

10/15/05

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

00 Civ. 5575 (PKC)

-against-

PHILLIP HERMAN, MARC WEIN, MILLENNIUM
SERVICES CORP., and BRANIN INVESTMENTS,
INC.,

Defendants.

FINAL CONSENT JUDGMENT OF
PERMANENT INJUNCTION AND OTHER RELIEF
AS TO DEFENDANT MARC WEIN

Plaintiff Securities and Exchange Commission ("Commission"), having commenced this action by filing a Complaint ("Complaint") on July 27, 2000, charging Phillip Herman ("Herman"), Marc Wein ("Wein"), Millennium Services Corp. ("Millennium"), and Branin Investments, Inc. ("Branin") with violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c)], Section 17(a) of the 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 [17 C.F.R. § 240.10b-5]; and Wein, having accepted service of the summons issued to him and the Complaint, having admitted to the jurisdiction of this Court over him and over the subject matter of this action, having waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and, without admitting or denying the allegations contained in the Commission's

Complaint (except as to jurisdiction, which are admitted), having executed the attached Consent of Defendant Marc Wein ("Consent") incorporated herein, and having consented to the entry without further notice of this Final Consent Judgment Of Permanent Injunction And Other Relief As To Defendant Marc Wein ("Final Judgment"):

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Wein, be, and hereby is, permanently enjoined and restrained from, directly or indirectly:

- A. unless a registration statement is in effect as to a security,
 - 1. making use of any means or instrument 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;
 - 2. carrying or causing to be carried through the mails or in interstate commerce by any means or instrument of transportation any such security for the purpose of sale or for delivery after sale; or
- B. 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 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,

in violation of Sections 5(a) or 5(c) of the Securities Act [15 U.S.C. §§ 77e(a),(c)].

II.

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

- A. employing any device, scheme, or artifice to defraud;
- B. obtaining 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 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 the purchaser,

in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wein be, and hereby is, permanently enjoined and restrained from, directly or indirectly, 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 omitting 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 connection with the purchase or sale of any security, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

IV.

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

V.

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 **Final Judgment**.

VI.

IT IS 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 Wein shall comply with all of the undertakings and agreements set forth therein.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there is no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk of the Court is hereby ordered to enter this Final Judgment forthwith and without further notice.

**CONSENT OF DEFENDANT
MARC WEIN**

1. Defendant Marc Wein ("Wein"), having accepted service of the summons issued to him and the complaint in this action, having read and understood the terms of the annexed **Final Consent Judgment Of Permanent Injunction And Other Relief As To Defendant Marc Wein ("Final Judgment")**, appears and admits the jurisdiction of this Court over him and over the subject matter of this action, waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure and, without admitting or denying the allegations contained in the Complaint of Plaintiff Securities and Exchange Commission ("Commission"), except as to jurisdiction, which are admitted, hereby consents to the entry, without further notice, of the **Final Judgment** in the form annexed hereto and incorporated by reference herein.

2. Wein agrees that this **Consent of Defendant Marc Wein ("Consent")** shall be incorporated by reference in and made part of the annexed **Final Judgment** with the same force and effect as if fully set forth therein.

3. Wein waives the right, if any, to appeal from the **Final Judgment**.

4. Wein 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 Wein to enter into this **Consent**.

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

6. Wein 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, Wein 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, Wein hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If Wein 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 Wein'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.

7. Wein 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 Wein to defend against this action. For these purposes, Wein agrees that Wein is not the prevailing party in this action since the parties have reached a good faith settlement.

8. 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, Wein (i) agrees to appear and be interviewed by any party of this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party at such times and places as the party or parties request upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas 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 Wein's travel, lodging, and subsistence expenses at the then-prevailing U.S.

Government per diem rates; and (iv) consents to personal jurisdiction over Wein in any United States District Court for purposes of enforcing any such subpoena.

9. Wein 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.

10. Wein 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 Wein of its terms and conditions. Wein further agrees to provide G. William Currier, Senior Trial Counsel, Securities and Exchange Commission, Northeast Regional Office, 233 Broadway, New York, NY 10279, within thirty days after the **Final Judgment** is filed with the Clerk of the Court, with an affidavit or declaration stating that Wein has received and read a copy of the **Final Judgment**.

11. Wein agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the **Final Judgment**.

12. Wein agrees that the Commission may present the annexed Final Judgment to the Court for signature and entry without further notice.

Marc Wein
Marc Wein

STATE OF TEXAS)
) ss.:
COUNTY OF Burnet)

On this 8th day of October, 2004, before me personally appeared Marc Wein, to me known to be the person who executed the foregoing Consent of Defendant Marc Wein.

L. Coleman
Notary Public



SO ORDERED:

[Signature]
UNITED STATES DISTRICT COURT JUDGE

Date: July 19, 2006 r

THIS DOCUMENT WAS ENTERED
ON THE COURT ON _____

SEC v. PHILLIP HERMAN, ET AL., 00 Civ. 5575 (PKC)

SERVICE LIST PURSUANT TO LOCAL RULE 77.1

Plaintiff Securities and Exchange Commission

Stephen B. Holden
Senior Attorney
Securities and Exchange Commission
3 World Financial Center, Room 4300
New York, New York 10281

Defendants Philip Herman, Branin Investments, Inc. and Millennium Services Corp.

Richard F. Albert, Esq.
Morvillo, Abramowitz, Grand, Iason & Silberberg, P.C.
565 Fifth Avenue
New York, New York 10017

Defendant Marc Wein, Pro Se

Marc Wein
19314 Inverness Drive
Spicewood, Texas 78669