

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

MAY 5 2005

**NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT**

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U.S. SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ALINA WELT, ANDREW M. WELT,
BRUCE A. WELT and BRUCE HIRSCHHORN,

Defendants.

Civil Action No.

FINAL JUDGMENT AS TO DEFENDANT BRUCE HIRSCHHORN

The Securities and Exchange Commission having filed a Complaint and Defendant Bruce Hirschhorn ("Defendant") having: 1) entered a general appearance, 2) consented to the Court's jurisdiction over Defendant and the subject matter of this action, 3) consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction), 4) waived findings of fact and conclusions of law and 5) waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant 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, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§78j(b)] and Rules 10b-5

thereunder [17 C.F.R. §§240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit 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) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant 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 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person;

the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee or other person acting on behalf of the offering person of such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or

- (b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person of such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith
- (i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;
 - (ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or
 - (iii) to any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Bruce Hirschhorn pay disgorgement in the amount of \$367,581, representing illegal trading profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$97,669.08, for a total of \$465,250.08.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Bruce Hirschhorn pay a civil penalty in the amount of \$367,581 pursuant to Section 21A of the Exchange Act, [15 U.S.C. §78(u)-1].

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that disgorgement, prejudgment interest and civil penalty paid pursuant to Sections III and IV of this Final Judgment (in the amount of \$832,831.08) shall be paid in the following five installments: the first installment of \$500,000 shall be paid within thirty (30) days of the entry of this Final Judgment; three additional installments of \$60,000 each, shall be paid on, or before, Wednesday, June 15, 2005, Thursday, September 15, 2005, Thursday, December 15, 2005; and then, the final additional installment of \$152,831.08 shall be paid on, or before, Wednesday, March 15, 2006. In the event that Defendant fails to submit payment of the full installment amount, on or before each of the five due dates set forth above, the remaining balance shall immediately become due and payable, and Defendant shall also pay post-judgment interest, as calculated pursuant to 28 U.S.C. §1961, on the remaining balance.

The Commission may enforce the Court's judgment by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after thirty days

following entry of this Final Judgment. In response to any such civil contempt motion by the Commission, the defendant may assert any legally permissible defense.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the first installment of \$500,000, set forth above, shall be divided into two parts, one payment of \$279,609.57 and another payment of \$220,390.43.

The payment of \$279,609.57 represents the profit made by Defendant Hirschhorn's trading of call options in Sensormatic Electronics Corp., (\$122,250), together with prejudgment interest thereon (\$24,788.11), as well as the profit made by Defendant Hirschhorn's trading of call options in Intermedia Communications, Inc. (\$102,000), together with prejudgment interest thereon (\$30,571.46). The payment of \$279,609.57 shall be paid to the Clerk of this Court, together with a cover letter identifying Hirschhorn 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 Scott Friestad, Assistant Director, 450 Fifth Street, NW, Mail Stop 07-08, Washington, D.C. 20549-0708. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS"). These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the CRIS until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to

ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Commission may by motion propose a plan to distribute the Fund subject to the Court's approval. Defendant shall pay post-judgment interest on any delinquent amount pursuant to 28 U.S.C. §1961.

The payment of \$220,390.43, and the other four payments set forth in Section V, above, shall be made by certified check, bank cashier's check, or United States postal money order payable to the "Securities and Exchange Commission" and bearing the title "SEC v. Welt, et al. (Sensormatic Elec. Corp., HO-9313)" at the bottom of the face of the envelope. Each 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 Bruce Hirschhorn 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 the payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of each payment, along with a letter, to Scott Friestad, Assistant Director, 450 Fifth Street, NW, Mail Stop 07-08, Washington, D.C. 20549-0708. By making the payments set forth above, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon receipt of the funds from Defendant Bruce Hirschhorn, the Comptroller, Securities and Exchange Commission, shall promptly remit the funds to the United States Treasury.

VIII.

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 Defendant shall comply with all of the undertakings and agreements set forth therein.

IX.

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.

X.

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: May 5, 2005

Theresa A. Albright
UNITED STATES DISTRICT JUDGE