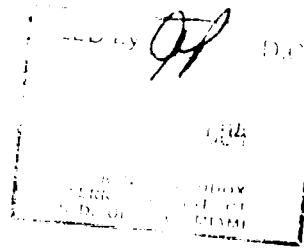


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-22524-CIV-JORDAN/Brown



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

EDUARDO MASFERRER,
JUAN CARLOS BERNACE, and
JOHN M.R. JACOBS,

Defendants.

**FINAL JUDGMENT OF PERMANENT INJUNCTION AND
OTHER RELIEF AS TO DEFENDANT JUAN CARLOS BERNACE**

Plaintiff Securities and Exchange Commission ("SEC" or "Commission") commenced this action by filing its Complaint against, among others, Defendant Juan Carlos Bernace ("Defendant"). In its Complaint, the Commission sought, among other relief, a permanent injunction to prohibit violations by the Defendant 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]; Section 13(a) of the Exchange Act [15 U.S.C. § 78m] and Rules 13a-1, 13a-13 and 12b-20 [17 C.F.R. § 240.13a-1, 240.13a-13 and 240.12b-20]; Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m]; and Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m] and Rule 13b2-2 [17 C.F.R. 240.13b2-1]; an order setting disgorgement and prejudgment interest thereon, and imposition of a civil money penalty against Defendant pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act.

Defendant, by the Consent affixed hereto, without admitting or denying any of the allegations in the Commission's Complaint or any other paper filed herein, except as to the

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jurisdiction of this Court, has agreed to the entry of this Final Judgment of Permanent Injunction and Other Relief ("Final Judgment"). This Court having accepted such Consent and this Court having jurisdiction over the Defendant and the subject matter hereof, and the Court being fully advised in the premises,

I.

FRAUD IN VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 THEREUNDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant, his officers, 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 Final Judgment, by personal service or otherwise, be and they hereby are, permanently restrained and enjoined from, knowingly, willfully, or recklessly, 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.

II.

AIDING AND ABETTING

**VIOLATION OF SECTION 13(a) OF THE EXCHANGE ACT
AND RULES 12b-20, 13A-1 AND 13a-13, THEREUNDER**

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant, his officers, 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 Final Judgment, by personal service or otherwise, be and they hereby are, permanently restrained and enjoined from, aiding and abetting any violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m], and Rules 13a-1, 13a-13 and 12b-20 [17 C.F.R. § 240.13a-1, 240.13a-13 and 240.12b-20], by knowingly providing substantial assistance to an issuer that fails to file reports with the SEC that accurately reflect its financial performance.

III.

AIDING AND ABETTING

**VIOLATION OF SECTIONS 13(b)(2)(A) AND
13(b)(2)(B) OF THE EXCHANGE ACT**

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant, his officers, agents, servants, employees, representatives, and all persons in active concert or participation with him, and each of them, who receive notice of this Final Judgment, by personal service or otherwise, be and they hereby are, permanently restrained and enjoined from aiding and abetting any violation of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)], by knowingly providing substantial assistance to an issuer that fails to:

- (a) make and keep books, records, and accounts, which, in reasonable detail,

accurately and fairly reflect the transactions and dispositions of the assets of any issuer; and

- (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:
 - (i) transactions are executed in accordance with management's general or specific authorization;
 - (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
 - (iii) access to assets is permitted only in accordance with management's general or specific authorization; and
 - (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

IV.

FRAUD IN VIOLATION OF SECTION 13(b)(2) OF THE EXCHANGE ACT AND RULE 13b2-2 THEREUNDER

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant, his officers, agents, servants, employees, attorneys in fact, and all persons in active concert or participation with them, and each of them, who receive notice of this Final Judgment, by personal service or otherwise, be and they hereby are, permanently restrained and enjoined from, directly or indirectly: (a) making or causing to be made materially false or misleading statements; or (b) omitting to state, or causing another person to omit to state, any material facts necessary in order to make the statements made, in light of the circumstances under which such

statements were made, not misleading to an accountant in connection with: (1) an audit or examination of financial statements required to be made pursuant to Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)]; or (2) the preparation or filing of any document or report required to be filed with the Commission, in violation of Rule 13b2-2 [17 C.F.R. § 240.13b2-2], promulgated under Section 13(b)(2) of the Exchange Act.

V.

OFFICER AND DIRECTOR BAR

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), Defendant is hereby permanently barred from acting as an officer or director of any issuer that has a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 781, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

VI.

DISGORGEMENT

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant is liable to disgorge \$67,000 representing his alleged ill-gotten profits or proceeds resulting from the acts and/or conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$26,452.40 for a total of \$93,452.40.

The Court is crediting Defendant for payments made to the Office of the Comptroller of the Currency and/or the Federal Deposit Insurance Corporation in parallel proceedings and is waiving payment of the disgorgement and prejudgment interest thereon. The waiver of the payment of disgorgement and prejudgment interest thereon is contingent upon Defendant fully complying with the terms of his settlement with the Office of the Comptroller of Currency. If at any time following

the entry of this Final Judgment, Defendant fails to comply with the terms of his settlement with the OCC, the Commission at its sole discretion, and without prior notice to Defendant, may petition the Court for an order requiring the payment of disgorgement, prejudgment interest and post judgment interest.

Defendant may not, by way of defense to such petition: (1) challenge the validity of this Consent or the Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment interest set forth in the Judgment or post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

VII.

CIVIL PENALTY

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty of \$110,000, pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3). Defendant shall make this payment within ten (10) business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying JUAN CARLOS BERNACE as a defendant 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 Final

Judgment. Defendant shall simultaneously transmit photocopies of such payment and letter to: Kerry A. Zinn, Senior Trial Counsel, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131.

VIII.

INCORPORATION OF CONSENT

IT IS HEREBY FURTHER ORDERED that Defendant shall comply with the provisions of the Consent attached hereto, and that such Consent is incorporated herein by reference as if fully set forth herein.

IX.

RETENTION OF JURISDICTION


IT IS FURTHER HEREBY ORDERED that this Court will retain jurisdiction over this matter and the Defendant 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.

X.

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 at 11:15 o'clock a.m. this 6th day of April, 2004 at
Miami, Florida.


HONORABLE ADALBERTO JORDAN
UNITED STATES DISTRICT JUDGE

Copies to:

Kerry A. Zinn, Esq.
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, FL 33131

Bernardo Burstein, Esq.
444 Brickell Ave., Suite 804
Miami, FL 33131-2407
Counsel for Defendant Juan Carlos Bernace