

Doc # 27

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

R.M. CARUCCI CORP.  
TOUCHDOWN SECURITIES, INC.  
ROBERT J. CARUCCI, CHRISTINE A. BEYER  
MICHAEL A. FRAYLER

Defendants.

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Civ. 1366 (JSR)

FINAL JUDGMENT OF  
PERMANENT INJUNCTION  
BY CONSENT AGAINST  
CHRISTINE A. BEYER

# 98,2783



Plaintiff Securities and Exchange Commission ("Commission"), having commenced this action by filing a Complaint against defendant Christine A. Beyer ("Beyer") on February 25, 1998 and a First Amended Complaint on May 18, 1998, for a permanent injunction and other equitable relief, and defendant Beyer, having executed the attached Consent in which, without admitting or denying the allegations of the First Amended Complaint, she admits the in personam jurisdiction of this Court over her and this Court's jurisdiction over the subject matter of this action, and the service of the Summons and Complaint on her, waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and consents to the entry, without further notice, of this Final Judgment by Consent Against Christine A. Beyer ("Final Judgment"), and there being no just reason for delaying the entry of this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Beyer hereby is permanently enjoined and restrained, directly or indirectly, singly or in concert, from:

- (1) effecting any transaction on any national securities exchange of which she is a member, for her own account, the account of an associated person, or an account with respect to which she or an associated person thereof exercises investment discretion;
- (2) initiating, while on the floor of any national securities exchange of which she is a member, any transaction in any security admitted to trading on such exchange, for any account in which she has an interest, or any account with respect to which she has discretion as to the time of execution, the choice of security to be bought or sold, the total amount of any security to be bought or sold, or whether such transaction shall be one of purchase or sale;

in violation of Section 11(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78k(a)] and Rule 11a-1 thereunder, [17 C.F.R. § 240.11a-1].

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Beyer hereby is permanently enjoined and restrained, directly or indirectly, singly or in concert, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce or of 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; or
- (3) engaging in any act, transaction, 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 Exchange Act [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 defendant Beyer hereby is permanently enjoined and restrained, directly or indirectly, singly or in concert, 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; or,
- (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 ("Securities Act") [15 U.S.C. § 77q(a)].

#### IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Beyer is hereby permanently enjoined and restrained from, directly or indirectly, singly or in concert, aiding and abetting violations of Section 17(a)(1) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-3 thereunder, [17 C.F.R. § 240.17a-3(a)(7)].

#### V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Beyer hereby is permanently enjoined and restrained from, directly or indirectly, singly or in concert, at any and all times she is a member of the New York Stock Exchange ("NYSE"), effecting any transaction in any security on the NYSE for her account, the

account of an associated person, or an account with respect to which she, or an associated person of a NYSE member organization that Beyer is associated with, exercises investment discretion, in violation of NYSE Rule 90(a).

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Beyer hereby is permanently enjoined and restrained from, directly or indirectly, singly or in concert, at any and all times she is a member of the NYSE, and while on the floor of the NYSE, executing or causing to be executed on the NYSE, or through the InterMarket Trading System [as that term is defined in NYSE Rule 15] or any of its applications, any transaction for the purchase or sale of any stock with respect to which transaction defendant Beyer is vested with discretion as to:

- (1) the choice of security to be bought or sold,
- (2) the total amount of any security to be bought or sold;  
or,
- (3) whether any such transaction shall be one of purchase or  
sale,

in violation of NYSE Rule 95(a).

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Beyer hereby is permanently enjoined and restrained from, directly or indirectly, singly or in concert, at any and all times she is a member of the NYSE, initiating transactions, while on the floor of the NYSE, for an account in which she has an interest unless she is registered as a Competitive Trader (as that term is defined by NYSE Rule 111) with the NYSE and unless the NYSE has approved of her so acting as a Competitive Trader, in violation of NYSE Rule 111(a).

