

**ORIGINAL**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SEP 21 2004

DAVID J. GONZALEZ, CLERK  
BY  
DEPUTY

**SECURITIES AND EXCHANGE COMMISSION,**

Plaintiff,

v.

**1) DIGITAL EXCHANGE SYSTEMS, INC.,  
2) ROSARIO CONIGLIO, and  
3) STEVEN SCHMIDT,**

Defendants.

Civil Action No. **4:04cv324**

**AGREED JUDGMENT AS TO ROSARIO CONIGLIO**

Plaintiff Securities and Exchange Commission filed its Complaint against Defendant Rosario Coniglio ("Coniglio" or "Defendant"), seeking a civil penalty of \$75,000 for Coniglio's aiding and abetting violations by Fleming Companies of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)] and Sections 13(a) and 13(b)(2)(A) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A)] and Rules 12b-20, 13a-1, 13a-13 and 13b2-1 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13 and 240.13b2-1].

Coniglio entered a general appearance through his Consent, attached to this Agreed Judgment, admitting the Court's jurisdiction over the subject and parties. Without admitting or denying the Commission's non-jurisdictional allegations, Coniglio has consented to the entry of this Agreed Judgment.

The Court accepts Coniglio's Consent and has jurisdiction over the parties and subject matter of this case. Therefore, the Court **ORDERS:**

**I.**

Defendant Coniglio shall pay a \$75,000 civil penalty under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall pay this amount within ten business days. Payment shall be made by U.S. Postal money order, certified check, bank cashier's check, or bank money order, made payable to the Securities and Exchange Commission, and be hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312, under cover of a letter that identifies Defendant Coniglio, the name and case number of this action, the name of this Court, and the Commission's case number (FW-02541). A copy of the cover letter and of the form of payment shall be simultaneously transmitted to Timothy P. Davis, Trial Counsel, Securities and Exchange Commission, Burnett Plaza, Suite 1900, 801 Cherry Street, Unit 18, Fort Worth, TX 76102-6882.

**II.**

The attached Consent is incorporated herein by reference with the same force and effect as if fully set forth herein.

**III.**

This Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Agreed Judgment.

**IV.**

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 Agreed Judgment immediately and without further notice.

Dated: Sept 21, 2004

  
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

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**SECURITIES AND EXCHANGE COMMISSION,**

Plaintiff,

v.

Civil Action No.

**1) DIGITAL EXCHANGE SYSTEMS, INC.,  
2) ROSARIO CONIGLIO, and  
3) STEVEN SCHMIDT,**

Defendants.

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**CONSENT OF ROSARIO CONIGLIO**

1. Defendant Rosario Coniglio ("Coniglio" or "Defendant") admits to the jurisdiction of this Court over him and over the subject matter of this action, acknowledges receipt of the Complaint of Plaintiff Securities and Exchange Commission in this action, and waives the filing of an Answer.

2. Defendant states that he enters into this Consent voluntarily, after consulting with his undersigned counsel, and that no promise, threat, or improper inducement has been made by the Commission or any member, officer, agent, or representative of the Commission to induce him to enter into this Consent.

3. Defendant, without admitting or denying the allegations of the Complaint, except that he is admitting the allegations as to jurisdiction and venue, hereby voluntarily consents to the entry of the Agreed Judgment in the form attached hereto and incorporated by reference herein.

4. Defendant agrees that the attached proposed Agreed Judgment, in the form attached hereto, may be presented by the Commission to the Court for signature and entry without further notice.

5. Defendant agrees that this Consent shall be made a part of the attached Agreed Judgment to be entered by this Court in this action, and further agrees that this Court shall retain jurisdiction over him.

6. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

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7. Defendant waives any right he may have to appeal from the entry of the Agreed Judgment.

8. Defendant waives service of the Agreed Judgment and agrees that entry of the Agreed Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Agreed Judgment.

9. Defendant agrees and undertakes to pay a civil penalty of \$75,000 pursuant to Section 20(d) of the Securities Act of 1933 [15 U.S.C. § 77t(d)], and Section 21(d)(3) of the Securities Exchange Act of 1934 [15 U.S.C. § 78u(d)(3)]. Defendant shall satisfy this obligation by paying \$75,000 within ten (10) days of the entry of the Agreed Judgment in this matter. Payment shall be made by U.S. Postal money order, certified check, bank cashier's check, or bank money order, made payable to the Securities and Exchange Commission, and be hand-delivered or mailed to the Office of

Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312, under cover of a letter that identifies Defendant Coniglio, the name and case number of this action, the name of this Court, and the Commission's case number (FW-02541). A copy of the cover letter and of the form of payment shall be simultaneously transmitted to Timothy P. Davis, Trial Counsel, Securities and Exchange Commission, Burnett Plaza, Suite 1900, 801 Cherry Street, Unit 18, Fort Worth, TX 76102-6882.

10. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant 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 criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant states that he understands that the Commission, at its sole and exclusive discretion, may refer this matter or any information or evidence gathered in connection therewith, or deriving therefrom to any governmental authorities having criminal, civil, or administrative jurisdiction for action thereby.

11. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein.

12. Defendant 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, Defendant 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, Defendant shall file no pleading in this action that in any manner contradicts or denies any allegation of the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Agreed Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Defendant agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Agreed Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Agreed Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

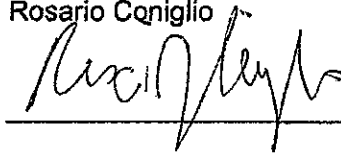
14. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendant (i) agrees to appear and be interviewed by

Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena.

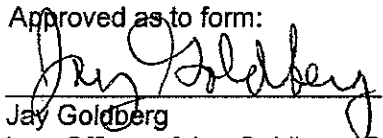
15. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996 or any other provision of law to pursue reimbursement of attorney's fees or other fees, expenses or costs expended by Defendant to defend against this action. For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

Respectfully submitted,

Rosario Coniglio

A handwritten signature in black ink, appearing to read 'Rosario Coniglio', is written over a horizontal line.

Approved as to form:

  
Jay Goldberg  
Law Offices of Jay Goldberg, P.C.  
250 Park Avenue  
20th Floor  
New York, NY 10177-0077

*Attorney for Rosario Coniglio*

STATE OF New York }  
COUNTY OF NASSAU }

SS:

On this 19 day of July, 2004, before me personally appeared Rosario Coniglio who produced a drivers license bearing his name and photograph as identification, or who is personally known to me, and who executed this Consent of Rosario Coniglio.

GLEN S. EDELMAN  
Notary Public, State of New York  
No. 4826716  
Qualified in Suffolk County, 2006  
Commission expires October 31, 2006

[Signature]  
NOTARY PUBLIC  
State of New York  
My commission expires:  
Commission Number: