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RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 v.

14 DONNE CORPORATION, SHERMAN S.
15 SMITH, SHAWN SMITH, AND BRUCE
ANDERSON,

16 Defendants.

Civil Action No. C 02-04238 SI

JUDGMENT OF PERMANENT
INJUNCTION AND OTHER RELIEF
AGAINST SHAWN SMITH

17
18 Plaintiff Securities and Exchange Commission ("Commission"), having
19 filed and served upon Defendant Shawn Smith a Summons and Complaint in this
20 action; Shawn Smith having admitted service upon him of the Summons and
21 Complaint in this action and the jurisdiction of this Court over him and over the
22 subject matter of this action; having been fully advised and informed of his right
23 to a judicial determination of this matter; having waived the entry of findings of
24 fact and conclusions of law as provided by Rule 52 of the Federal Rules of Civil
25 Procedure; having consented to the entry of this Judgment Of Permanent
26 Injunction And Other Relief Against Shawn Smith ("Judgment") without
27 admitting or denying the allegations in the Complaint, except as specifically set
28 forth in the Consent Of Shawn Smith To Entry Of Judgment Of Permanent

45

1 Injunction And Other Relief ("Consent"); no notice of hearing upon the entry of
2 this Judgment being necessary, and this Court being fully advised:

3 I

4 IT IS ORDERED, ADJUDGED AND DECREED that Shawn Smith and his
5 agents, servants, employees, and attorneys, and those persons in active concert or
6 participation with them who receive actual notice of this Judgment by personal
7 service or otherwise, are permanently restrained and enjoined from, directly or
8 indirectly:

- 9 a. making use of any means or instruments of transportation or
10 communication in interstate commerce or of the mails to sell any
11 security through the use or medium of any prospectus or otherwise,
12 unless a registration statement is in effect as to such security;
- 13 b. carrying or causing to be carried through the mails or in interstate
14 commerce, by any means or instruments of transportation, any such
15 security for the purpose of sale or for delivery after sale, unless a
16 registration statement is in effect as to such security; and
- 17 c. making use of any means or instruments of transportation or
18 communication in interstate commerce or of the mails to offer to sell
19 or offer to buy through the use or medium of any prospectus or
20 otherwise, any security, unless a registration statement has been filed
21 with the Commission as to such security, or while a registration
22 statement is the subject of a refusal order or stop order or (prior to the
23 effective date of the registration statement) any public proceeding of
24 examination under Section 8 of the Securities Act, 15 U.S.C. § 77h;
25 in violation of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) &
26 77e(c).

27 *

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II.

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2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Shawn
3 Smith and his agents, servants, employees, attorneys, and all persons in active
4 concert or participation with any of them, who receive actual notice of this
5 judgment, by personal service or otherwise, and each of them, are permanently
6 restrained and enjoined from, directly or indirectly, in the offer or sale of the
7 securities of any issuer, by the use of any means or instruments of transportation or
8 communication in interstate commerce or by the use of the mails:

- 9 a. employing any device, scheme or artifice to defraud;
10 b. obtaining money or property by means of any untrue statement of a
11 material fact or any omission to state a material fact necessary in
12 order to make the statements made, in the light of the circumstances
13 under which they were made, not misleading; or
14 c. engaging in any transaction, practice, or course of business which
15 operates or would operate as a fraud or deceit upon the purchaser;
16 in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a).

III.

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18 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Shawn
19 Smith and his agents, servants, employees and attorneys, and all persons in active
20 concert or participation with any of them, who receive actual notice of this
21 judgment by personal service or otherwise, and each of them, are permanently
22 restrained and enjoined from, directly or indirectly, in connection with the
23 purchase or sale of any security, by the use of any means or instrumentality of
24 interstate commerce, or of the mails, or of any facility of any national securities
25 exchange:

- 26 a. employing any device, scheme, or artifice to defraud;
27 b. making any untrue statement of a material fact or omitting to state a
28 material fact necessary in order to make the statements made, in the

1 light of the circumstances under which they were made, not
2 misleading; or

3 c. engaging in any act, practice, or course of business which operates or
4 would operate as a fraud or deceit upon any person;

5 in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C.
6 § 78j(b) (the "Exchange Act"), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

7 IV.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
9 provisions of the Consent filed concurrently with this Judgment are incorporated
10 herein with the same force and effect as if fully set forth herein and that Shawn
11 Smith shall comply with his Consent.

