

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

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	Civ. A. No. 07-4144-ILG-JMA
	:	
-against-	:	
	:	
KEVIN JAMES DUNN, JR.,	:	
	:	
Defendant.	:	
	:	

**PROPOSED PARTIAL FINAL CONSENT JUDGMENT OF PERMANENT INJUNCTION  
AS TO DEFENDANT KEVIN JAMES DUNN, JR.**

Plaintiff Securities and Exchange Commission (“Commission”) having filed a complaint (“Complaint”) alleging that defendant Kevin James Dunn, Jr. (“Dunn”) violated Section 17(a) of the Securities Act of 1933 (“Securities Act”), 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 Dunn having executed the Consent annexed hereto and incorporated herein, having waived 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 allegations are admitted, and having consented to the entry of this Partial Final Consent Judgment Of Permanent Injunction (“Partial Judgment”), without further notice:

**I.**

**IT IS ORDERED, ADJUDGED, AND DECREED** that defendant Dunn is permanently restrained and enjoined from:

(1) 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]; and

(2) in the offer or sale of any securities or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly:

- (A) employing any device, scheme, or artifice to defraud;
- (B) obtaining money or property by means of any untrue statement of a 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 the 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 in view of defendant Dunn's agreement to forfeit \$323,000 in conjunction with his guilty plea in *United States v. Kevin Dunn*, 07 Cr. 732 (ILG) (E.D.N.Y.), in which he was criminally charged with engaging in the same conduct that is alleged in the Commission's Complaint, defendant Dunn is not additionally liable in the Commission's civil action for disgorgement of ill-gotten gains he received as a result of the conduct alleged in the Complaint.

**III.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that absent further agreement between the parties, the Court shall determine, upon motion of the Commission, whether to impose a civil penalty against defendant Dunn pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and, if so, the amount of any civil penalty. In connection with the Commission's motion for a civil penalty, and at any oral argument held on such a motion: (a) defendant Dunn will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) defendant Dunn may not challenge the validity of the Consent annexed hereto or this Partial Judgment; (c) solely for the purposes of such motion (and for no other purpose), the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may, in its discretion, determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure and without conducting an evidentiary hearing.

IV.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, this Partial Judgment shall be binding upon defendant Dunn, his agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this Partial 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 Partial 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 Partial 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 Partial Judgment forthwith and without further notice.

Dated: 9-23, 2008  
Brooklyn, New York

**SO ORDERED**

\_\_\_\_\_  
**UNITED STATES DISTRICT JUDGE**

**CONSENT OF DEFENDANT KEVIN JAMES DUNN, JR.**

1. Defendant Kevin James Dunn, Jr. ("Dunn"), being fully apprised of his rights, having had the opportunity to confer with legal counsel, having read and understood the terms of the annexed Partial Final Consent Judgment Of Permanent Injunction As To Defendant Kevin James Dunn, Jr. ("Partial 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 complaint filed against him ("Complaint") by plaintiff Securities and Exchange Commission ("Commission"), except as to jurisdiction, which allegations are admitted, hereby consents to the entry of the annexed Partial Judgment.

2. Defendant Dunn agrees that this Consent shall be incorporated by reference in, and be made part of, the Partial Judgment to be presented to the Court for signature, filing and entry contemporaneously herewith.

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

4. Defendant Dunn acknowledges that any violation of any of the terms of the Partial Judgment may place him in contempt of this Court and subject him to civil or criminal sanctions.

5. Defendant Dunn acknowledges that he enters into this Consent voluntarily and that this Consent and the Partial Judgment embody the entire understanding of himself and the Commission. Defendant Dunn acknowledges and agrees that this proceeding, and his Consent to the entry of the Partial Judgment, are for the purposes of resolving in part 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 any criminal liability arising from the facts underlying this action or immunity from any such criminal liability.

