

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

JOSEPH SIMONE, et al.,

Defendants.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ MAY 22 2012 ★

BROOKLYN OFFICE

Civ. No. 07-3928 (JG)(RML)

**JUDGMENT OF PERMANENT INJUNCTION AND OTHER
RELIEF AS TO DEFENDANT ALFRED VARRICCHIO**

Plaintiff Securities and Exchange Commission ("Commission") having filed an amended complaint on September 24, 2007 ("Complaint") alleging, among other things, that defendant Alfred Varricchio ("Varricchio") violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Varricchio having executed the Consent of Defendant Alfred Varricchio ("Consent") annexed hereto and incorporated herein, having acknowledged service of the Summons and Complaint and waiving the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, having admitted to the jurisdiction of this Court over him and over the subject matter of this action and, without admitting or denying the allegations contained in the Complaint, except as to jurisdiction, which are admitted, having consented to the entry of this Judgment Of Permanent Injunction And Other Relief As To Defendant Alfred Varricchio ("Judgment"), without further notice:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Varricchio is permanently enjoined and restrained from, directly or indirectly, in the offer or sale of any security, by the use of any means or instrument of transportation or communication in interstate commerce or of the mails:

- (A) employing any device, scheme, or artifice to defraud;
- (B) 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 light of the circumstances under which they were made, not misleading;
or
- (C) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a 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 Varricchio is permanently restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- (A) employing any device, scheme, or artifice to defraud;
- (B) making 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) 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 promulgated thereunder [17 C.F.R. § 240.10b-5].

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon motion of the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains and/or a civil penalty against Varricchio pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and, if so, the amount(s) of disgorgement and/or a civil penalty. If disgorgement is ordered, Varricchio shall pay prejudgment interest on the disgorgement amount, calculated from January 1, 2005, at the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any oral argument held on such a motion: (a) Varricchio will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) he may not challenge the validity of the Consent or this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court (with the exception of the specific percentage amounts of the sham finder fees that Varricchio received as alleged in Paragraph 65 and Paragraph 83 of the Complaint); and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule

56(c) of the Federal Rules of Civil Procedure and without conducting an evidentiary hearing.

IV.

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

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the provisions of the annexed Consent be, and the same hereby are, incorporated in this Judgment with the same force and effect as if fully set forth herein.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, implementing and enforcing the terms and conditions of this Judgment.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that 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.

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

Civ. No. 07-3928 (JG)(RML)

v.

JOSEPH SIMONE, et al.,

Defendants.

CONSENT OF DEFENDANT ALFRED VARRICCHIO

1. Defendant Alfred Varricchio ("Varricchio"), acknowledges having been served with the amended complaint in this action ("Complaint"), enters a general appearance, and admits the Court's jurisdiction over him 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 Varricchio admits), Varricchio hereby consents to the entry of the Judgment Of Permanent Injunction And Other Relief As To Defendant Alfred Varricchio ("Judgment") which, among other things, permanently restrains and enjoins Varricchio from violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

3. Varricchio agrees that this Consent Of Defendant Alfred Varricchio ("Consent") shall be incorporated by reference in and made part of the Judgment to be presented to the Court for signature, filing and entry contemporaneously herewith.

4. Varricchio agrees that, upon motion of the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains and/or a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and, if so, the amount(s) of the disgorgement and/or civil penalty. Varricchio further understands that, if disgorgement is ordered, Varricchio shall pay prejudgment interest thereon, calculated from January 1, 2005, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). Varricchio further agrees that in connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Varricchio will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Varricchio may not challenge the validity of this Consent or the Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court (with the exception of the specific percentage amounts of the sham finder fees that Varricchio received as alleged in Paragraph 65 and Paragraph 83 of the Complaint); and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

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

6. Varricchio waives the right, if any, to a jury trial and to appeal from the entry of the Judgment.

7. Varricchio 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 Varricchio to enter into this Consent.

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

10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Varricchio in this civil proceeding. Varricchio 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. Varricchio waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Varricchio 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, Varricchio understands that he shall not be permitted to contest the factual allegations of the Complaint in this action.

11. Varricchio 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. In compliance with this policy, Varricchio 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, Varricchio hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If Varricchio 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 Varricchio'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. Varricchio 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 Varricchio to defend against this action. For these purposes, Varricchio agrees that he is not the prevailing party in this action since the parties have reached a good faith settlement.

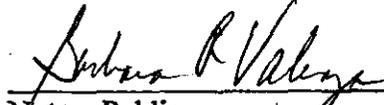
13. Varricchio agrees that the Commission may present the Judgment to the Court for signature and entry without further notice.

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

Dated: 4/27, 2012


Alfred Varricchio

On APRIL 29th, 2012, Alfred Varricchio, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.


Notary Public
Commission expires:

BARBARA R. VALENZA
Notary Public, State of New York
No. 01VA6238657
Qualified in Nassau County
Commission Expires April 2, 2016

SO ORDERED:

s/John Gleeson

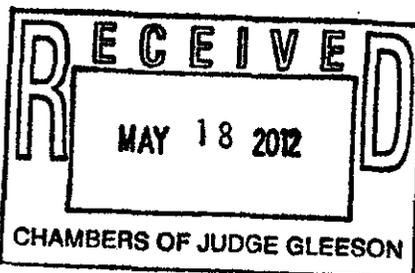
5/18/12

UNITED STATES DISTRICT JUDGE



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
3 World Financial Center, Suite 400
NEW YORK, N.Y. 10281

WRITER'S DIRECT LINE
(212) 336-0037



May 16, 2012

By UPS

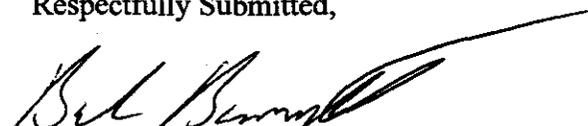
The Honorable John Gleeson
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: SEC v. Joseph Simone, et al., Civ. No. 07-3928 (JG)(RML)

Dear Judge Gleeson:

On behalf of plaintiff Securities and Exchange Commission ("Commission"), I enclose for Your Honor's consideration and approval an executed Judgment of Permanent Injunction and Other Relief as to Defendant Alfred Varricchio. ("Judgment"). Should Your Honor enter the Judgment, it would fully resolve the Commission's claims for injunctive relief concerning this defendant and leave the resolution of the remaining claims for disgorgement and civil penalties to motion practice. However, defendant has requested that the Commission consider waiving its monetary claims based on his inability to pay. The Commission staff has requested financial information from the defendant to determine whether to recommend a waiver to the Commission.

Respectfully Submitted,


Burk Burnett
Enforcement Division

Enclosure

cc: Howard Elisofon, Esq.
Counsel to Alfred Varricchio