

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

COPY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PHONG NGUYEN,

Defendant.

Civil Action No. 03-863
(JMR/FLN)

**JUDGMENT OF PERMANENT INJUNCTION AS TO
DEFENDANT PHONG NGUYEN**

The Securities and Exchange Commission ("Commission") having filed a Complaint and Defendant Phong Nguyen ("Defendant") having consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this 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 Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any

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RICHARD D. SLETTEN, CLERK
JUDGMENT ENTERED _____
DEPUTY CLERK'S INITIALS _____

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 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 FURTHER ORDERED, ADJUDGED, AND DECREED that this Court retains jurisdiction to determine the appropriateness and amounts (if any) of disgorgement, prejudgment interest thereon, and civil penalty to be paid by Defendant in connection with his conduct as alleged in the Complaint in this action. The amount of any disgorgement and prejudgment interest thereon, as well as the imposition of any civil penalty, will be determined by this Court upon motion of the Commission at a hearing at which the issues will be limited to the determination of the appropriateness and amounts of such relief. At such hearing Defendant will be precluded from arguing that he did not violate the federal securities laws in the manner described in the Complaint. Solely for the purposes of such hearing, the allegations of the Complaint shall be accepted and deemed true by the Court except for those set forth in the prayer for relief. The Court may determine amounts of disgorgement, prejudgment interest thereon, and civil penalty on the basis of the allegations in the Complaint, testimony of witnesses at the hearing,

affidavits, declarations, Commission investigative testimony excerpts and exhibits, or any other information deemed appropriate by the Court and has the discretion to determine that no relief is appropriate under the circumstances.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of Defendant Phong Nguyen 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 Judgment, *to end until December 31st, 2004.*

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 Judgment forthwith and without further notice.

Dated this 4th day of May, 2004.


UNITED STATES DISTRICT JUDGE

may pay pursuant to further order of this Court, regardless of whether such penalty or any part thereof is added to a distribution fund or otherwise used for the benefit of investors.

Defendant 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 that Defendant may pay pursuant to further order of this Court, regardless of whether such penalty or any part thereof is added to a distribution fund or otherwise used for the benefit of investors.

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

5. Defendant waives the right, if any, to appeal from the entry of the Judgment.

6. 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.

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

8. Defendant will not oppose the enforcement of the 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.

9. Defendant waives service of the Judgment and agrees that service upon his attorney after entry of the 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 (30) days after the 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 Judgment.

10. Consistent with 17 C.F.R. § 202.5(f), Defendant 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 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 an 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 understands that he shall not be permitted to contest the factual allegations of the Complaint in this action but will be able to contest the allegations made in the prayer for relief specifically that he is required to disgorge unlawful profits, interest or civil penalties.

11. 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 allegations in the complaint or order for

proceedings.” 17 C.F.R. § 202.5(e). 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 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 or other legal proceedings in which the Commission is not a party.

12. 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 neither party is the prevailing party in this action since the parties have reached a good faith settlement.

13. 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 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, 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 (iv) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena.

14. Defendant understands and agrees that the amount of any disgorgement and prejudgment interest thereon, as well as the imposition of any civil penalty, will be determined by this Court upon motion of the Commission at a hearing at which the issues will be limited to the determination of the appropriateness and amounts of such relief. Defendant understands and agrees that at such hearing he will be precluded from arguing that he did not violate the federal securities laws in the manner described in the Complaint, and that, solely for the purposes of such hearing, the allegations of the Complaint shall be accepted and deemed true by the Court. Defendant understands and agrees that the Court may determine amounts of disgorgement, prejudgment interest thereon, and civil penalty on the basis of the allegations in the Complaint, testimony of witnesses at the hearing, affidavits, declarations, Commission investigative testimony excerpts and exhibits, or any other information deemed appropriate by the Court.

15. The Commission acknowledges that the Court has complete discretion to decide the appropriate relief which includes the possibility that the Court will decline to award the Commission any of the relief it seeks.

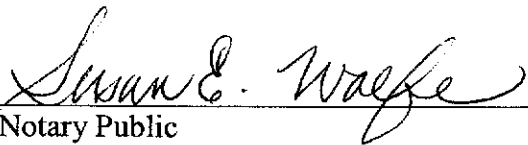
16. Defendant agrees that the Commission may present the Judgment to the Court for signature and entry without further notice.

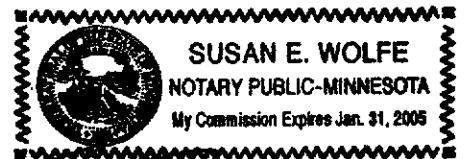
17. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Judgment.

Dated: 4/14/2004



PHONG NGUYEN


On April 14, 2004, Phong Nguyen, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.


Notary Public
Commission expires:



SEEN AND APPROVED AS TO FORM 


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