

3

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2002 SEP 30 A 11:36

SECURITIES AND EXCHANGE COMMISSION,
U.S. DISTRICT COURT
DISTRICT OF MASS.

Plaintiff,

v.

CHRISTOPHER P. WHALEN

Defendant.

CIVIL ACTION
NO.

02 CV 11913 JLT

FINAL JUDGMENT AS TO CHRISTOPHER P. WHALEN

Plaintiff Securities and Exchange Commission ("Commission"), having duly commenced this action by filing its Complaint ("Complaint"), and Defendant Christopher P. Whalen ("Whalen") in his Consent of Christopher P. Whalen (the "Consent"), filed simultaneously with this Final Judgment as to Christopher P. Whalen (the "Final Judgment") and incorporated herein by reference, having entered an appearance, having admitted this Court's jurisdiction over him and over the subject matter of this action, having waived a hearing, the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure; without admitting or denying any of the allegations of the Complaint, except as to jurisdiction, which he admits, having consented to the entry of this Final Judgment; having waived the filing of an Answer to the Complaint; having waived his right to appeal from this Final Judgment; having waived 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 Whalen to defend

against this action and having agreed, for these purposes, that he is not the prevailing party in this action since the parties have reached a good faith settlement; and it further appearing that this Court has jurisdiction over Whalen and the subject matter hereof, and the Court being fully advised in the premises:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Whalen, his agents, servants, employees, attorneys, successors and assigns and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], by, directly or indirectly, 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 the use of the mails, or of any facility of any national securities exchange:

- (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 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 transaction, act, practice, or course of business which operates or would operate as a fraud upon any purchaser.

II.

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

- (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,

in connection with the purchase or sale of any security.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Whalen, his agents, servants, employees, attorneys, successors and assigns and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, violating Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-13 and 12b-20 thereunder [17

C.F.R. §§ 240.13a-13 and 240.12b-20] by allowing any issuer of securities registered under Section 12 of the Exchange Act [15 U.S.C. § 78l] to fail to file, in accordance with such rules and regulations as the Commission prescribes as necessary or appropriate, such information and documents as the Commission requires to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act, or such quarterly reports as the Commission prescribes, including, but not limited to, quarterly reports on Form 10-Q as prescribed by Rule 13a-13 [17 C.F.R. § 240.13a-13], and by failing to include, in addition to the information expressly required to be included in any statement or report filed pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Whalen, his agents, servants, employees, attorneys, successors and assigns and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Sections 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by participating with an issuer of securities registered under Section 12 of the Exchange Act, directly or indirectly, in the failure to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the issuer.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Whalen, his agents, servants, employees, attorneys, successors and assigns and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly circumventing or failing to implement a system of internal accounting controls or knowingly falsifying any book, record or account of an issuer which has a class of securities registered with the Commission or which is required to file reports with the Commission.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Whalen, his agents, servants, employees, attorneys, successors and assigns and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] by, directly or indirectly, falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Whalen shall pay the sum of \$1,361 plus prejudgment interest in the amount of \$214 through August 31, 2002, or at total of \$1,575, representing Whalen's ill-gotten gains as alleged in the Complaint. Such disgorgement payment shall be (1) made within ten days of the entry of this Final Judgment; (2) made by bank

cashier's check, bank money order, certified check or United States postal money order; (3) made payable to the "Securities and Exchange Commission"; (4) mailed or hand-delivered to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia, 22312; and (5) submitted under cover of a letter that identifies Christopher P. Whalen as the defendant in this action, the name and number of this action and name of this Court, with a copy to Juan Marcel Marcelino, at the Commission's Boston District Office located at Suite 600, 73 Tremont Street, Boston, Massachusetts 02108.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Whalen shall pay a civil monetary penalty in the amount of \$15,000 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. § 78u(d)(3)]. Whalen's payment of \$15,000 shall be: (1) made within ten days of the entry of this Final Judgment; (2) made by bank cashier's check, bank money order, certified check or United States postal money order; (3) made payable to the "Securities and Exchange Commission"; (4) mailed or hand-delivered to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia, 22312; and (5) submitted under cover of a letter that identifies Christopher P. Whalen as the defendant in this action, the name and number of this action and name of this Court, with a copy to Juan Marcel Marcelino, at the Commission's Boston District Office located at Suite 600, 73 Tremont Street, Boston, Massachusetts 02108.

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Whalen shall, at the Commission's request, appear as a witness at the trial of this action, appear as a witness at a deposition in this action prior to trial and appear in any related judicial or administrative proceeding brought by the Commission related to the Complaint or any allegations therein and any continuing litigation or proceeding based thereon.

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the annexed Consent of Christopher P. Whalen be, and hereby is, incorporated by reference herein with the same force and effect as if fully set forth herein.

XI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over Whalen as a party to this matter for the purpose of implementing and enforcing the terms and conditions of this Final Judgment.

XII.

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

DONE AND ORDERED at 31st this _____ day
of Jan, 2003



UNITED STATES DISTRICT JUDGE