

ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

United States District Court
Southern District of Texas
ENTERED

JAN 10 2001

Michael N. Milby, Clerk of Court

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

**Y2K HIGHWAY, INC. and
ROBERT J. KUNTZ**

Defendants.

: Civil Action No.:

14.

C-00-187

**FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF AGAINST ROBERT J. KUNTZ**

Plaintiff Securities and Exchange Commission ("Commission"), having filed its Complaint in this matter and defendant Robert J. Kuntz ("Kuntz"), through his Stipulation and Consent ("Consent"), having admitted service of the Complaint and waived service of the summons, having admitted the jurisdiction of this Court over him, having waived the entry of findings of facts and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, having entered into his Consent voluntarily, no threats, promises of immunity or assurances having been made by the Commission or by any of its members, officers, agents or representatives to induce Kuntz to enter into his Consent, having consented, without admitting or denying any of the allegations in the Commission's Complaint, except as to jurisdiction as set forth above, to entry without further notice of this Final Judgment of Permanent Injunction and Other Equitable Relief ("Final Judgment") enjoining defendant Kuntz from engaging in transactions, acts, practices and courses of business which constitute and would constitute violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, [15 U.S.C. §§ 77e(a), 77e(c) and 77(q)(a)], Section 10(b)

of the Securities Exchange Act of 1934, [15 U.S.C. §78j(b)], and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5]; and it further appearing that this Court has jurisdiction over defendant Kuntz and over the subject matter of this action and that no further notice of hearing for the entry of this Final Judgment need be given; and the Court being fully advised in the premises:

I.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that defendant Kuntz and his agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined, directly or indirectly, in connection with the purchase or sale of securities, in the form of investment contracts, notes or any other security, from making use of any means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange:

- (a) to employ any device, scheme or artifice to defraud;
- (b) to make any untrue statement of a material fact or 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 FURTHER ORDERED, ADJUDGED AND DECREED that defendant Kuntz and his agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently

restrained and enjoined, in the offer or sale of securities, in the form of investment contracts, notes or any other security, from making use of any means or instruments of transportation or communication in interstate commerce, or of the mails, directly or indirectly:

- (a) to employ any device, scheme or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission 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 transaction, practice or course of business which operates or would operate as a fraud or deceit upon any purchaser.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Kuntz and his agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, in the absence of any applicable exemption, directly or indirectly:

- (a) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell the securities of any issuer, through the use or medium of any prospectus or otherwise, unless and until a registration statement is in effect as to such securities;
- (b) carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale

or for delivery after sale, the securities of any issuer, unless and until a registration statement is in effect as to such securities; 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 the securities of any issuer, unless and until a registration statement has been filed with the Commission as to such securities, or while a registration statement as to such securities is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding of examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Kuntz shall pay disgorgement, jointly and severally with Defendant Y2K Highway, Inc., in the amount of \$281, 914.40, representing gains from the conduct alleged in the Complaint, plus prejudgment interest. Based upon defendant Kuntz's sworn representations in his Sworn Statement of Financial Condition dated June 1, 2000, and submitted to the Commission, payment of the above-referenced disgorgement and all prejudgment interest thereon is waived, contingent upon the accuracy and completeness of his Sworn Statement of Financial Condition.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based upon defendant Kuntz's sworn representations in his Sworn Statement of Financial Condition dated February 15, 2000, and submitted to the Commission, the Court is not ordering him to pay a civil money penalty pursuant to the provisions of Section 20(d) of the Securities Act of 1933, [15 U.S.C. §77t(d)], and Section 21(d)(3) of the Securities Exchange Act of 1934, [15 U.S.C. §78u(d)(3)]. The determination not to impose a civil penalty and to waive payment of a portion of the disgorgement amount and all prejudgment interest thereon is contingent upon the accuracy and completeness of defendant Kuntz's Sworn Statement of Financial Condition. If at any time following the entry of this Final Judgment, the Commission obtains information indicating that defendant Kuntz's representations to the Commission concerning his assets, income, liabilities or net worth were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Kuntz, petition this Court for an order requiring Kuntz to pay all disgorgement previously waived, plus prejudgment and post-judgment interest thereon, and a civil penalty. In connection with any such petition, the only issues shall be whether the financial information provided by defendant Kuntz was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, and the amount of civil penalty to be imposed. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering defendant Kuntz to turn over funds and assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment, and the Commission may also request additional discovery. Defendant Kuntz may not, by way of defense to such petition, challenge the validity of his Consent or this Final Judgment, contest the allegations in the Complaint filed by the

Commission or the amount of disgorgement and interest, or assert that disgorgement or payment of a civil penalty should not be ordered.

VI.

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

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this action for all purposes, including for purposes of entertaining any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court, including but not limited to the relief requested by the Commission in its Complaint in this action.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Final Judgment may be served upon defendant Kuntz in person or by mail either by the United States marshal, by the Clerk of the Court or by any member of the staff of the Commission.

DATED and SIGNED this ~~16~~^{9th} day of ~~June~~^{January}, 2000~~2000~~²⁰⁰¹


UNITED STATES DISTRICT JUDGE

Agreed as to Form and Substance:



ROBERT J. KUNTZ