

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
(Tampa Division)

)	
SECURITIES AND EXCHANGE)	CASE NO.
COMMISSION,)	8:03-CV-321-T-27 TBM
)	
Plaintiff,)	
)	
v.)	
)	
ROBERT A. MAGNAN, INVESTMENT)	
RECOVERY NETWORK, INC., JOHN)	
DELPRINCE, and OLD DOMINION)	
SECURITIES, INC.,)	
)	
Defendants.)	
)	

**JUDGMENT OF PERMANENT INJUNCTION AND OTHER
RELIEF AS TO DEFENDANT ROBERT A. MAGNAN**

Plaintiff Securities and Exchange Commission (“Commission”) commenced this action by filing its Complaint against, among others, Defendant Robert A. Magnan (“Magnan”). In its Complaint, the Commission sought a permanent injunction to prohibit Magnan from violating Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 (“Securities Act”), and Sections 10(b) and 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), and Rule 10b-5 thereunder. The Commission also sought a penny stock bar, disgorgement and civil penalties against Magnan.

Magnan, by the Consent affixed hereto, without admitting or denying any of the allegations in the Commission's Complaint, except as to the jurisdiction of the Court over him and the subject matter of the Complaint, has agreed to the entry of this Judgment of Permanent Injunction and Other Relief (“Judgment”), waived findings of fact and conclusions of law, and waived any right to appeal from this Judgment. This Court

having accepted the Consent and this Court having jurisdiction over Magnan and the subject matter of the Complaint, orders as follows.

I. PERMANENT INJUNCTIVE RELIEF

**A. VIOLATION OF SECTIONS 5(a)
AND 5(c) OF THE SECURITIES ACT**

IT IS ORDERED AND ADJUDGED that Magnan, his officers, directors, agents, servants, employees, representatives, and all persons in active concert or participation with him, and each of them, directly or indirectly, who receive actual notice of this Judgment, by personal service or otherwise, are permanently restrained and enjoined from, directly or indirectly:

- (a) making use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell any security, in the form of units, common stock, warrants or any other security, through the use or medium of any prospectus or otherwise, unless and until a registration statement is in effect with the Commission as to such security;
- (b) carrying or causing to be carried through the mails or in interstate commerce, by means or instruments of transportation, any security, in the form of units, common stock, warrants or any other security, for the purpose of sale or delivery after sale, unless and until a registration statement is in effect with the Commission as to such security; 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 any security, in the form of units, common stock, warrants or any other security, through the use or medium of any prospectus or otherwise, unless and until a

registration statement is filed with the Commission as to such security, or while a registration statement filed with the Commission as to such security is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

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

B. VIOLATION OF SECTION 17(a) OF THE SECURITIES ACT

IT IS FURTHER ORDERED AND ADJUDGED that Magnan, his officers, directors, agents, servants, employees, representatives, and all persons in active concert or participation with him, and each of them, directly or indirectly, who receive actual notice of this Judgment, by personal service or otherwise, are permanently restrained and enjoined from, directly or indirectly, singly or in concert, as aiders and abettors or otherwise, 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 use of the mails:

- (a) employing any device, scheme or artifice to defraud:
- (b) obtaining money or property by means of any untrue statement of material fact or omission to state any material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading; or
- (c) engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon purchasers or prospective purchasers of any such security.

in violation of Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(1), 77q(a)(2) and 77q(a)(3).

**C. VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT
AND RULE 10b-5 THEREUNDER**

IT IS FURTHER ORDERED AND ADJUDGED that Magnan, his officers, directors, agents, servants, employees, representatives, and all persons in active concert or participation with him, and each of them, directly or indirectly, who receive actual notice of this Judgment, by personal service or otherwise, are permanently restrained and enjoined from, directly or indirectly, singly or in concert, as aiders and abettors or otherwise, 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:

- (a) employing any device, scheme or artifice to defraud;
- (b) making any untrue statements of 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
- (c) 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, 17 C.F.R. § 240.10b-5, thereunder.

