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U.S. DISTRICT COURT E.D.N.Y

★ MAY 21 2002 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

PAUL SKULSKY, JEFFREY SKULSKY, :
EDWARD R. CAPUANO, CINDY L. EISELE, :
JOSEPH CASUCCIO, JEFFREY J. SCHNEIDER, :
AARON CHAITOVSKY, ROBERT GLASS, :
ASHLEY NEMIROFF, ROCCO SICLARI, :
GEORGE A. CARHART, HOWARD ZELIN, :
CARL D. DELIA, CRAIG A. BRANDWEIN, :
AND DONALD CATAPANO, :

Defendants. :

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LONG ISLAND OFFICE

Rg 5-23-02

No. CV-02-1524 (DRH)

~~PROPOSED~~
PARTIAL FINAL JUDGMENT
OF PERMANENT INJUNCTION
AND OTHER RELIEF
AS TO DEFENDANT
EDWARD R. CAPUANO

The Plaintiff Securities and Exchange Commission ("Commission"), having duly commenced this action by filing its Complaint, and defendant Edward R. Capuano ("Capuano"), having in his Consent of Defendant Edward R. Capuano ("Consent") entered a general appearance herein, having admitted the jurisdiction of this Court over him and over the subject matter of this action, having waived the filing of an Answer to the Complaint and the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and without admitting or denying any of the allegations of the Complaint, except as to jurisdiction, which he admits, having consented to the entry of this Partial Final Judgment of Permanent Injunction and Other Relief as to Defendant Edward Capuano ("Partial Final Judgment"), permanently restraining

and enjoining Capuano from (i) violating Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b) and 78m(b)(5), and Rules 10b-5 and 13b2-1 thereunder, 17 C.F.R. §§ 240.10b-5, 240.13b2-1, and (ii) violating, directly or indirectly, or as a control person pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a), Sections 13(a) and 13(b)(2) of the Exchange Act, 15 U.S.C. §§ 78m(a) and 78m(b)(2), and Rules 12b-20, 13a-1, and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13, and it further appearing that this Court has jurisdiction over Defendant Capuano and the subject matter hereof, and the Court being fully advised in the premises:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Capuano be, and hereby is, permanently enjoined from, directly or indirectly, singly or in concert, in the offer or sale of any security, and by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails:

- (1) employing any device, scheme, or artifice to defraud;
- (2) 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 the light of the circumstances under which they were made, not misleading; or
- (3) 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 Defendant Capuano be, and hereby is, permanently enjoined and restrained from, directly or indirectly, singly or in concert, in connection with the purchase or sale of any security, and by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- (1) employing any device, scheme or artifice to defraud;
- (2) making any untrue statement of a material fact or omitting 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
- (3) 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 thereunder, 17 C.F.R. § 240.10b-5.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Capuano be, and hereby is, permanently restrained and enjoined from, directly or indirectly, singly or in concert, knowingly circumventing or knowingly failing to implement a system of internal accounting controls, or knowingly falsifying any book, record, or account of any issuer which has a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, or any issuer which is required to file reports pursuant to Section 15(d) of the

Exchange Act, 15 U.S.C. § 78o(d), in violation of Section 13(b)(5) of the Exchange Act, 15 U.S.C. §§ 78m(b)(5), and Exchange Act Rule 13b2-1, 17 C.F.R. § 240.13b2-1.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Capuano be, and hereby is, permanently restrained and enjoined from, directly or indirectly, singly or in concert, or as a control person within the meaning of Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a):

- (A) failing to file with the Commission any report required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. §78m(a), and the rules and regulations promulgated thereunder; or
- (B) filing with the Commission a report required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. §78m(a), and the rules and regulations promulgated thereunder that (1) contains an untrue statement of material fact; (2) fails to include, in addition to the information required to be stated in such report, such further material information as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading; or (3) fails to disclose any information required to be disclosed therein,

in violation of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1, and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Capuano be, and hereby is, permanently enjoined and restrained from, directly or indirectly,

singly or in concert, or as a control person within the meaning of Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a):

- (A) failing to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of an issuer; and
- (B) failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that-
 - (i) transactions are executed in accordance with management's general or specific authorization;
 - (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
 - (iii) access to assets is permitted only in accordance with management's general or specific authorization; and
 - (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences,

in violation of Sections 13(b)(2)(A) and (B) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A) and (B).

