

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

FILED
U.S. DIST. COURT
SAVANNAH DIV.

DEC 29 3 48 PM '97

CLERK: *SPY*
SO. DIST. OF GA.

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

Civil Action
No. CV-497-060

SUSAN L. HIRSCH,
GREGORY M. HIRSCH,
DANNY B. KAMINSKY,
LEWIS A. KOODEN,
DANIEL H. KLUGMAN and
MICHAEL D. KOODEN,

Defendants.

FINAL JUDGMENT
OF PERMANENT INJUNCTION
AS TO DEFENDANT GREGORY M. HIRSCH.

Plaintiff Securities and Exchange Commission (the "Commission") having filed its Complaint, and Defendant Gregory M. Hirsch, having entered into the attached Consent and Undertakings of Defendant Gregory M. Hirsch (the "Consent"), filed simultaneously with this Final Judgment of Permanent Injunction and incorporated by reference herein, having entered a general appearance, having acknowledged service of the Complaint, having admitted the Court's jurisdiction over him and over the subject matter of this action, having waived service of process, having waived filing of an answer, 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 any of the allegations of the Complaint, except as to jurisdiction, which the defendant admits, having consented to the

entry of this Final Judgment, and it further appearing that this Court has jurisdiction over Gregory M. Hirsch, and the subject matter hereof, and the Court being fully advised in the premises:

I.

IT IS HEREBY ORDERED that Gregory M. Hirsch, his agents, servants, employees, attorneys, and those 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, are permanently enjoined and restrained from violating, directly or indirectly, by use of the means or instrumentalities of interstate commerce, the mails, or any facility of any national securities exchange:

- (a) Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5] by: (1) employing any device, scheme or artifice to defraud, (2) 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 (3) 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; and

- (b) Section 14(e) of the Securities Exchange Act of 1934 [15 U.S.C. § 78n(e)] and Rule 14e-3 promulgated thereunder [17 C.F.R. § 240.14e-3] by:
- (1) trading in the securities sought or to be sought in a tender offer while in possession of material information relating to said tender offer which the defendant knows or has reason to know is nonpublic and has been acquired, directly or indirectly, from the offering person, the issuer of the securities sought or to be sought by such tender offer, or any officer, director, partner, employee, or other person acting on behalf of the offering person or such issuer, without disclosing a reasonable time prior to trading such information and its source; or
 - (2) communicating material information relating to a tender offer, which information the defendant knows or has reason to know is nonpublic and knows or has reason to know was acquired, directly or indirectly, from the offering person, the issuer of the securities sought or to be sought by such tender offer, or any officer, director, partner, employee, or other person acting on behalf of the offering person or such issuer, to any other person under circumstances in which it is reasonably foreseeable that such communication is

likely to result in violation of Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated under the Securities Exchange Act of 1934.

II.

IT IS FURTHER ORDERED that Gregory M. Hirsch shall pay disgorgement in the amount of \$125,645, representing his gains from the conduct alleged in the Complaint, plus prejudgment interest thereon. Based upon the sworn representations in Defendant Gregory M. Hirsch's Statement of Financial Condition, dated September 12, 1997 (the "Statement of Financial Condition"), and contingent upon the accuracy and completeness of the Statement of Financial Condition, all but \$93,837 of the disgorgement amount, and all of the prejudgment interest thereon, is waived.

III.

IT IS FURTHER ORDERED that, based upon the sworn representations in the Statement of Financial Condition, the Court is not ordering Gregory M. Hirsch to pay a civil penalty pursuant to Section 21A(a) of the Securities and Exchange Act of 1934 [15 U.S.C. § 78u-1(a)]. The determination not to impose a civil penalty and to partially waive payment of disgorgement and prejudgment interest thereon as described in Paragraph II above is contingent upon the accuracy and completeness of the Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Defendant Hirsch'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 Defendant Hirsch, petition this Court for an order requiring Defendant Hirsch to pay the remaining portion of the disgorgement, prejudgment and postjudgment interest thereon, and a civil penalty. In connection with any such petition, the only issues shall be whether the financial information provided by Defendant Hirsch 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 Hirsch to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment, and the Commission may also request additional discovery. Defendant Hirsch 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, contest the amount of disgorgement and interest, or assert that disgorgement or the payment of a civil penalty should not be ordered.

IV.

IT IS FURTHER ORDERED that \$23,459.25 of the monies ordered to be paid pursuant to Section II, above, of this Final Judgment

shall be paid within 10 days of entry of this Final Judgment; \$23,459.25, plus post-judgment interest, of the monies ordered to be paid pursuant to Section II, above, shall be paid within six months of entry of this Final Judgment; \$23,459.25, plus post-judgment interest, of the monies ordered to be paid pursuant to Section II, above, shall be paid within nine months of entry of this Final Judgment; and \$23,459.25, plus post-judgment interest, of the monies ordered to be paid pursuant to Section II, above, shall be paid within twelve months of entry of this Final Judgment. All payments shall be made pursuant to this paragraph shall be made to the Clerk of this Court by cashier's check, certified check or postal money order, under cover of a letter that identifies the defendant, the name and case number of this litigation and the name of this Court, with a copy of the cover letter simultaneously transmitted to counsel for the Commission in this action, with such monies to be placed in an interest bearing account as required by Rule 67, Federal Rules of Civil Procedure and thereafter disbursed as directed by Order of this Court.

V.

IT IS FURTHER ORDERED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Gregory M. Hirsch shall comply with all of the undertakings and agreements incorporated herein.

VI.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction for the purpose of enforcing the Final Judgment.

VII.

There being no cause for delay, the Clerk of the Court is directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment forthwith.

Dated: DEC. 29, 1997


United States District Judge