

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

JOSEPH SIMONE, et al.,

Defendants.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ DEC 23 2010 ★

BROOKLYN OFFICE

07CV 3928

Civ. No. ~~07-3928~~ (JG)(RML)

**FINAL CONSENT JUDGMENT OF
PERMANENT INJUNCTION AND OTHER RELIEF
AS TO DEFENDANT SHAUN SARNICOLA**

Plaintiff Securities and Exchange Commission ("Commission") having filed an amended complaint on September 24, 2007 ("Complaint") alleging, among other things, that defendant Shaun Sarnicola ("Sarnicola") violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and defendant Sarnicola having executed the Consent of Defendant Shaun Sarnicola ("Consent") annexed hereto and incorporated herein, having acknowledged service of the Summons and Complaint and the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, having 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, which are admitted, having consented to the entry of this Final Consent Judgment Of Permanent Injunction And Other Relief As To Defendant Shaun Sarnicola ("Final Judgment"), without further notice:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Sarnicola is permanently enjoined and restrained from, directly or indirectly, in the offer or sale of any security, by the use of any means or instrument of transportation or communication in interstate commerce or of the mails:

- (A) employing any device, scheme, or artifice to defraud;
- (B) obtaining money or property by means of any untrue statement of material fact or any 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;
or
- (C) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser,

in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Sarnicola is permanently restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- (A) employing any device, scheme, or artifice to defraud;
- (B) making 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) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5].

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in view of defendant Sarnicola having been sentenced pursuant to his guilty plea in *United States v. Shaun Sarnicola, 07-CR-639-01 (E.D.N.Y.) (JG)*, in which he was criminally charged with engaging in the same conduct alleged in the Commission's Complaint, to pay restitution in the amount of \$75,000 and to serve 60 days in federal prison, defendant Sarnicola is not additionally liable in the Commission's civil action for disgorgement of the \$22,814 in ill-gotten gains he received as a result of the conduct alleged in the Commission's Complaint or civil penalties.

IV.

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 defendant Sarnicola, 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.

V.

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.

VI.

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.

VII.

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 SHAUN SARNICOLA

1. Defendants Shaun Sarnicola ("Sarnicola"), 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 Of Permanent Injunction And Other Relief As To Defendant Shaun Sarnicola ("Final Judgment"), 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 amended complaint ("Complaint") filed by plaintiff Securities and Exchange Commission ("Commission"), except as to jurisdiction, which are admitted, hereby consents to the entry of the annexed Final Judgment.

2. Defendant Sarnicola agrees that this Consent Of Defendant Shaun Sarnicola ("Consent") shall be incorporated by reference in and made part of the Final Judgment to be presented to the Court for signature, filing and entry contemporaneously herewith.

3. Defendant Sarnicola waives the right, if any, to a jury trial and to appeal from the Final Judgment.

4. Defendant Sarnicola acknowledges that any 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. Defendant Sarnicola acknowledges that he enters into this Consent voluntarily, and that, other than the acceptance of his offer to consent to the entry of an administrative order

pursuant to Section 15(b) of the Securities Exchange Act of 1934, this Consent and the Final Judgment embody the entire understanding of himself and the Commission. Defendant Sarnicola 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 with regard to: (a) any criminal liability arising from the facts underlying this action; or (b) immunity from any such criminal liability.

6. Defendant Sarnicola 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. Defendant Sarnicola acknowledges that, in conformity with the provisions of 17 C.F.R. § 202.5(f), their 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, defendant Sarnicola 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 or civil penalty herein, bars any criminal action, or that any criminal action bars the relief consented to in this action.

8. Defendant Sarnicola acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and

regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding.

9. Defendant Sarnicola 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, defendant Sarnicola 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 Sarnicola hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If defendant Sarnicola 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 defendant Sarnicola'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.

10. Defendant Sarnicola 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.

11. Defendant Sarnicola hereby consents and agrees that the annexed Final Judgment may be presented by the Commission to the Court for signature and entry without further notice

or delay.

12. Defendant Sarnicola 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.

13. Defendant Sarnicola 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 defendant Sarnicola of its terms and conditions. Defendant Sarnicola agrees to execute and provide to the Commission a written declaration pursuant to 28 U.S.C. § 1746 acknowledging their receipt of the Final Judgment no later than twenty (20) days after a copy of the Final Judgment has been delivered to his counsel, Sarah S. Gold, Esq., Proskauer Rose, 1585 Broadway, New York, New York 10036-8299.

14. Defendant Sarnicola 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 defendant Sarnicola to defend against this action. For these purposes, defendant Sarnicola agrees that he is not the prevailing party in this action since the parties have reached a good faith settlement.

15. Defendant Sarnicola 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 amount that defendant Sarnicola 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 Sarnicola 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 Sarnicola 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.

16. 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 Sarnicola (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 his attorney, Sarah S. Gold, Esq., 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

Sarnicola's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over him in any United States District Court for purposes of enforcing any such subpoena.

Dated: July 15, 2010

Shaun Sarnicola
Shaun Sarnicola

On 15th Day of JULY, 2010, Shaun Sarnicola, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

SAQUANA JOHNSON
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01J06187522
QUALIFIED IN RICHMOND COUNTY
COMMISSION EXPIRES 05/19/2012

Saquana Johnson
Notary Public
Commission expires: MAY 19 2012

SO ORDERED:

s/John Gleeson

12-22-10

John Gleeson
UNITED STATES DISTRICT JUDGE



**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE**
3 WORLD FINANCIAL CENTER
SUITE 400
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December 20, 2010

By UPS

The Honorable John Gleeson
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: SEC v. Joseph Simone, et al., 07-cv-3928 (JG)(RML)

Dear Judge Gleeson:

We represent plaintiff Securities and Exchange Commission in the above-referenced action. Enclosed for Your Honor's consideration is the signed proposed Final Consent Judgment as to defendant Shaun Sarnicola. The proposed Final Consent Judgment seeks to resolve all of the Commission's claims against Mr. Sarnicola.

Respectfully Yours,

A handwritten signature in black ink, appearing to read "Burk Burnett", with a long, sweeping horizontal line extending to the right.

Burk Burnett
Division of Enforcement

Enclosure

cc Sarah S. Gold, Esq.
Counsel for Sarnicola