

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

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| SECURITIES AND EXCHANGE COMMISSION, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| -against- | : | 09-CV-14S |
| | : | |
| GEN-SEE CAPITAL CORPORATION a/k/a | : | |
| GEN UNLIMITED and RICHARD S. PICCOLI, | : | |
| | : | |
| Defendants. | : | |
| | : | |

**FINAL JUDGMENT AS TO DEFENDANTS
GEN-SEE CAPITAL CORPORATION A/K/A GEN UNLIMITED
AND RICHARD S. PICCOLI**

The Securities and Exchange Commission (“Commission”) having filed a Complaint against defendants Richard S. Piccoli and Gen-See Capital Corporation a/k/a Gen Unlimited (collectively, “Defendants”); Defendants having entered a general appearance, consented to the Court’s jurisdiction over them and the subject matter of this action and to the entry of a preliminary injunction and order freezing assets; the Court on January 28, 2009, having entered a *Consent Order Granting Preliminary Injunction and Other Interim Relief* (“Preliminary Injunction Order”) that preliminarily enjoined the Defendants from selling any securities whatsoever and from violating the securities laws, directly or indirectly, and, as subsequently modified on March 3, 2009, continued the asset freeze that had been provisionally in effect since January 8, 2009; and Defendants having consented to entry of this 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 Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants and each of their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final 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 (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 Defendants and each of their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently enjoined, from violating, directly or indirectly, Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C.

§ 77q(a)] in the offer or sale of any security by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails:

- (a) to employ any device, scheme or artifice to defraud;
- (b) to obtain money or property by means of an untrue statement of material fact or omitting to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and
- (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 HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants and each of their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently enjoined, from violating Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and (c)] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any

means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or

- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are jointly and severally liable for and shall pay disgorgement of ill-gotten gains resulting from the conduct alleged in the Complaint plus prejudgment interest thereon, and 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)]. The Court shall determine the amounts of the disgorgement, prejudgment interest, and civil penalty upon motion of the Commission. Prejudgment interest shall be calculated from the date of the first violation 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). In connection with the Commission's motion for disgorgement, prejudgment interest, and/or civil penalties, and at any hearing held on such a motion: (a) Defendants will be precluded from arguing that they did not violate the federal securities laws as alleged in

the Complaint: (b) Defendants may not challenge the validity of the Consent or this Final Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; 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, prejudgment interest, and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that all of Defendants' funds located in banking, financial, and brokerage institutions identified in or currently subject to the provisions of the Preliminary Injunction Order imposing a freeze of the assets of Defendants shall, upon further Orders of the Court, be transferred to and deposited by the Clerk in an interest-bearing account with the Court's Registry Fund, and the Clerk of the Court will invest the funds accordingly. The Court shall issue Orders to those banking, financial, and brokerage institutions directing them to transfer the funds to the Court's Registry Fund. **Such Orders shall be prepared by the Commission and submitted for the Court's review and consideration.** Upon such transfer, Defendants relinquish all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendants. The amount of the funds deposited in the Registry Fund pursuant to this paragraph shall be applied to satisfy, in whole or in part, Defendants' disgorgement obligation on a dollar-for-dollar basis. These

funds, and any additional funds subsequently deposited in the Court's Registry Fund, together with any interest and income earned thereon (collectively, the "Fund"), shall be held in the interest-bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk of the Court is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States.

The Commission may by motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Final Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendants shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendants' payment of disgorgement in this action, argue that he or it is entitled to, nor shall he or it further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendants shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a

payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Final Judgment. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Defendants by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the provisions of the Preliminary Injunction Order imposing a freeze of the assets of Defendants are incorporated into this Final Judgment and shall remain in full force until further order of this Court.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Final Judgment shall be, and is, binding upon Defendants and their, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of Defendants Gen-See Capital Corporation a/k/a Gen Unlimited and Richard S. Piccoli is incorporated herein with the same force and effect as if fully set forth herein, and that Defendants comply with all of the undertakings and agreements set forth therein.

IX.

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 Final Judgment.

