

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No.: 03-62039-CIV-ALTONAGA/Bandstra

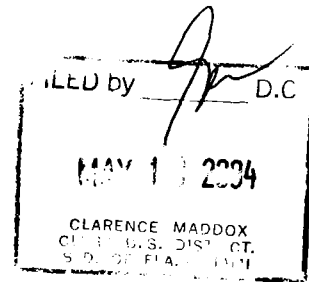
SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

ENRICO CORTESANO,

Defendant.



**FINAL DEFAULT JUDGMENT OF PERMANENT INJUNCTION AND OTHER
RELIEF AGAINST DEFENDANT, ENRICO CORTESANO**

THIS CAUSE came before the Court upon the May 12, 2004 Order Granting Plaintiff, Securities and Exchange Commission's (hereinafter "SEC") Motion for Entry of a Default Judgment of Permanent Injunction and Other Relief Against Defendant, Enrico Cortesano.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has personal jurisdiction over Cortesano and the subject matter herein. Notice of this action was duly served upon Cortesano pursuant to Fed. R. Civ. P. 4(e). Pursuant to Fed. R. Civ. P. 4(1), proof of service on Cortesano was filed with the Court on November 21, 2003 (D.E. 3). On December 10, 2003, the Clerk of Court entered a Default against Cortesano (D.E. 5).

As of the date of this Judgment, Cortesano has failed to answer or otherwise plead to the SEC's Complaint as required by the Federal Rules of Civil Procedure. By virtue of his failure to answer or otherwise plead, Cortesano is deemed to have admitted the well-pleaded allegations of the

Complaint. Accordingly, the Court finds that Cortesano committed the violations alleged therein, which the Court finds are sufficient to justify permanent injunctive relief because there is a reasonable likelihood that the wrongful activity will be repeated. *See SEC v. Scherm*, 854 F. Supp. 900, 907 (N.D. Ga. 1993).

Cortesano is not an infant or incompetent person and has no general guardian, committee, conservator or other such persons appearing on his behalf. Cortesano is not in the military service.

Violation of Section 5(c) of the Securities Act

It is **ORDERED AND ADJUDGED** that Cortesano, 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, 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 SEC 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 SEC as to such security; and/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) and any public proceeding or examination under Section 8 of the Securities Act, 14 U.S.C. § 77h, in violation of Section 5(c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77e(c).

Fraud in Violation of Section 17(a) of the Securities Act

It is **ORDERED AND ADJUDGED** that Cortesano, his officers, agents, servants, employees, attorneys in fact, and all persons in active concert or participation with him, and each of them, who receive notice of this Judgment, by personal service or otherwise, are permanently restrained and enjoined from, directly or indirectly in the offer or sale of any securities, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails:

- (a) knowingly or recklessly employing any device, scheme or artifice to defraud;
- (b) obtaining money or property by means of any untrue statement of a material fact or omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or
- (c) engaging in any practice, transaction, or course of business that operates or would

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operate as a fraud or deceit upon the purchase of any security, in violation of Sections 17(a)(1) and 17(a)(3) of the Securities Act, 14 U.S.C. §§ 77q(a)(1) and 77q(a)(3).

Order Pursuant to Section 20(c) of the Securities Act

It is **ORDERED AND ADJUDGED** that Cortesano shall comply with the SEC's September 28, 2001 Order Instituting Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order.

Civil Penalty

It is **ORDERED AND ADJUDGED** that Cortesano shall pay a civil money penalty pursuant to Section 20(d) of the Securities Act, 17 U.S.C. § 77t(d), based upon conduct constituting fraud and deliberate and reckless disregard of regulatory requirements as alleged in the Complaint. Cortesano is hereby ordered to pay a civil money penalty in the total amount of **\$150,000** under 15 U.S.C. § 77t(d)(2)(B), which provides that "the amount of penalty *for each violation* [of the Securities Act, in this case violations of Sections 5(c), 17(a)(1) and 17(a)(3)] shall not exceed the greater of (i) ***\$50,000 for a natural person . . . if the violation . . . involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.***" (emphasis added). This second tier penalty under the statute is warranted as to Cortesano because he acted with scienter, although, fortunately, there were no investor losses in this case. Cortesano is also liable for the applicable inflation adjustment on the civil monetary penalty pursuant to 17 C.F.R. Pt. 201, Subpt. E, Tbl. II.

Cortesano shall pay the civil penalty ordered within **thirty (30) days** of the entry of this Final Judgment by sending a U.S. postal money order, certified check, bank cashier's check or bank money

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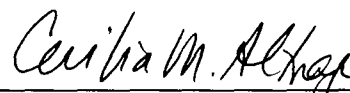
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order payable to the U.S. Securities and Exchange Commission, and transmitted to the Comptroller, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549, under cover of a letter that identifies ENRICO CORTESANO as the payor, the caption and case number of this action and the name of this Court. Copies of such check and accompanying cover letter shall be simultaneously transmitted to Alise M. Johnson, Senior Trial Counsel, U.S. Securities and Exchange Commission, Southeast Regional Office, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131.

Retention of Jurisdiction

It is **ORDERED AND ADJUDGED** that this Court will retain jurisdiction over this matter and Cortesano in order to implement and carry out the terms of its Orders and/or to entertain any appropriate 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.

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida, this 13 day of May, 2004.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

Copies provided to:

- (1) Magistrate Judge Ted E. Bandstra
- (2) Teresa J. Verges, Esq. (Counsel for Securities and Exchange Commission)
Fax: (305) 536-4146
- (3) Alise M. Johnson, Esq. (Counsel for Securities and Exchange Commission)
Fax: (305) 536-4154
- (4) Enrico Cortesano (Defendant)

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1227 Tyler Street
Hollywood, FL 33019