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Capuano be, and hereby is, permanently prohibited from acting as a director or officer of any issuer having a

class of securities registered with the Commission pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the annexed Consent of Defendant Capuano be, and hereby is, incorporated herein with the same force as if fully set forth herein.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Capuano comply with the following agreements and undertakings set forth in his Consent:

- (A) To produce, without service of a notice or subpoena, any and all documents and other information requested by the Commission's staff;
- (B) To be interviewed by the Commission's staff at such times as the staff reasonably may direct;
- (C) To allow the Commission to use, without restriction, the contents of any proffer Defendant Capuano has made, or hereafter may make, to the United States Attorney's Office and/or the Commission in connection with the matters at issue in the Complaint; and
- (D) That in connection with any testimony of Defendant Capuano to be conducted at deposition, hearing or trial pursuant to a notice or subpoena:
 - (i) that any such notice or subpoena for Defendant Capuano's appearance and testimony may be addressed to his counsel, Joseph Benfante, Esq., 225 Broadway, Suite 2700, New York, NY 10007 and served by mail; and

- (ii) that any such notice or subpoena for Defendant Capuano's appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

IX.

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

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for all purposes.

XI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commission may effect service of this Partial Final Judgment and all other papers in this action upon defendant Capuano by regular mail.

XII.

There being no just reason for delay, the Clerk of the Court is hereby directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure to enter this Partial Final Judgment forthwith.

Dated: *Central Islip*, New York
May 21, 2002

S/ Denis R. Hurley
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

PAUL SKULSKY, JEFFREY SKULSKY, :
EDWARD R. CAPUANO, CINDY L. EISELE, :
JOSEPH CASUCCIO, JEFFREY J. SCHNEIDER, :
AARON CHAITOVSKY, ROBERT GLASS, :
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CARL D. DELIA, CRAIG A. BRANDWEIN, :
AND DONALD CATAPANO, :

Defendants. :

-----X

No. CV-02-1524 (DRH)

**CONSENT OF
DEFENDANT
EDWARD R. CAPUANO**

1. Defendant Edward R. Capuano ("Capuano"), being fully apprised of his rights, having read and understood the terms of the Partial Final Judgment of Permanent Injunction and Other Relief By Consent as to Defendant Edward R. Capuano ("Partial Final Judgment"), of which this Consent of Capuano ("Consent") is made a part, hereby admits the service of the summons and Complaint on him, the *in personam* jurisdiction of this Court over him, and the jurisdiction of this Court 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 admitting or denying the allegations contained in the Complaint of the plaintiff Securities and Exchange Commission ("Commission"), consents to the entry of the annexed Final Judgment without further notice whereby Defendant Capuano consents to entry of a

permanent injunction from (i) violating Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b) and 78m(b)(5), and Rules 10b-5 and 13b2-1 thereunder, 17 C.F.R. §§ 240.10b-5, 240.13b2-1, and (ii) violating, directly or indirectly, or as a control person pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a), Sections 13(a) and 13(b)(2) of the Exchange Act, 15 U.S.C. §§ 78m(a) and 78m(b)(2), and Rules 12b-20, 13a-1, and 13a-13, 17 C.F.R. §§240.12b-20, 240.13a-1, and 240.13a-13.

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

3. Defendant Capuano waives any right he may have to appeal from the Partial Final Judgment.

4. Defendant Capuano enters into this Consent voluntarily and acknowledges that this Consent and Partial Final Judgment embody the entire understanding of the parties concerning the settlement of this action. Defendant Capuano acknowledges and agrees that this proceeding, and his consent to the entry of the Partial Final Judgment, are for the purpose of resolving this civil action only, and that no tender, offer, promise, inducement, or threat of any kind has been made by plaintiff Commission or any of its members, officers, agents or representatives to induce him to enter into this Consent.

