

NATHAN, S.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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ELECTRONICALLY FILED
DOC #:
DATE FILED: **SEP 25 2013**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PETRO-SUISSE LTD. and MARK GASARCH,

Defendants.

Civ. () 12cv6221(AJN)

FINAL JUDGMENT AS TO DEFENDANT MARK GASARCH

The Securities and Exchange Commission having filed a Complaint and Defendant Mark Gasarch having entered a general appearance; consented to the Court's jurisdiction over Defendant Mark Gasarch 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 Defendant Mark Gasarch, and each of his partners, agents, servants, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service, facsimile service, telephonic notice, notice by e-mail or otherwise, are permanently restrained and enjoined from, directly or indirectly, singly or in concert, in the offer, purchase or sale of any security, by use of any means or instruments of transportation or

communication in interstate commerce or by use of the mails:

- (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,

in violation, or aiding and abetting a violation, of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Mark Gasarch and Defendant Petro-Suisse Ltd. are jointly and severally liable for disgorgement of \$8,370,000, representing profits gained as a result of the conduct alleged in the Complaint, which liability is deemed fully satisfied by Defendant Petro-Suisse Ltd.'s previous payments to Petro-Suisse Ltd. limited partnership investors.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Mark Gasarch is liable for a civil penalty in the amount of \$130,000 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant Mark Gasarch shall satisfy this obligation by paying \$130,000 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, 100 F Street, NE, Stop 6042, Washington DC 20549, and shall be accompanied by a letter identifying Mark Gasarch 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 Mark Gasarch 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.

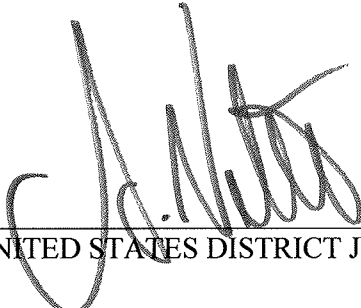
IV.

IT IS HEREBY 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 Mark Gasarch 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.

Dated: Sept. 25, 2013


UNITED STATES DISTRICT JUDGE *pn*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PETRO-SUISSE LTD. and MARK GASARCH,

Defendants.

Civ. () 12 N 6221 (ASN)

CONSENT OF DEFENDANT MARK GASARCH

1. Defendant Mark Gasarch waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant Mark Gasarch 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 Mark Gasarch admits), Defendant Mark Gasarch 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) permanently restrains and enjoins Defendant Mark Gasarch from violating or aiding and abetting any violation of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. 240.10b-5];
- (b) orders Defendant Mark Gasarch and Defendant Petro-Suisse Ltd. jointly and severally liable for disgorgement of \$8,370,000, which is deemed fully

satisfied by Defendant Petro-Suisse Ltd.'s previous payments to Petro-Suisse Ltd. limited partnership investors; and

(c) orders Defendant Mark Gasarch to pay a civil penalty in the amount of \$130,000 under Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

3. Defendant Mark Gasarch acknowledges that the civil penalty paid pursuant to the Final Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, the civil penalty shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant Mark Gasarch agrees that he shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant Mark Gasarch's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant Mark Gasarch's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant Mark Gasarch agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this action. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant Mark Gasarch by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

4. Defendant Mark Gasarch 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 Mark Gasarch 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 Mark Gasarch 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 Mark Gasarch 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.

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

6. Defendant Mark Gasarch waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

7. Defendant Mark Gasarch 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 Mark Gasarch to enter into this Consent.

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

9. Defendant Mark Gasarch 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.

10. Defendant Mark Gasarch 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 Mark Gasarch of its terms and conditions. Defendant Mark Gasarch further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant Mark Gasarch has received and read a copy of the Final Judgment.

11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant Mark Gasarch in this civil proceeding. Defendant Mark Gasarch acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant Mark Gasarch waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant Mark Gasarch further 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. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant Mark Gasarch understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

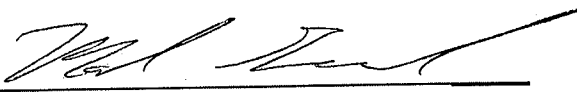
12. Defendant Mark Gasarch understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant Mark Gasarch 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 Mark Gasarch hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant Mark Gasarch 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 Mark Gasarch'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.

13. Defendant Mark Gasarch 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 Mark Gasarch to defend against this action. For these purposes, Defendant Mark Gasarch agrees that Defendant Mark Gasarch is not the prevailing party in this action since the parties have reached a good faith settlement.

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

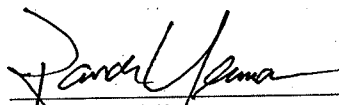
15. Defendant Mark Gasarch agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 04/06/12



Mark Gasarch

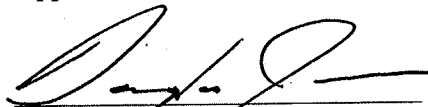
On April 6, 2012, Mark Gasarch, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.



Notary Public
Commission expires:

Randi Yerman
Notary Public, State of New York
No. 01YE4723089
Qualified in Queens County
Commission Expires September 30, 2014

Approved as to form:



Douglas Jensen, Esq.
Park & Jensen LLP
630 Third Ave
New York, NY
646-200-6320
Attorney for Defendant Mark Gasarch