

*Scotman J  
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 (AGS)

FINAL JUDGMENT  
OF PERMANENT  
INJUNCTION AND  
OTHER RELIEF  
BY CONSENT AGAINST  
MARK ZABORSKY

Plaintiff Securities and Exchange Commission ("Commission"), having commenced this action by filing a complaint on December 18, 1997 for a permanent injunction and other equitable relief, and defendant Mark Zaborsky having executed the attached Consent in which, without admitting or denying the allegations of the complaint, he admits the in personam jurisdiction of this Court over him, the jurisdiction of this Court over the subject matter of this action, and the service of the summons and complaint on him, waives the entry of findings of fact and conclusions of law pursuant of Rule 52 of the Federal Rules of Civil Procedure, and consents to the entry, without further notice, of this Final Judgment of Permanent Injunction and Other Relief by Consent Against Mark Zaborsky, and there being no just reason for delaying the entry of this Final Judgment:

THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON \_\_\_\_\_

**I.**

**IT IS ORDERED, ADJUDGED, AND DECREED** that defendant Zaborsky and his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, are hereby permanently enjoined and restrained, directly or indirectly, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, from:

- (1) employing any device, scheme, or artifice to defraud;
- (2) obtaining money or property by means of any untrue statement of 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; and
- (3) 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 of 1933, 15 U.S.C. § 77q(a).

**II.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that defendant Zaborsky and his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, are hereby permanently enjoined and restrained, directly or indirectly, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce or the mails, or of any facility of any national securities exchange, from:

- (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; and
- (3) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person,

in violation of 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.

### III.

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

### IV.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that this Court shall retain jurisdiction of this matter for all purposes, including the implementation and enforcement of this Final Judgment.

### V.

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

**VI.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, there being no just reason for delay, the clerk of Court is hereby directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment forthwith.

## CONSENT OF MARK ZABORSKY

1. Defendant Mark Zaborsky, having read and understood the terms of the Final Judgment of Permanent Injunction and Other Relief by Consent against Mark Zaborsky, having admitted the jurisdiction of this Court over him and over the subject matter of this civil action, having waived the entry of findings of fact and conclusions of the 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") filed on December 18, 1997, except as to jurisdiction, which is admitted, hereby consents to the entry, without further notice, of this Final Judgment.

2. Zaborsky agrees that this Consent shall be incorporated by reference in, and made part of, the Final Judgment to be presented to the Court for signature, filing and entry contemporaneously herewith.

3. Zaborsky waives any rights he may have to appeal from the Final Judgment.

4. Zaborsky acknowledges that any willful violation of any of the terms or provisions of the Final Judgment may place him in contempt of this Court and may subject him to civil or criminal sanctions.

5. Zaborsky acknowledges that he enters into this Consent voluntarily and that no tender, offer, promise, threat, or representation of any kind has been made by the Commission or any member, officer, attorney, agent or representative thereof to induce him to enter into this Consent.

6. Zaborsky acknowledges that no promise or representation has been made by the Commission or its staff with regard to: (a) any criminal liability that may have arisen or may arise from the facts underlying this civil action; or (b) immunity from any such criminal liability.

7. Zaborsky acknowledges that he has been informed and understands that the Commission, at its sole and exclusive discretion, may refer or grant access to this matter, or any information or evidence gathered in connection therewith or derived therefrom, to any person or entity having appropriate administrative, civil, or criminal jurisdiction.

8. Zaborsky acknowledges and agrees that this proceeding and his Consent are for the purposes of resolving this proceeding only, in conformity with the provisions of 17 C.F.R. 202.5(f), and do not resolve, affect, or preclude any other proceeding which may be brought against him. Consistent with the provisions of 17 C.F.R. 202.5(f), Zaborsky waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Zaborsky 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.

9. Zaborsky acknowledges that neither this Consent nor the annexed Final Judgment precludes the Commission from instituting administrative proceedings against Zaborsky based

upon or relating to any of the matters alleged in the complaint herein or upon the entry of the annexed Final Judgment.

10. Zaborsky acknowledges that the Final Judgment, including this Consent, embodies the entire understanding of the parties.

11. Zaborsky 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(e)). In compliance with this policy, Zaborsky 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 Zaborsky breaches this agreement, the Commission's Division of Enforcement may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this provision affects Zaborsky's: (a) testimonial obligations; or (b) right to take legal or factual positions in litigation in which the Commission is not a party.

12. Zaborsky acknowledges and agrees that the Commission's claim for disgorgement against Zaborsky in this civil action is satisfied by the restitution ordered in United States v. Mark Zaborsky, et al., 98 Cr. 1037 (S.D.N.Y.) (LAK).

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

14. Zaborsky consents and agrees that the Final Judgment may be presented by the Commission to the Court for signature and entry without further notice and delay.

15. Zaborsky agrees that first-class mail to him at:


Mark Zaborsky  
c/o Marissa Deneve, U.S. Parole Officer  
1 Boca Place  
2225 Glades Rd., Suite 226-A  
Boca Raton, FL 33431

shall be deemed personal service for all correspondence, service and notices as to any matter related to this Consent and the Final Judgment, unless Zaborsky notifies the Commission of any alternative address by first-class mail at the following address:

U.S. Securities and Exchange Commission  
Northeast Regional Office  
233 Broadway  
New York, New York 10279  
Attn: James E. Burt IV.

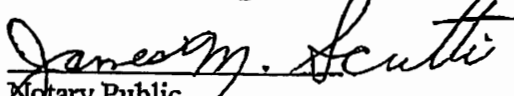
Date: 08-22, 2002

By:

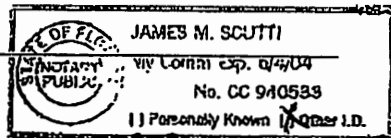
  
Mark Zaborsky

State of FLORIDA )  
County of PALM BEACH ) ss.:

On this 22<sup>nd</sup> day of AUGUST, 2002, before me personally came Mark Zaborsky, ~~to me known and~~ known to me to be the person who executed the foregoing Consent of Mark Zaborsky, and he acknowledged to me that he executed the same.

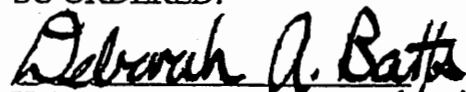
  
Notary Public

My Commission expires:



Date: \_\_\_\_\_, 2002  
New York, New York

SO ORDERED:

  
United States District Judge 6/26/03