12 V.

13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court
14 retains jurisdiction to determine the appropriateness and amounts of disgorgement,
15 prejudgment interest, and a civil penalty. Prejudgment interest shall be calculated
16 pursuant to 28 U.S.C. § 1961 based on the date of entry of the order fixing the
17 amount of disgorgement. In connection with any hearing to determine the
18 appropriate amounts of disgorgement and a civil penalty, if any, Shawn Smith
19 shall not raise as a defense that he is not liable for payment of disgorgement or a
20 civil penalty, because he did not violate the provisions of the Securities Act, the
21 Exchange Act, or rules thereunder as set forth in the Complaint. Solely for the
22 purposes of determining the amount of disgorgement and a civil penalty, the Court
23 shall accept and deem as true the facts alleged in the Commission's Complaint.

24 VI.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Shawn
26 Smith shall not be entitled to a trial by jury for purposes of determining the
27 amount of disgorgement or a civil penalty.

28 *

VII.

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 2 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED
 3 that during the pendency of this action against any defendant, Shawn Smith shall
 4 remain subject to the discovery provisions of the Federal Rules of Civil Procedure
 5 which apply to parties, and, in addition, that Shawn Smith agrees and undertakes,
 6 without service of a subpoena, to appear for his deposition or to testify as a
 7 witness at any trial of this action or at any related proceeding. Failure to comply
 8 with the foregoing will subject Shawn Smith to the remedies and sanctions set
 9 forth in Rule 37 of the Federal Rules of Civil Procedure and all other available
 10 remedies.

VIII.

11
 12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this
 13 Court shall retain jurisdiction over this action for all purposes, including
 14 implementing and carrying out the terms of this Judgment and all other orders
 15 which may be entered herein, to resolve the Commission's pending claims against
 16 Shawn Smith for disgorgement, together with prejudgment interest, and for a civil
 17 penalty, and to entertain any suitable application or motion for additional relief
 18 within the jurisdiction of this Court.

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IX.

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 Judgment.

DATED: OCT 30 2003

Susan Illston
HONORABLE SUSAN ILLSTON
UNITED STATES DISTRICT JUDGE

Submitted by



Jose F. Sanchez
Attorney for Plaintiff
Securities and Exchange Commission

Approved as to form and content:



Defendant Shawn Smith

1 **PROOF OF SERVICE**

2 I am over the age of 18 years and not a party to this action. My business address is:

3 [X] U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire
4 Boulevard, 11th Floor, Los Angeles, California 90036-3648

5 Telephone No. (323) 965-3998; Facsimile No. (323) 965-3815.

6 On October 29, 2003, I served the document entitled **FINAL JUDGMENT OF**
7 **PERMANENT INJUNCTION AND OTHER RELIEF AGAINST SHAWN**
8 **SMITH** upon the parties to this action addressed as stated on the attached service list:

9 [X] **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for
10 collection and mailing today following ordinary business practices. I am readily
11 familiar with this agency's practice for collection and processing of
12 correspondence for mailing; such correspondence would be deposited with the
13 U.S. Postal Service on the same day in the ordinary course of business.

14 [] **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s),
15 which I personally deposited with the U.S. Postal Service. Each such
16 envelope was deposited with the U.S. Postal Service at Los Angeles,
17 California, with first class postage thereon fully prepaid.

18 [] **EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility
19 regularly maintained at the U.S. Postal Service for receipt of Express
20 Mail at Los Angeles, California, with Express Mail postage paid.

21 [] **HAND DELIVERY:** I caused to be hand delivered each such envelope to the
22 office of the addressee.

23 [] **FEDERAL EXPRESS BY AGREEMENT OF ALL PARTIES:** By placing
24 in sealed envelope(s) designated by Federal Express with delivery fees paid or
25 provided for, which I deposited in a facility regularly maintained by Federal
26 Express or delivered to a Federal Express courier, at Los Angeles, California.

27 [] **ELECTRONIC MAIL:** By transmitting the document by electronic mail to
the electronic mail address as stated on the attached service list.

[] **FAX (BY AGREEMENT ONLY):** By transmitting the document by facsimile
transmission. The transmission was reported as complete and without error.

[X] **(Federal)** I declare that I am employed in the office of a member of the bar of
this Court, at whose direction the service was made. I declare under penalty of
perjury that the foregoing is true and correct.

24 Date: October 29, 2003



JOAN T. THOMAS

1 **SEC v. DONNE CORPORATION, et al.**
2 **United States District Court - Northern District of California**
3 **Case No. C 02-04238 SI**
 (LA-2422)

4 **SERVICE LIST**

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 Attorney for Defendant Sherman S. Smith

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12 1836 Second Street
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16 *Pro Se*

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