

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :
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 Plaintiff, :
 :
 - against - : 00 Civ. 9422 (JGK)
 :
 MARCO G. FIORE, JR., BENJAMIN V. :
 SALMONESE, JR., THOMAS DECEGLIE, :
 DAVID C. LAVENDER, and :
 PETER C. RESTIVO, :
 Defendants. :
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FINAL JUDGMENT BY CONSENT AS TO DEFENDANT PETER C. RESTIVO

The Securities and Exchange Commission having filed a Complaint and Defendant Peter C. Restivo (“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 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 Defendant and Defendant’s 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, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with a distribution of securities, directly or indirectly, from bidding for, purchasing, or attempting to induce any person to bid for or purchase, a covered security during the applicable restricted period, absent any exemption, in violation of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and Rules 101 and 102 of Regulation M [17 C.F.R. §§242.101 and 242.102], promulgated thereunder, which are the successor rules to Rule 10b-6 [17 C.F.R. 240.10b-6].

II.

IT IS HEREBY FUTHER ORDERED, ADJUDGED, AND DECREED that Defendant is enjoined and restrained, for ten years from the date of entry of this Final Judgment, from directly or indirectly, singly or in concert:

- A. participating in any way in the sale of any security while acting as, on behalf of, or in association with, an issuer, underwriter, broker, or dealer involved in such sale, unless a registration statement is in effect as to such security; or
- B. participating in any way in the offer to sell or the offer to buy any security while acting as, on behalf of, or in association with, an issuer, underwriter, broker, or dealer involved in such offer, unless a registration statement has been filed as to such security.

III.

IT IS HEREBY 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 HEREBY 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.

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 Final Judgment forthwith and without further notice.

CONSENT OF DEFENDANT PETER C. RESTIVO

1. Defendant Peter C. Restivo (“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 Final Judgment in the form attached hereto (the “Final Judgment”) and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violations of Rules 101 and 102 of Regulation M [17 C.F.R. § 242.101; 17 C.F.R. § 242.102], which are the successor rules to Rule 10b-6 under the Securities Exchange Act of 1934 (“Exchange Act”) [17 C.F.R. 240.10b-6]; and
- (b) enjoins and restrains Defendant, for ten years from the date of entry of this Final Judgment, from directly or indirectly, singly or in concert, (i) participating in any way in the sale of any security while acting as, on behalf of, or in association with, an issuer, underwriter, broker, or dealer involved in such sale, unless a registration statement is in effect as to such security or (ii) participating in any way in the offer to sell or the offer to buy any security while acting as, on behalf of, or in association with, an issuer, underwriter, broker, or dealer involved in such offer, unless a registration statement has been filed as to such security.

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 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 Final Judgment with the same force and effect as if fully set forth therein.

7. Defendant 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 waives any objection based thereon.

8. Defendant waives service of the Final Judgment and agrees that entry of the 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 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 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 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 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, Defendant understands that he shall not be permitted to contest the factual allegations of the Complaint in this action.

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 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 or other legal proceedings 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. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

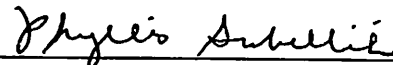
13. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 10/22, 2003



PETER C. RESTIVO

On 10/22/, 2003, Peter C. Restivo, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent to Final Judgment.



NOTARY PUBLIC
Commission Expires:

PHYLLIS SABELLICHI
Notary Public, State of New York
No. 01SA5031266
Qualified in Nassau County
Commission Expires August 1, 06

SO ORDERED:

Date: 11/18, 2003
New York, New York



UNITED STATES DISTRICT JUDGE