

U.S. Courts  
Rec'd Filed *OK*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

OCT 25 2004

Cameron S. Burke  
Clerk, Idaho

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

AQUA VIE BEVERAGE CORP.,  
THOMAS J. GILLESPIE, and  
JOSEPH J. WOZNIAK

Defendants.

CV 04-414-S-EJL  
04-CV-4528 (JGK)

**FINAL JUDGMENT AS TO DEFENDANT JOSEPH J. WOZNIAK**

The Securities and Exchange Commission having filed a Complaint and Defendant Joseph J. Wozniak ("Defendant" or "Wozniak") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment 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 Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Wozniak and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

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*9-19-04*  
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- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; 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 through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding of examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

## II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Wozniak is barred from participating in an offering of penny stock for a period of two years, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity

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security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R. 240.3a51-1].

### III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Wozniak in lieu of paying disgorgement of \$599,583.46, representing proceeds he received from his unregistered offering, shall satisfy the disgorgement obligation by turning over (a) 35,000 shares of Aqua Vie Beverage Corporation ("Aqua Vie") common stock to Aqua Vie's transfer agent with a direction that they be cancelled and (b) 514.63 shares of Aqua Vie Series J Preferred Stock convertible into 5,146,300 shares of common to Aqua Vie with a direction that they be cancelled. Defendant shall transmit evidence of the cancellation of those shares within ten business days of entry of this Final Judgment to the Commission's counsel in this action. By directing the cancellation of those shares, Defendant relinquishes all legal and equitable right, title, and interest in such shares, and no part of the shares shall be returned to Defendant.

### IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wozniak shall pay a civil penalty in the amount of \$35,000 pursuant to Section 20(d) of the Securities Act payable in two installments. Defendant shall make the first payment of \$17,500 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 second installment of 17,500 shall be made within six months from entry of this Final Judgment. The payments shall be delivered or mailed to the Office of Financial Management, Securities and Exchange

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Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Joseph I. Wozniak 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.

IV.

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

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VI.

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.

Dated: October 25<sup>th</sup> 2004

*[Signature]*  
UNITED STATES DISTRICT JUDGE

*Approved for Entry  
Notice of presentation waived*

*[Signature]*  
Joseph Wozniak, Defendant

*WJ  
7-14-04*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

04 CV 1528 (JGK)

v.

AQUA VIE BEVERAGE CORP.,  
THOMAS J. GILLESPIE, and  
JOSEPH J. WOZNAK

Defendant[s]

**CONSENT OF DEFENDANT JOSEPH J. WOZNAK**

1. Defendant Joseph J. Wozniak ("Defendant") acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant 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 Defendant admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

- (a) bars Defendant from participating in an offering of penny stock for a period of two years;
- (b) permanently restrains and enjoins Defendant from violation of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act");
- (c) orders Defendant to turn over (i) 35,000 shares of Aqua Vie Beverage Corp. ("Aqua Vie") common stock to Aqua Vie's transfer agent with a

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direction that they be cancelled and (ii) 514.63 shares of Aqua Vie Series J Preferred Stock convertible into 5,146,300 shares of common to Aqua Vie with a direction that they be cancelled; and

(d) orders Defendant to pay a civil penalty in the amount of \$35,000.00 under Section 20(d) of the Securities Act.

3. 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 Final 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 Final 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.

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

5. Defendant waives the right, if any, to appeal from the entry of the Final Judgment.

6. Defendant 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 Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

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4-14-04

direction that they be cancelled and (ii) 514.63 shares of Aqua Vie Series J Preferred Stock convertible into 5,146,300 shares of common to Aqua Vie with a direction that they be cancelled; and

(d) orders Defendant to pay a civil penalty in the amount of \$35,000.00 under Section 20(d) of the Securities Act.

3. 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 Final 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 Final 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.

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member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. 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 hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant 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 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.

12. 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 Defendant is not the prevailing party in this action since the parties have reached a good faith settlement, nor shall Plaintiff seek award of fees and costs.

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13. 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.

14. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

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15. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: April 14, 2004

Joseph J. Wozniak  
Joseph J. Wozniak

On April 14, 2004, Joseph J. Wozniak, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.



Elly Hagel Lewis  
Notary Public  
Commission expires:

8/29/04  
Notary Public  
Commission expires:

*WJ*  
*4-14-04*

United States District Court  
for the  
District of Idaho  
October 27, 2004

\* \* CLERK'S CERTIFICATE OF MAILING \* \*

Re: 1:04-cv-00414

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

Mark K Schoenfeld, Esq.  
SEC  
Northeast Regional Office  
233 Broadway The Woodworth Bldg.  
New York, NY 10279

Rachel Izower, Esq.  
SECURITIES & EXCHANGE COMMISSION  
233 Broadway  
New York, NY 10279

James Stephen O'Brien Jr, Esq.  
PRYOR CASHMAN SHERMAN & FLYNN  
410 Park Ave  
New York, NY 10022

Joseph J Wozniak  
15404 20th Ave SW  
Burien, WA 98166


Frank Birkholz temp  
1001 Fourth Ave #3827  
Seattle, WA 98154

\_\_\_\_ Chief Judge B. Lynn Winmill  
\_\_\_\_ ✓ Judge Edward J. Lodge  
\_\_\_\_ Chief Magistrate Judge Larry M. Boyle  
\_\_\_\_ Magistrate Judge Mikel H. Williams

Visiting Judges:  
\_\_\_\_ Judge David O. Carter  
\_\_\_\_ Judge John C. Coughenour  
\_\_\_\_ Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date: 10-27-04

BY:   
(Deputy Clerk)