

00075

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

IRVING PAUL DAVID,

Defendant.

03 Civ. 6305 (KMW)

CONSENT JUDGMENT
OF PERMANENT
INJUNCTION
AGAINST DEFENDANT
IRVING PAUL DAVID

Plaintiff Securities and Exchange Commission having filed a Complaint and Defendant Irving Paul David ("David") having entered a general appearance; consented to the Court's jurisdiction over him and the subject matter of this action; consented to entry of this Consent Judgment of Permanent Injunction ("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 Permanent Injunction,

NOW THEREFORE:

I.

IT IS ORDERED that David, his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the Permanent Injunction by personal service or otherwise are permanently restrained and enjoined from stealing, unlawfully abstracting, unlawfully and willfully converting to his own use or to the use of

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another, or embezzling any of the moneys, funds, securities, credits, property, or assets of any registered investment company, in violation of Section 37 of the Investment Company Act of 1940 ("Investment Company Act"), 15 U.S.C. § 80a-36;

II.

IT IS FURTHER ORDERED, pursuant to Section 34(b) of the Investment Company Act, 15 U.S.C. § 80a-33(b), that David, his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the Permanent Injunction by personal service or otherwise are permanently restrained and enjoined from making any untrue statement of a material fact in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act;

III.

IT IS FURTHER ORDERED that David, his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the Permanent Injunction by personal service or otherwise are permanently restrained and enjoined from aiding or abetting the making of any untrue statement of a material fact in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d);

IV.

IT IS FURTHER ORDERED, pursuant to Section 36(a) of the Investment Company Act, 15 U.S.C. § 80a-35(a), that David is permanently restrained and enjoined from serving as an

officer, director, member of any advisory board, investment adviser, or depositor of any registered investment company, or as principal underwriter of any open-end registered investment company;

V.

IT IS FURTHER ORDERED that David shall pay disgorgement of ill-gotten gains, if any, including prejudgment interest thereon, and/or civil penalties, if any, if so ordered by the Court pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)] and Section 42(e) of the Investment Company Act [15 U.S.C. § 80a-41(e)], in the amount, and upon such terms, as may be determined by the Court at a hearing to be held, upon motion of the Commission. David understands and agrees that at such hearing he will be precluded from arguing that he did not violate the federal securities laws in the manner described in the Complaint herein. David further understands and agrees that, solely for the purposes of such hearing, the allegations of the Complaint shall be accepted as and deemed true by the Court, and that at the hearing he may not challenge the validity of his Consent or the Permanent Injunction. David agrees that the Court may determine whether to impose disgorgement, if any, and/or civil penalties, if any, and the amounts thereof, on the basis of affidavits, declarations, deposition excerpts and exhibits. In connection with the determination of the amount of disgorgement and civil penalties, if any, the Commission may request discovery and David shall provide such discovery, including, but not limited to, his testimony at deposition, hearing, and/or trial upon request by the Commission.

VI.

IT IS FURTHER ORDERED that the Consent of Irving Paul David is incorporated herein with the same force and effect as if fully set forth herein, and that David shall comply with all of the undertakings and agreements set forth therein.

VII.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes of enforcing the terms of the Permanent Injunction.

CONSENT OF DEFENDANT IRVING PAUL DAVID

1. Defendant Irving Paul David acknowledges having been served with the Complaint in this action, enters a general appearance, and admits the Court's jurisdiction over David and over the subject matter of this action.

2. Without admitting or denying the allegations of the Complaint (except as to personal and subject matter jurisdiction, which David admits), David hereby consents to the entry of the Permanent Injunction in the form attached hereto and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins David from stealing, unlawfully abstracting, unlawfully and willfully converting to his own use or to the use of another, or embezzling any of the moneys, funds, securities, credits, property, or assets of any registered investment company in violation of Section 37 of the Investment Company Act of 1940 ("Investment Company Act"), 15 U.S.C. § 80a-36;
- (b) permanently restrains and enjoins David, pursuant to Section 34(b) of the Investment Company Act, 15 U.S.C. § 80a-33(b), from making any untrue statement of a material fact in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act;
- (c) permanently restrains and enjoins David from aiding or abetting the making of any untrue statement of a material fact in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d); and

- (d) permanently restrains and enjoins David, pursuant to Section 36(a) of the Investment Company Act, 15 U.S.C. § 80a-35(a), from serving as an officer, director, member of any advisory board, investment adviser, or depositor of any registered investment company, or as principal underwriter of any open-end registered investment company.

