

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

GREGORY J. MISFELDT, GREGORY L. TYRER,
JODI L. KNUEPPEL and MARK R. SONDAY,

Defendants.

FILED CV
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ AUG 26 2004 ★

P.M. _____
TIME A.M. _____

03 Civ. 2666

**FINAL JUDGMENT
OF PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF
BY CONSENT AGAINST
MARK R. SONDAY**

**JOHNSON, J.
MANN, M.J.**

Plaintiff Securities and Exchange Commission (the "Commission") having commenced this action by filing a Complaint ("Complaint") on May 28, 2003 against Defendant Mark R. Sunday ("Sunday"), for injunctive and other equitable relief charging Sunday with violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, and Sunday having executed the Consent of Defendant Mark R. Sunday to Final Judgment of Permanent Injunctive and Other Equitable Relief ("Consent"), dated March 3, 2003, annexed hereto and incorporated herein, having admitted to the service of the Summons and Complaint on him, having admitted to the in personam jurisdiction of this Court over him and over the subject matter of this action, having waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and without admitting or denying the allegations contained in the Commission's Complaint, except as to jurisdiction, which are admitted, and having consented to the entry of this Final Judgment of Permanent Injunction and Other Equitable Relief By Consent Against Mark R. Sunday ("Final Judgment"); without further notice:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Sondag be and hereby is permanently enjoined and restrained, directly or indirectly, singly or in concert, 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, from:

- (A) employing any device, scheme, or artifice to defraud;
- (B) making any untrue statement of a 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; and
- (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 promulgated thereunder, 17 C.F.R. § 240.10b-5.

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Sondag shall pay \$10,000 representing disgorgement of \$8,800 plus partial prejudgment interest thereon of \$1,200. Restitution payments made in connection with *United States v. Mark R. Sondag*, 03 Cr. 536 shall be credited against the disgorgement and prejudgment interest to be paid by Sondag pursuant to this paragraph.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, this Final Judgment shall be binding upon Sondag, his agents, servants, employees and attorneys, and upon those persons in active concert or

participation with him who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the provisions of the annexed Consent be, and the same hereby are, incorporated in this Final Judgment with the same force and effect as if fully set forth herein.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, implementing and enforcing the terms and conditions of this Final Judgment.

VI.

The Court expressly determines that there is no just reason for delay in the entry of this Final Judgment. The Clerk of the Court is hereby directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure to enter this Final Judgment forthwith.

**CONSENT OF DEFENDANT MARK R. SONDAY TO FINAL JUDGMENT
OF PERMANENT INJUNCTIVE AND OTHER EQUITABLE RELIEF**

1. Defendant Mark R. Sonday ("Sonday"), upon the advice of counsel and being fully apprised of his rights, having read and understood the terms of the annexed Final Judgment Of Permanent Injunction and Other Equitable Relief by Consent Against Defendant Mark R. Sonday ("Final Judgment"), appears and admits to the in personam and subject matter jurisdiction of this Court, waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure and, without further notice, trial or argument, and without admitting or denying the allegations against him contained in the Complaint of Plaintiff Securities and Exchange Commission ("Commission"), filed on May 28, 2003, except as to jurisdiction, which are admitted, hereby consents to the entry of the annexed Final Judgment.

2. Sonday agrees that this Consent of Defendant Mark R. Sonday to Final Judgment of Permanent Injunctive and Other Equitable Relief (the "Consent") shall be incorporated by reference in and made part of the Final Judgment to be presented to the Court for signature, filing and entry contemporaneously herewith.

3. Sonday waives any right he may have to appeal from the Final Judgment.

4. Sonday agrees that he 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 he may have based thereon.

5. Sonday acknowledges that any willful violation of any of the terms of the Final Judgment may place him in contempt of this Court and subject him to civil or criminal sanctions, or both.

