

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

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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. :
-----X

No. CV-02-1524 (DRH)
:
:
[PROPOSED]
PARTIAL FINAL
JUDGMENT OF
PERMANENT INJUNCTION
AND OTHER RELIEF
AS TO DEFENDANT
ROCCO SICLARI

The Securities and Exchange Commission having filed a Complaint and Defendant Rocco Siclari ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Partial 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 Partial Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant, Defendant's agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Partial Final Judgment by personal service or otherwise are permanently restrained and enjoined from

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violating, directly or indirectly, 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], 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, Defendant's agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Partial Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of 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) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

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.

IV.

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 Partial Final Judgment.

V.

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 Final Judgment forthwith and without further notice.

Dated: 2/10, 2003

S/ Denis R. Hurley
UNITED STATES DISTRICT JUDGE

CONSENT OF DEFENDANT ROCCO SICLARI

1. Defendant Rocco Siclari ("Defendant") acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant 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 admits), Defendant hereby consents to the entry of the Partial Final Judgment in the form attached hereto and incorporated by reference herein, which, among other things: permanently restrains and enjoins Defendant from violations of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], and Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)].

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

4. Defendant waives the right, if any, to appeal from the entry of the Partial Final Judgment.

5. Defendant 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 to enter into this Consent.

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

7. Defendant will not oppose the enforcement of the Partial 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.

8. Defendant waives service of the Partial Final Judgment and agrees that entry of the Partial Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Partial Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Partial Final Judgment.

9. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant 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.

10. Defendant 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 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 hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Partial Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation in which the Commission is not a party.

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

12. 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 (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 for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Defendant's undersigned attorney 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's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena.

13. Defendant agrees that the Commission may present the Partial Final Judgment to the Court for signature and entry without further notice.

14. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Partial Final Judgment.

Dated: 1-10-03

Rocco Siclari
Rocco Siclari

On January 10, 2003, Rocco Siclari, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Steven K. Frankel
Notary Public
Commission expires:

STEVEN K. FRANKEL
Notary Public, State of New York
No. 4607105
Qualified in Kings County
Commission Expires 02/01/2003

Approved as to Form:

Stephen K. Frankel
Stephen Frankel, Esq.
319 Broadway
New York, NY 10007
Attorney for Defendant



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NORTHEAST REGIONAL OFFICE WRITER'S DIRECT DIAL NUMBER
233 BROADWAY 646-428-1864
NEW YORK, NY 10279

February 5, 2003

VIA FEDERAL EXPRESS

Clerk of Court
United States District Court
Eastern District of New York
Long Island Courthouse
100 Federal Plaza
Central Islip, NY 11722-4438

RECEIVED
U.S. DISTRICT COURT E.D.N.Y.
IN CLERK'S OFFICE
LONG ISLAND OFFICE

★ FEB 06 2003 ★

ENTERED

★ _____ ★

Re: SEC v. Paul Skulsky, et al., CV-02-1524 (DRH)

Dear Sir/Madam:

On behalf of plaintiff, Securities and Exchange Commission, enclosed please find a proposed Partial Final Judgment of Permanent Injunction and Other Relief By Consent with respect to defendant Rocco Siclari.

The proposed Partial Final Judgment and Consent are respectfully submitted to the Court for its approval. Also enclosed is an additional courtesy copy of the proposed Partial Final Judgment and Consent as well as a prepaid envelope to return a file-stamped copy to the undersigned. Please contact me with any questions at (646) 428-1864.

Very truly yours,

Jonathan A. Roberts
Attorney for Plaintiff
Securities and Exchange Commission

Enclosures

cc: All Attorneys of Record

FILED
FEB 06 2003
BY THE CLERK OF
JUDGE DENIS B. MARLER