SO ORDERED:

Dated: June 9, 2009
Buffalo, NY

/s/William M. Skretny
UNITED STATES DISTRICT JUDGE

**CONSENT OF DEFENDANTS
GEN-SEE CAPITAL CORPORATION A/K/A GEN UNLIMITED
AND RICHARD S. PICCOLI**

Defendants Gen-See Capital Corporation a/k/a Gen Unlimited and Richard S. Piccoli (collectively, “Defendants”) acknowledge having been served with the summons and complaint in this action, enter a general appearance, and admit the Court’s jurisdiction over Defendants and over the subject matter of this action.

Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Defendants admit), Defendants hereby consent to the entry of the proposed Final Judgment As To Defendants Richard S. Piccoli and Gen-See Capital Corporation a/k/a Gen Unlimited in the form attached hereto (“Final Judgment”) and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendants from violating Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a), 77e(c) and 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 [17 C.F.R. § 240.10b-5];
- (b) orders Defendants to pay disgorgement plus prejudgment interest and civil penalties and provides that the amounts of the disgorgement, prejudgment interest, and civil penalties will be determined by the Court at a later time in this action on motion by the Securities and Exchange Commission (“Commission”); and

- (c) continues the asset freeze imposed in the Court's *Consent Order Granting Preliminary Injunction and Other Interim Relief*, entered on January 22, 2009, as modified on March 8, 2009 ("Preliminary Injunction Order").

Defendants acknowledge that the civil penalty paid pursuant to the Final Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, the civil penalty shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendants agree that they shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendants' payment of disgorgement in this action, argue that they are entitled to, nor shall they further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendants' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendants agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this action. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendants by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

Defendants agree that they shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendants pay pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendants further agree that they 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 amounts that Defendants pay pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

Defendants agree that the Court shall order disgorgement of ill-gotten gains, prejudgment interest thereon, and 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)]. Defendants further agree that the amounts of the disgorgement and civil penalty shall be determined by the Court upon motion of the Commission, and that prejudgment interest shall be calculated from the date of the first violation 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). Defendants further agree that in connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendants will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendants may not challenge the validity of this Consent or the Final Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and

deemed true by the Court; 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.

The Defendants agree that all of Defendants' funds located in banking, financial, and brokerage institutions identified in or currently subject to the provisions of the Preliminary Injunction Order imposing a freeze of the assets of Defendants shall be transferred to and deposited in an interest bearing account with the Court's Registry Fund, pursuant to further Order of the Court. Upon such transfer, Defendants relinquish all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendants. Defendants further agree that the amount of such funds transferred to and deposited in the Court's Registry Fund shall be applied to satisfy, in whole or in part, Defendants' disgorgement obligation on a dollar-for-dollar basis.

Defendants waive the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

Defendants waive the right, if any, to a jury trial and to appeal from the entry of the proposed Final Judgment.

Defendants enter into this Consent voluntarily and represent 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 Defendants to enter into this Consent.

Defendants agree that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

Defendants will not oppose the enforcement of the 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 waive any objection based thereon.

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

Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendants in this civil proceeding. Defendants acknowledge 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. Defendants further acknowledge 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, Defendants understand that they shall not be permitted to contest the factual allegations of the complaint in this action.

Defendants understand and agree 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, Defendants agree: (a) 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 (b) that upon the filing of this Consent, Defendants hereby withdraw any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendants breach this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendants': (a) testimonial obligations; or (b) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

Defendants hereby waive 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 Defendants to defend against this action. For these purposes, Defendants agree that Defendants are not the prevailing party in this action since the parties have reached a good faith settlement.

Defendants agree that the Commission may present the proposed Judgment to the Court for signature and entry without further notice.

Defendants agree that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: April 11, 2009

/s/ Richard S. Piccoli
Richard S. Piccoli, in his personal capacity
and as President of Gen-See Capital
Corporation a/k/a Gen Unlimited

On April 11, 2009, Richard S. Piccoli, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent of Defendants Gen-See Capital Corporation a/k/a Gen Unlimited and Richard S. Piccoli in his personal capacity and, with full authority to do so, on behalf of Gen-See Capital Corporation a/k/a Gen Unlimited as its President.

/s/ Joel L. Daniels
Notary Public
Commission expires: 11-23-09

Approved as to form:

/s/ Joel L. Daniels
Joel L. Daniels, Esq.
1366 Statler Towers
Buffalo, NY 14202
716-856-5140 (Tel.)
716-856-3106 (Fax)
*Attorney for Richard S. Piccoli
and Gen-See Capital Corporation a/k/a Gen Unlimited*