6. Defendant Dunn 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 Dunn acknowledges that, in conformity with the provisions of 17 C.F.R. § 202.5(f), this Consent and the entry of the annexed Partial 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 Dunn 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 Dunn 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.

Defendant Dunn further acknowledges that such statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding.

9. Defendant Dunn 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 Dunn 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 Dunn hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If defendant Dunn breaches this understanding and agreement, the Commission may petition the Court to vacate the Partial Judgment and restore this action to its active docket. Nothing in this provision affects defendant Dunn's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Commission is not a party.

10. Defendant Dunn agrees that this Court shall retain jurisdiction of this matter for purposes of implementing and enforcing the terms and conditions of the Partial Judgment and for all other purposes.

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

12. Defendant Dunn agrees not to oppose the enforcement of the Partial 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 Dunn waives service of the Partial Judgment and agrees that entry of the Partial Judgment by the Court and filing with the Clerk of the Court will constitute notice to him of its terms and conditions. Defendant Dunn agrees to execute and provide to the Commission, within 20 days after the Partial Judgment is filed with the Clerk of the Court, a written declaration in accordance with 28 U.S.C. § 1746 acknowledging that defendant Dunn has received and read a copy of the Partial Judgment.

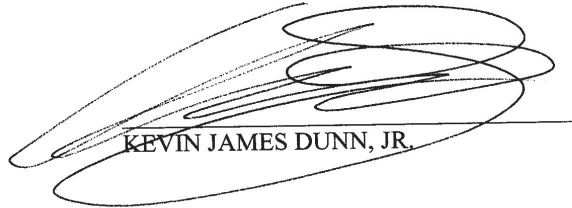
14. Defendant Dunn hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law, to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by defendant Dunn to defend this action. For these purposes, defendant Dunn agrees that he is not the prevailing party in this action since the parties have reached a good faith settlement.

15. 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 Dunn (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) 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



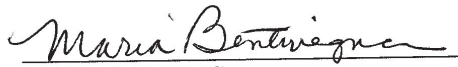
rules; and (iv) consents to personal jurisdiction over him in any United States District Court for purposes of enforcing any such subpoena.

Dated: 8/13, 2008



KEVIN JAMES DUNN, JR.

On Aug 13, 2008, Kevin James Dunn, Jr., a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

  
NOTARY PUBLIC  
Commission expires: Feb. 28, 2010

MARIA BENTIVEGNA  
Notary Public, State of New York  
No. 01BE4828502  
Qualified in Richmond County  
Commission Expires February 28, 2010



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
NORTHEAST REGIONAL OFFICE  
3 WORLD FINANCIAL CENTER  
SUITE 400  
NEW YORK, NEW YORK 10281-1022

RECEIVED  
9/23/08  
Chambers of  
I. Leo Glasser  
U.S.D.J.

September 22, 2008

**Via Federal Express**

The Honorable I. Leo Glasser  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

**Re: SEC v. Kevin James Dunn, Jr., 07 Civ. 4144 (ILG) (JMA)**

Dear Judge Glasser:

We represent plaintiff Securities and Exchange Commission ("Commission") in the above-referenced action. On behalf of the parties, we enclose a proposed final consent judgment of permanent injunction as to defendant Kevin James Dunn, Jr., together with defendant Dunn's executed consent to that proposed judgment.

The proposed judgment reflects a final resolution of all matters in this action except for the Commission's right to seek a civil penalty against defendant Dunn pursuant to Section 21(d)(3) of the Securities Exchange Act of 1934, which right is preserved by paragraph III of the proposed judgment.

On behalf of the parties, we respectfully request that the Court so order the enclosed proposed judgment. Should Your Honor have any questions or require additional information, the undersigned can be contacted at (212) 336-0113.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Boryshansky", with a horizontal line underneath.

Joseph Boryshansky  
Attorney for plaintiff  
Securities and Exchange Commission

Enclosures

cc: Kevin James Dunn, Jr. (with enclosures)  
Mario F. Gallucci, Esq. (with enclosures)