5. Defendant Capuano acknowledges that any willful violation of any of the terms or provisions of the annexed Partial Final Judgment may place him in contempt of this Court and subject him to civil and criminal sanctions.

6. Defendant Capuano acknowledges that he has been informed and understands that

plaintiff 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 civil, administrative or criminal jurisdiction or authority. In this connection, Defendant Capuano acknowledges that no representations regarding the above have been made so as to induce him to enter into this Consent.

7. Defendant Capuano acknowledges and agrees that this Consent and the entry of the Partial Final Judgment are for the purpose of resolving this civil action only, in conformity with the provisions of 17 C.F.R. § 202.5(f), and do not resolve, affect or preclude any other proceeding which may be brought against Defendant Capuano. Among other things, Defendant Capuano waives any right he may have to assert that under the Double Jeopardy Clause of the United States Constitution, the relief consented to in this action, including the imposition of any remedy or civil penalty herein, bars any criminal action, or that any criminal action bars the relief consented to in this civil action.

8. Defendant Capuano 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 allegations in the complaint or order for proceedings." (17 C.F.R. § 202.5(e)). In compliance with this policy, Defendant Capuano agrees not to take any action or 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. If Defendant Capuano breaches this agreement, the Commission may petition the Court to vacate the Partial Final Judgment and restore this case to its active docket. Nothing in this provision affects Defendant Capuano's (i) testimonial obligations, or (ii) right to take legal positions in litigation in which the Commission is not a party.

9. Defendant Capuano 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 pursue reimbursement of attorney's fees or other fees, expenses or costs expended by Capuano to defend against this action. For these purposes, Defendant Capuano agrees that he is not the prevailing party in this action since the parties have reached a good faith settlement.

10. Defendant Capuano undertakes and agrees to cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Complaint. In connection with such cooperation, Defendant Capuano agrees and undertakes:

- (i) To produce, without service of a notice or subpoena, any and all documents and other information requested by the Commission's staff;
- (ii) To be interviewed by the Commission's staff at such times as the staff reasonably may direct;
- (iii) To allow the Commission to use, without restriction, the contents of any proffer Defendant Capuano has made, or hereafter may make, to the United States Attorney's Office and/or the Commission in connection with the matters at issue in the Complaint; and
- (iv) That in connection with any testimony of Defendant Capuano to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Defendant Capuano:
 - (a) Agrees that any such notice or subpoena for Defendant Capuano's appearance and testimony may be addressed to his counsel, Joseph Benfante, Esq., 225 Broadway Suite 2700, New York, NY 10007, and served by mail; and

- (b) Agrees that any such notice or subpoena for Defendant Capuano's appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

11. Defendant Capuano agrees to execute and return promptly acknowledgements of receipt of the Partial Final Judgment once the Partial Final Judgment has been entered by the Court and forwarded to him for that purpose.

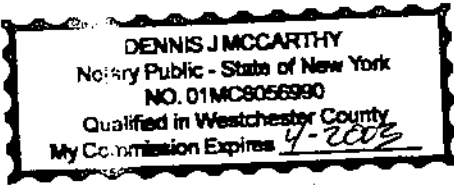
12. Defendant Capuano agrees that the annexed Partial Final Judgment may be presented by the Commission to the Court for signature and entry without further notice.

13. Defendant Capuano consents that this Court shall retain jurisdiction of this action for the purpose of implementing and enforcing the terms and conditions of the annexed Partial Final Judgment for all purposes.

Edward R. Capuano
Edward R. Capuano

State of New York)
County of *WESTCHESTER*) ss:

On this 20 day of April, 2002, before me personally appeared Edward R. Capuano, to me known and known to be the person who executed the foregoing consent.



D. McCarthy
Notary Public

SO ORDERED

Dated: May 21, 2002
Central Islip New York

S/ Denis B. Hurley
UNITED STATES DISTRICT JUDGE