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Beyer hereby is permanently enjoined and restrained, directly or indirectly, singly or in concert, at any and all times she is a member of the NYSE, from:

- (1) personally buying or initiating the purchase of any security on the NYSE for her own account or for any account in which she, her member organization or any other NYSE member, allied member or approved person, in such organization or officer thereof, is directly or indirectly interested, while she personally holds or has knowledge that her member organization holds an unexecuted market order to buy such security in the unit of trading for a customer; or

(2) personally selling or initiating the sale of any security on the NYSE for her own account or for any account in which she, her member organization or any other NYSE member, allied member or approved person, in such organization or officer thereof, is directly or indirectly interested, while she personally holds or has knowledge that her member organization holds an unexecuted market order to sell such security in the unit of trading for a customer, in violation of NYSE Rule 92.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Beyer hereby is permanently enjoined and restrained from, directly or indirectly, singly or in concert, at any and all times she is a member of the NYSE, from filling a purchase order for securities that she has accepted for execution, personally or through her member organization, by selling such securities for any account in which she, her member organization or any other member or allied member therein has a direct or indirect interest or for any account in which an approved person in such organization or officer thereof is directly or indirectly interested when she knows or should know that the sale is for such an account, or having so accepted an order for the sale of securities, filling such order by buying such securities for such an account, in violation of NYSE Rule 91.

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Beyer pay disgorgement in the amount of \$375,649.34, representing (1) \$286,825.00 in disgorgement of her gains from the conduct alleged in the First Amended Complaint; and (2) \$88,824.34 in prejudgment interest. Such payment shall be paid in the following manner:

- A. Within 30 business days of entry of this Final Judgment, the amount disgorged shall be paid into the registry of this Court by cashier's check, certified check or postal money order drawn to the order of "Clerk, United States District Court, S.D.N.Y.," whereupon the Clerk of this Court, or the Financial Deputy Clerk, is hereby directed to deposit said cashier's check, certified check or postal money order into an account for this case with the Court Registry Investment System (the "C.R.I.S. Account"), administered through the United States District Court for the Southern District of Texas.
- B. Simultaneously with making payment pursuant to subparagraph A above, copies of each cashier's check, certified check or U.S. Postal Money Order, front and back, as well as any accompanying correspondence, shall be transmitted to Carmen J. Lawrence, Esq., Regional

Director, U.S. Securities and Exchange Commission,  
Northeast Regional Office, Seven World Trade Center,  
New York, New York 10048, Attn: Robert G. Heim, Esq.,  
under cover of a letter that identifies the Defendants,  
the name and civil action number of this litigation,  
the name of this Court and the Commission case number  
"NY-6428."

- C. Funds in the C.R.I.S. Account shall be held until further order of the Court, and shall be disbursed in accordance with a plan of distribution to be submitted by Plaintiff Commission and approved by the Court. In no event shall any portion of the C.R.I.S. Account be returned to Beyer, her successors or assigns.
- D. Interest earned on the C.R.I.S. Account shall be credited to the C.R.I.S. Account and shall thereafter be treated in the same manner as principal. Prior to making any disbursements from the C.R.I.S. Account, the Custodian of the C.R.I.S. Account is directed to deduct from the income on the investment a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office at equal to ten percent (10%) of the income earned for deduction in the investment so held and without further order of the Court.

**XI.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, defendant Beyer pay, to the United States Treasury, a civil penalty of \$50,000 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d). Payment shall be made within thirty (30) days from date of entry of this Judgment, by postal money order, certified check, bank cashier's check or bank money order made payable to the order of the "United States Securities and Exchange Commission." The payment shall be transmitted to the Comptroller, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, under cover of letter identifying the name and civil action number of this litigation and the name of Beyer. A copy of the cover letter and payment shall be simultaneously transmitted to Carmen J. Lawrence, Esq., Regional Director, U.S. Securities and Exchange Commission, 7 World Trade Center, 13th Floor, New York, New York 10048, Attn. Robert G. Heim, Esq.

**XII.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, this Final Judgment is binding upon defendant Beyer her officers, agents, servants, employees, partners, and attorneys, and upon those persons in active concert or participation with her who receive

actual notice of this Final Judgment by personal service or otherwise, pursuant to Federal Rule of Civil Procedure 65(d).

**XIII.**

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the attached Consent of defendant Beyer be and hereby is incorporated herein with the same force and effect as if fully set forth herein.

**XIV.**

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for all purposes.

XV.

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

Dated: \_\_\_\_\_

12/10/98

  
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Jed S. Rakoff  
U.S.D.J. *msj*

THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON 12/14/98