

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 02-80466-Civ.—Hurley/Lynch

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

v.

INVESTCO, INC., JOSEPH L. LENTS,  
FIRST INTERNATIONAL FINANCE  
CORPORATION, MICHAEL E. ZAPETIS,  
BRIAN E. BAGINSKI, ELECTRONIC  
COMMERCE CONSULTANTS, INC.,  
ANTHONY V. YONADI and SOUTHEAST  
CAPITAL PARTNERS, INC.,

Defendants.

~~FILED~~

~~AUG 08 2003~~

~~CLERK, USDC (S.D.) FLA.~~

FILED by [Signature] D.C.  
AUG 14 2003  
CLARENCE MADDOX  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - W.P.B.

**JUDGMENT OF PERMANENT INJUNCTION, DISGORGEMENT AND CIVIL  
PENALTIES AGAINST DEFENDANTS BRIAN E. BAGINSKI AND  
ELECTRONIC COMMERCE CONSULTANTS, INC.**

The Securities and Exchange Commission having filed a Complaint and Defendants Brian E. Baginski (Baginski) and Electronic Commerce Consultants, Inc. (ECC) (collectively Defendants) having entered a general appearance; consented to the Court's jurisdiction over Defendants and the subject matter of this action; consented to entry of this Judgment of Permanent Injunction, Disgorgement and Civil Penalties Against Brian E. Baginski and Electronic Commerce Consultants, Inc. (Judgment of Permanent Injunction) 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 Judgment of Permanent Injunction:

[Handwritten signature]

**I.**

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendants Baginski and ECC, their officers, agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Order of Permanent Injunction by personal service or otherwise, and each of them, are permanently restrained and enjoined from violating Section 5 of the Securities Act of 1933 (Securities Act) [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, 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:
- (b) Unless a registration statement is in effect as to a security, 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; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the

registration statement) any public proceeding of examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

**II.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendants Baginski and ECC, their officers, agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Order of Permanent Injunction by personal service or otherwise, and each of them, are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated 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:

- (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.**

**DISGORGEMENT AND CIVIL PENALTIES**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Baginski and ECC are liable for \$67,802.81, representing all ill-gotten gains received by them as a result of the conduct alleged in the Complaint; plus \$4,164.61 in prejudgment interest, for a total of \$71,967.42. In addition, Baginski and ECC will each pay civil penalties. The Court will set the specific amount of civil penalties for Baginski and ECC upon due notice and motion by the Commission and will decide the amount based on the written submissions of the parties. Defendants agree that for the purposes of determining the amount of civil penalties, the allegations in the Commission's Complaint will be taken as true and that Defendants will be precluded from arguing that they did not violate the federal securities laws in the manner set out in the Commission's Complaint. Nothing herein shall be construed to prevent and/or otherwise bar Baginski and ECC from challenging the amount of civil penalties. Nothing herein affects Baginski or ECC's: (i) testimonial obligations; or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings in which the Commission is not a party.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after ten days following entry of this Judgment of Permanent Injunction. In response to any such civil contempt motion by the Commission, the Defendants may assert any legally permissible defense. Payments under this paragraph shall be made to the Clerk of this Court, together with a cover letter identifying Baginski and ECC as defendants in this action; setting forth the title and civil

action number of this action and the name of this Court; and specifying that payment is made pursuant to this Judgment of Permanent Injunction. Defendants shall simultaneously transmit photocopies of each such payment and letter to the Commission's counsel in this action. Defendants relinquish all legal and equitable right, title, and interest in such payments, and no part of the funds shall be returned to Defendants. The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS"). These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the CRIS until further order of the Court. In accordance with the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Commission may propose a plan to distribute the Fund subject to the Court's approval.

Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment of Permanent Injunction shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the punitive effect of the civil penalty, Defendants shall not, in any Related Investor Action, benefit from any offset or reduction of any investor's claim by the amount of any Fair Fund distribution to such investor in this action that is proportionately attributable to the civil penalty paid by Defendants ("Penalty Offset"). If the court in any Related Investor

Action grants such an offset or reduction, Defendants shall, within 30 days after entry of a final order granting the offset or reduction, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment of Permanent Injunction. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendants by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

**IV.**

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

**V.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court's orders regarding the freezing of assets contained in Paragraph IV of the Court's Stipulated Order of Preliminary Injunction and Other Relief dated June 6, 2002, shall remain in full effect unless modified by this Court.

**VI.**

**IT IS FURTHER ORDERED** that the Commission is expressly authorized to engage in continued discovery regarding any unresolved issue in the case with respect to Baginski, ECC, or any other defendant, which shall include, but not be limited to, discovery for purposes of determining civil penalties.


**VII.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that this Court shall retain jurisdiction of this matter for all purposes, including, but not limited to enforcement of the Judgment of Permanent Injunction.

**VIII.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that there being no just reason for delay, the Clerk is directed to enter this Judgment of Permanent Injunction.

**IT IS SO ORDERED.**

  
HONORABLE DANIEL T.K. HURLEY  
UNITED STATES DISTRICT COURT JUDGE

Dated: August 14, 2003

cc. 2/ counsel