3. David acknowledges and agrees that, if so ordered by the Court, he shall pay disgorgement of ill-gotten gains, if any, prejudgment interest thereon, and civil penalties, if any, pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)] and Section 42(e) of the Investment Company Act [15 U.S.C. § 80a-41(e)]. David agrees that the amount of disgorgement and civil penalties, if any, will be determined by the Court at a hearing to be held upon motion of the Commission. David understands and agrees that at such hearing he will be precluded from arguing that he did not violate the federal securities laws in the manner described in the Complaint. David further understands and agrees that, solely for the purposes of such hearing, the allegations of the Complaint shall be accepted as and deemed true by the Court, and that at the hearing he may not challenge the validity of the Permanent Injunction. David agrees that the Court may determine whether to impose disgorgement, if any, and/or civil penalties, if any, and the amount thereof, on the basis of affidavits, declarations, deposition excerpts and exhibits. In connection with the determinations of the amount of disgorgement and civil penalties, if any, the Commission may request discovery and David shall provide such discovery, including, but not limited to, his testimony at deposition, hearing, and/or trial upon request by the Commission.

4. David waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.
5. David waives the right, if any, to appeal from the entry of the Permanent Injunction.
6. David enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce David to enter into this Consent.
7. David agrees that this Consent shall be incorporated into the annexed Permanent Injunction with the same force and effect as if fully set forth therein
8. David will not oppose the enforcement of the Permanent Injunction 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 based thereon.
9. David waives service of the Permanent Injunction and agrees that its entry by the Court and filing with the Clerk of the Court will constitute notice to David of its terms and conditions. David further agrees to provide counsel for the Commission, within thirty days after the Permanent Injunction is filed with the Clerk of the Court, with an affidavit or declaration stating that David has received and read a copy of the Permanent Injunction.
10. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, David (a) will provide interviews at the request of the Commission staff; (b) will accept service by mail or facsimile transmission of subpoenas for documents or testimony at

depositions, hearings, or trials; (c) waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure or applicable local rules for such subpoenas; and (d) appoints his undersigned counsel as agent to receive such service.

11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against David in this civil proceeding. David acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. David waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. David further 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.

12. David 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. In compliance with this policy, David agrees: (i) 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; and (ii) that upon the filing of this Consent, David hereby withdraws any papers filed in this action to the extent that they deny

any allegation in the Complaint. If David breaches this agreement, the Commission may petition the Court to vacate the Permanent Injunction and restore this action to its active docket. Nothing in this paragraph affects David's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation in which the Commission is not a party.

13. David hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provisions of law to pursue reimbursement of attorney's fees or other fees, expenses, or costs expended by David to defend against this action. For these purposes, David agrees that David is not the prevailing party in this action since the parties have reached a good faith settlement.

14. David agrees that the Commission may present the Permanent Injunction to the Court for signature and entry without further notice.

15. David agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Permanent Injunction.

Dated Oct 8, 2003



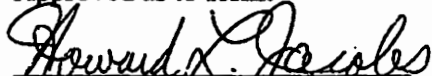
IRVING PAUL DAVID

On Oct 8, 2003, Irving Paul David, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.



Notary Public
Commission expires:

Approved as to form:


Howard Jacobs, Esq.
401 Broadway, Suite 1902
New York, New York 10013

HOWARD JACOBS
Notary Public, State of New York
No. 4608926
Qualified in New York County
Certificate Filed in New York County
Commission Expires 6/22/05

Attorney for Defendant Irving Paul David

SO ORDERED:

Dated: Oct 9, 2003
New York, New York



UNITED STATES DISTRICT JUDGE *mu*