

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**- against-**

**SYMBOL TECHNOLOGIES, INC., et al.,**

**Defendants.**

**Civ. A. No. 04-2276 (SJF)**

**FINAL CONSENT JUDGMENT AS TO DEFENDANT MICHAEL DEGENNARO**

Plaintiff Securities and Exchange Commission ("Commission") having filed a complaint ("Complaint") against defendant Michael DeGennaro ("DeGennaro"), and DeGennaro having executed the consent annexed hereto and incorporated herein, having acknowledged service of the Summons and Complaint, having waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, admitted to the jurisdiction of this Court over him and over the subject matter of this action and, without admitting or denying the allegations contained in the Complaint (except as to jurisdiction), having consented to the entry of this Final Consent Judgment As To Defendant Michael DeGennaro ("Final Judgment"), without further notice:

**I.**

**IT IS ORDERED, ADJUDGED, AND DECREED** that DeGennaro shall pay a civil penalty in the amount of \$40,000 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. DeGennaro shall make this payment within 14 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 Michael DeGennaro 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. DeGennaro shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action, Todd Brody, Esq., U.S. Securities and Exchange Commission, New York Regional Office, Three World Financial Center, New York, NY 10281. DeGennaro shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

**II.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, this Final Judgment shall be binding upon DeGennaro, his agents, servants, employees and attorneys, and upon those persons in active concert or participation with him, who receive actual notice of this Final Judgment by personal service or otherwise.

**III.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the provisions of the annexed Consent be, and the same hereby are, incorporated in this Final Judgment with the same force and effect as if fully set forth herein, and that DeGennaro shall comply with all of the undertakings and agreements set forth therein.

**IV.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, implementing and enforcing the terms and conditions of this Final Judgment.

**V.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, 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.

**CONSENT OF DEFENDANT MICHAEL DEGENNARO**

1. Defendant Michael DeGennaro ("DeGennaro"), being fully apprised of his rights, having had the opportunity to confer with legal counsel, having read and understood the terms of the annexed Final Consent Judgment As To Defendant Michael DeGennaro ("Final Judgment"), acknowledges proper service of the Summons and Complaint, appears and admits to the jurisdiction of this Court over him and over the subject matter of this action, waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure and, without further notice, trial or argument, and without admitting or denying the allegations of the Complaint filed by plaintiff Securities and Exchange Commission ("Commission"), except as to jurisdiction, which allegations are admitted, hereby consents to the entry of the Final Judgment annexed hereto and incorporated by reference herein.
2. DeGennaro agrees that this Consent shall be incorporated by reference in, and be made part of, the Final Judgment to be presented to the Court for signature, filing and entry contemporaneously herewith.
3. DeGennaro waives the right, if any, to a jury trial and to appeal from the Final Judgment.
4. DeGennaro acknowledges that the violation of any of the terms of the Final Judgment may place him in contempt of this Court and subject him to civil or criminal sanctions.
5. DeGennaro acknowledges that he enters into this Consent voluntarily and that this Consent and the Final Judgment embody the entire understanding of himself and the Commission. DeGennaro acknowledges and agrees that this proceeding and his consent to the

entry of the Final Judgment are for the purposes of resolving this civil action only and that no tender, offer, promise, threat, or representation of any kind has been made by the Commission or any member, officer, attorney, agent, or representative thereof to induce him to enter into this Consent or with regard to (a) any criminal liability arising from the facts underlying this action; or (b) immunity from any such criminal liability.

6. DeGennaro acknowledges that he has been informed and understands that the Commission, at its sole and exclusive discretion, may refer, or grant access to, this matter or any information or evidence gathered in connection therewith or derived therefrom, to any person or entity having appropriate administrative, civil, or criminal jurisdiction, if the Commission has not already done so.

7. DeGennaro acknowledges that, consistent with 17 C.F.R. § 202.5(f), his Consent and the entry of the annexed Final Judgment do not resolve, affect or preclude any other proceeding that has been or may be brought against him or anyone else. Among other things, DeGennaro waives any right he may have to assert that, under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, the relief sought or consented to in this civil action, including the seeking or imposition of any remedy, disgorgement or civil penalty herein, bars any criminal action, or that any criminal action bars the relief consented to in this action.

8. DeGennaro 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(e). In compliance with this policy, DeGennaro 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, DeGennaro hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If DeGennaro 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 provision affects DeGennaro's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings in which the Commission is not a party.

9. DeGennaro agrees that this Court shall retain jurisdiction of this matter for purposes of implementing and enforcing the terms and conditions of the Final Judgment and for all other purposes.

10. DeGennaro hereby consents and agrees that the Final Judgment may be presented by the Commission to the Court for signature and entry without further notice or delay.

11. DeGennaro will not oppose the enforcement of the Final Judgment 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.

12. DeGennaro waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to DeGennaro of its terms and conditions. DeGennaro agrees to execute and provide to the Commission a written declaration pursuant to 28 U.S.C. § 1746 acknowledging his receipt of the Final Judgment no later than ten business days after a copy of the Final Judgment has been

forwarded to DeGennaro's counsel, Michael Sommer, Esq., Wilson Sonsini Goodrich & Rosati, P.C., 1301 Avenue of the Americas, 40<sup>th</sup> Floor, New York, New York 10019.

13. DeGennaro 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 seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by DeGennaro to defend against this action. For these purposes, DeGennaro agrees that he is not the prevailing party in this action since the parties have reached a good faith settlement.

15. DeGennaro 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 DeGennaro 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. DeGennaro 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 DeGennaro 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.

Dated:

March 29, 2010



Michael DeGennaro

On 29<sup>th</sup> day of March, 2010, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.



Notary Public

Commission expires:

07/30/2011

SIRILO R. AQUINO

Notary Public, State of New York

No. 01AQ6171787

Qualified in Suffolk County

Commission Expires 07/30/2011

SO ORDERED:



UNITED STATES DISTRICT JUDGE