smith
15 16725 North Madison Road
16 Mead, WA 99021
 Pro Se

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04 MAY 21 PM 12:54

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 v.

14 DONNE CORPORATION,
15 SHERMAN S. SMITH, SHAWN
SMITH, and BRUCE ANDERSON,

16 Defendants.

Civil Action No. C 02-04238 SI

**[PROPOSED] FINAL JUDGMENT
OF CIVIL PENALTIES AGAINST
DEFENDANT SHAWN SMITH**

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3 V.

4 There being no just reason for delay, the Clerk of the Court is hereby
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6 this Final Judgment.

7
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9 DATED:

The Honorable Susan Illston
UNITED STATES DISTRICT JUDGE

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11
12 Submitted by:

13
14 _____
Jose F. Sanchez
15 Attorney for Plaintiff
16 Securities and Exchange Commission

17 Approved as to form and content:

18 
19 _____
20 Defendant Shawn Smith

1 **PROOF OF SERVICE**

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3 U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire
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25 provided for, which I deposited in a facility regularly maintained by Federal
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FAX (BY AGREEMENT ONLY): By transmitting the document by facsimile
transmission. The transmission was reported as complete and without error.

(Federal) I declare that I am employed in the office of a member of the bar of
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perjury that the foregoing is true and correct.

24 Dated: May 19, 2004


25 MAGNOLIA M. MARCELO

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2 **United States District Court - Northern District of California**
3 **Case No. C 02-04238 SI**
4 **(LA-2422)**

5 **SERVICE LIST**

6 Irving M. Einhorn, Esq.
7 Law Offices of Irving M. Einhorn
8 1710 10th Street
9 Manhattan Beach, CA 90266-6206
10 Facsimile: (310) 798-5910
11 *Attorney for Defendant Sherman S. Smith*

12 Donne Corporation
13 1836 Second Street
14 Napa, CA 94559

15 Shawn Smith
16 16725 North Madison Road
17 Mead, WA 99021
18 *Pro Se*

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