6. Sonday acknowledges that he enters into this Consent voluntarily, and agrees that this proceeding, and his Consent to the entry of the Final Judgment, are for the purposes of

resolving this civil action only, and that no tender, offer, promise, threat or representation of any kind has been made by the Commission or any member, officer, attorney, agent or representative thereof, to induce him to enter into this Consent.

7. Sonday acknowledges further that no promise or representation has been made by the Commission or its staff with regard to: (a) any criminal liability arising from the facts underlying this action; or (b) immunity from any such criminal liability.

8. Sonday acknowledges that he has been informed and understands that the Commission, at its sole and exclusive discretion, may refer, or grant access to, this matter or any information or evidence gathered in connection therewith or derived therefrom, to any person or entity having appropriate administrative, civil, or criminal jurisdiction, if the Commission has not already done so.

9. Sonday acknowledges that, in conformity with the provisions of 17 C.F.R. § 202.5(f), his Consent and the entry of the annexed Final Judgment do not resolve, affect or preclude any other proceeding that has been or may be brought against him or anyone else. Among other things, Sonday waives any right he may have to assert that, under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, the relief sought or consented to in this civil action, including the seeking or imposition of any remedy or civil penalty herein, bars any criminal action, or that any criminal action bars the relief consented to in this action.

10. Sonday 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. Sondag 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 allegation in the complaint or order for proceedings," 17 C.F.R. § 202.5(e). In compliance with this policy, Sondag agrees 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. If Sondag 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 Sondag's: (a) testimonial obligations; or (b) right to take legal or factual positions in litigation in which the Commission is not a party.

12. Sondag undertakes to disclose truthfully to the Commission and its representatives all information concerning his own activities and the activities of others on any matters about which the Commission may inquire, and he undertakes further to attend all meetings at which his presence is reasonably requested with respect to the matters about which the Commission may inquire and to appear and testify truthfully at any trial, hearing or court or administrative proceeding with respect to any matters about which the Commission may request his testimony. Sondag undertakes further to provide to the Commission any documents, records, or other tangible evidence in his possession, custody, or control, relating to the matters about which the staff may inquire. Sondag agrees that he will not assert the Fifth Amendment as a bar to providing any of the information required hereunder.

13. Sondag hereby waives any rights under the Equal Access to Justice Act or any other

provision of law to pursue reimbursement of attorney's fees or other fees, expenses or costs expended by Sondag to defend against this action. For these purposes, Sondag agrees that Sondag is not the prevailing party in this action since the parties have reached a good faith settlement.

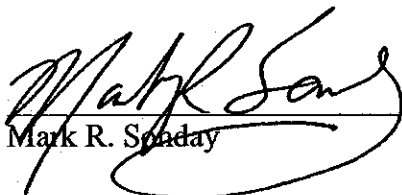
14. Sondag acknowledges that this Consent embodies the entire understanding of the parties concerning the settlement of this action.

15. Sondag agrees that this Court shall retain jurisdiction of this matter for purposes of implementing and enforcing the terms and conditions of the Final Judgment and for all other purposes.

16. Sondag hereby consents and agrees that the annexed Final Judgment may be presented by the Commission to the Court for signature and entry without further notice or delay.

17. Sondag agrees to execute and provide to the Commission a written declaration pursuant to 28 U.S.C. § 1746 acknowledging his receipt of the Final Judgment no later than ten (10) business days after a copy of the Final Judgment has been forwarded to him.

Dated: Madison, Wisconsin
~~February~~ 3, 2003
March


Mark R. Sondag

STATE OF WISCONSIN)
) ss.:
COUNTY OF Dane)

The foregoing instrument was acknowledged before me on this 3 day of March, 2003, by Mark R. Sondag, who is personally known to me or has produced a driver's license as identification, and who did take an oath.





Notary Public

State of Wisconsin
Commission No. no commission number
My commission expires on 10-23-05.

SO ORDERED:

Brooklyn, New York
Dec. 3, 2003

UNITED STATES DISTRICT JUDGE