D. VIOLATION OF SECTION 15(b)(6)(B)(i) OF THE EXCHANGE ACT

IT IS FURTHER ORDERED AND ADJUDGED that Magnan, his officers, directors, agents, servants, employees, representatives, and all persons in active concert or participation with him, and each of them, directly or indirectly, who receive actual notice of

this Judgment, by personal service or otherwise, are permanently restrained and enjoined from, directly or indirectly, singly or in concert, as aiders and abettors or otherwise, becoming associated with or associating with a broker or dealer without the consent of the Commission in violation of Section 15(b)(6)(B)(i) of the Exchange Act, 15 U.S.C. § 78o(b)(6)(B)(i).

II. PENNY STOCK BAR

IT IS FURTHER ORDERED AND ADJUDGED that pursuant to Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), Magnan is barred from participating in an offering of a penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock; or inducing or attempting to induce the purchase or sale of any penny stock.

III. DISGORGEMENT AND CIVIL PENALTIES

IT IS FURTHER ORDERED AND ADJUDGED that Magnan pay \$125,000 in disgorgement. The Court waives payment of an additional \$67,500 in disgorgement, plus prejudgment interest on the total disgorgement, and also is not ordering Magnan to pay civil penalties, based on (i) Magnan's sworn representations in his Statement of Financial Condition dated July 20, 2004 and other documents submitted to the Commission, and (ii) his agreement to pay \$125,000 within one year of entry of this Judgment as follows: \$25,000 shall be due and payable within seven days of entry of the Judgment; an additional \$33,333 shall be due and payable within four months of entry of the Judgment; an additional \$33,333 shall be due and payable within eight months of entry of the Judgment; and the final \$33,334 shall be due and payable within one year of entry of the Judgment. All

payments shall be: (a) made by United States postal money order, certified check, bank cashier's check or bank money order; (b) made payable to the Registry of the Court of the United States District Court for the Middle District of Florida under cover of a letter that identifies the name and number of this action and includes a copy of this Judgment, with a copy of said cover letter and money order or check to Robert K. Levenson, Esq., Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, Florida, 33131.

If Magnan fails to make any single payment, or part of any single payment, within the precise time specified for such payment as set forth in the preceding paragraph, the installment terms of that paragraph shall no longer apply, and the full amount of Magnan's remaining unpaid disgorgement and prejudgment interest shall be immediately due, owing and payable, plus post-judgment interest on such remaining unpaid amount calculated at the rate of interest set forth in Rule 600(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.600(b), from the date of entry of the Judgment until such amount is paid in full.

The Clerk of the Court shall deposit the aforementioned payments into an interest-bearing account with the Court Registry Investment System ("CRIS"). The disgorgement, together with any interest and income earned thereon, shall be held by the CRIS until further order of the Court. In accordance with 28 U.S.C. § 1914 and 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 disgorgement payments a fee equal to ten percent of the income earned. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Commission may, after all

of the payments have been made, propose a plan to distribute the disgorgement subject to the Court's approval.

The determination not to impose \$67,500 in disgorgement plus prejudgment interest and a civil penalty is contingent upon the accuracy and completeness of Magnan's Statement of Financial Condition as well as his payment of the amounts set forth above. If at any time following the entry of the Judgment the Commission obtains information that Magnan's representations to the Commission in the Statement of Financial Condition 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, in its sole discretion and without prior notice to Magnan, petition the Court for an order requiring Magnan to pay disgorgement of \$192,500, prejudgment interest, and a civil penalty of \$110,000. In connection with any such petition, the only issue shall be whether the financial information Magnan provided was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time the representations were made. In any such petition, the Commission may move the Court to consider all available remedies, including, but not limited to: ordering Magnan to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of the Judgment. The Commission may also request additional discovery. Magnan may not, by way of defense to such petition: (1) challenge the validity of the Consent or the Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of a civil penalty should not be ordered; (4) contest the imposition of disgorgement or the maximum civil penalty allowable under the law; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

IV. INCORPORATION OF CONSENT

IT IS FURTHER ORDERED AND ADJUDGED that Magnan shall comply with the provisions of the Consent, and that the Consent is incorporated by reference into this Judgment as if fully set forth herein.


V. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that this Court will retain jurisdiction over this matter and over Magnan in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

VI. RULE 54(b) CERTIFICATION

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

DONE AND ORDERED this 4th day of OCTOBER, 2004, Tampa, Florida.



HONORABLE JAMES WHITTEMORE
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record