

BATTEN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

LEONARD ALEXANDER RUGE,
RICHARD WOLFF,
MAC BEAGELMAN,
MICHAEL SCOTT SYMONS,
RICHARD BALBER,
STEPHEN EVERS,
EUGENE FLAKSMAN,
MARK FURMAN,
ALEX GRINSHPON,
DANIEL KOLCHKOV,
JEFF SANDERS,
ALEX SOLON,
MARK ZABORSKY, and
JEFFERY STONE,

Defendants.

DAB
97 Civ. 9306 (AG)

FINAL JUDGMENT
OF PERMANENT
INJUNCTION AND
OTHER RELIEF
ON CONSENT AGAINST
DANIEL KOLCHKOV

The Securities and Exchange Commission ("Commission"), having filed a Complaint and Defendant Daniel Kolchkov ("Kolchkov") having entered a general appearance; consented to this Court's jurisdiction over him and the subject matter of this action; consented to entry of this Final Judgment of Permanent Injunction and Other Relief On Consent Against Daniel Kolchkov ("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 Kolchkov and his agents, servants, employees, attorneys, assigns 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 Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by the use 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 material fact or any omission of 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 the purchaser.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that defendant Kolchkov and his agents, servants, employees, attorneys, assigns and all persons in active concert or participation with them who receive actual notice by 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.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that defendant Kolchkov is permanently barred from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R. 240.3a51-1].

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the Commission's claim for disgorgement against defendant Kolchkov in this civil action is satisfied by the restitution ordered in United States v. Mark Zaborsky, et. al, 98 Cr. 1037 (Daniel Kolchkov) (S.D.N.Y.) (LAK).

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the annexed Consent of Daniel Kolchkov is incorporated herein with the same force and effect as if fully set forth herein, and that defendant Kolchkov shall comply with all of the undertakings and agreements set forth therein.

VI.

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.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that 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 DANIEL KOLCHKOV

1. Defendant Daniel Kolchkov ("Kolchkov"), acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over him 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 Kolchkov admits), defendant Kolchkov hereby consents to the entry of the Final Judgment of Permanent Injunction and Other Relief On Consent Against Daniel Kolchkov ("Final Judgment") in the form attached hereto and incorporated by reference herein which, among other things:

- (a) permanently restrains and enjoins defendant Kolchkov from violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a), Section 10(b) of the Securities Exchange Act of 1934, 17 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5;
- (b) permanently bars defendant Kolchkov from participating in the offering of any penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock; and
- (c) orders that the Commission's claim for disgorgement against defendant Kolchkov is satisfied by the restitution ordered in United States v. Mark Zaborsky, et. al, 98 Cr. 1037 (Daniel Kolchkov) (S.D.N.Y.) (LAK).

3. Defendant Kolchkov waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

4. Defendant Kolchkov waives the right, if any, to appeal from the entry of the Final Judgment.

5. Defendant Kolchkov enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission to induce defendant Kolchkov to enter into this Consent.

6. Defendant Kolchkov 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 Kolchkov 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 Kolchkov 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 Kolchkov of its terms and conditions. Defendant Kolchkov 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 of declaration stating that defendant Kolchkov 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 Kolchkov in this civil proceeding. Defendant Kolchkov waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant Kolchkov further acknowledges that the Court's entry

of a permanent injunction may have collateral consequences under federal or state law and that 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.

10. Defendant Kolchkov 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 Kolchkov agrees 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. If defendant Kolchkov 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 Kolchkov's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation in which the Commission is not a party.

11. Defendant Kolchkov 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, or costs expended by defendant Kolchkov to defend against this action. For these purposes, defendant Kolchkov agrees that defendant Kolchkov is not the prevailing party in this action since the parties have reached a good faith settlement.

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

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

Date: April 15th, 2003


Daniel Kolchkov

On this April 15th, 2003, Daniel Kolchkov, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.



Pauline A. Duimstra
Commission # CC 965403
Expires Oct. 20, 2004
Bonded Thru
Atlantic Bonding Co., Inc.


Notary Public
Commission expires: October 20, 2004

SO ORDERED:

Date: June 26, 2003
New York, New York


United States District Judge

