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ORIGINAL

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

FILED

MAR 16 2000

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

NANCY DOHERTY, CLERK

By Deputy

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

AMERICAN AUTOMATION, INC., KENDYLL R.  
HORTON, HAZEL A. HORTON, MERLE B.  
GROSS, and JAYNE R. ROOSE,

Defendants,

and

MUSCLEWEAR, INC., ANGEL WORLD INSURANCE  
GROUP, INC., LORD & KENDYLL INVESTMENTS,  
INC., FAMILY LIGHT CO., LLC, and DIRECTION  
MANAGEMENT CO., LLC

Defendants Solely for Purposes  
of Equitable Relief.

CIVIL ACTION NO.  
3-98CV1596-D

ENTERED ON DOCKET

MAR 17 2000

U.S. DISTRICT CLERK'S OFFICE

**FINAL JUDGMENT AS TO MERLE B. GROSS**

This matter came before this Court on the application of plaintiff Securities and Exchange Commission ("Commission") by consent of defendant Merle B. Gross ("Gross") for issuance of this Final Judgment in this action, providing the relief set out herein. Gross has provided this Court with a Stipulation and Consent ("Stipulation") in which, inter alia, he 1) acknowledges and admits the in personam jurisdiction of this Court over himself, and the subject matter jurisdiction of this Court over the cause of action claimed by the Commission herein; 2) waives entry of findings of fact and conclusions of law under rule 52, Fed. Rules Civ. Proc., 28 U.S.C.A., with respect to the entry of this Order;

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and 3) consents, for purposes of this action only, to the entry of this Final Judgment, without admitting or denying any of the allegations of the Commission's Complaint in this matter and without admitting or denying any violation of the federal securities laws, except as to jurisdiction, as set forth herein.

It appears this Court has in personam jurisdiction over Gross, and subject matter jurisdiction over the cause of action claimed by the Commission; it appears that no further notice or hearing is required prior to entry of this Final Judgment and there is no just reason for delay; and it appears the Court has been fully advised of the premises for entry of this Final Judgment.

IT IS THEREFORE ORDERED:

I.

Gross and his agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined, directly or indirectly, in connection with the purchase or sale of securities, from making use of any means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange:

- a.) to employ devices, schemes and artifices to defraud;
- b.) to make untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- c.) to engage in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons,

in connection with the purchase and sale of securities.

II.

Gross and his agents, servants, employees, attorneys-in-fact and all other 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, be and hereby are permanently restrained and enjoined, in the offer or sale of securities, from making use of any means or instruments of transportation or communication in interstate commerce, or of the mails, directly or indirectly:

- a.) to employ devices, schemes or artifices to defraud;
- b.) to obtain money or property by means of untrue statements of material fact or omissions to state material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and
- c.) to engage in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

III.

Gross and his agents, servants, employees, attorneys-in-fact, and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly:

- a.) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell any securities through the use or medium of any prospectus or otherwise, unless and until a registration

statement is in effect with the Commission as to such securities;

b.) carrying securities, or causing them to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale, unless and until a registration statement is in effect with the Commission as to such securities; or

c.) 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, securities unless a registration statement has been filed with the Commission as to such securities, or while a registration statement filed with the Commission as to such securities is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding of examination under Section 8 of the Securities Act of 1933, as amended [15 U.S.C. § 77h];

provided, however, that nothing in this Part III shall apply to any security or transaction which is exempt from the provisions of Section 5 of the Securities Act [15 U.S.C. § 77e].

#### IV.

Gross shall pay disgorgement in the amount of \$206,830.71, representing his gains from the conduct alleged in the complaint, plus prejudgment interest thereon in the amount of \$30,299.06. However, based on the sworn representations in Gross' Statement of Financial Condition dated June 15, 1999, a copy of which was attached to his Consent, and filed with this Court, payment of the disgorgement and prejudgment interest thereon is waived by the Commission, contingent upon the accuracy and completeness of his Statement of Financial Condition.

V.

Based on the sworn representations in Gross' Statement of Financial Condition dated June 15, 1999, the Court is not ordering him to pay a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21 (d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

VI.

The Court's determination not to impose a civil penalty and the Commission's waiver of payment of the disgorgement and prejudgment interest thereon, are contingent upon the accuracy and completeness of Gross' Statement of Financial Condition, dated June 15, 1999. If at any time following the entry of this Final Judgment the Commission obtains information that Gross' representations to this Court and 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 Gross, petition the Court for an order requiring him to pay disgorgement, prejudgment and post-judgment interest thereon, and a civil penalty. In connection with any such petition, the allegations set out in the petition shall be limited exclusively to whether the financial information provided by Gross 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 any such petition, the Commission may move the Court to consider all available remedies, including, but not limited to, ordering Gross to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of the court's Final Judgment, and

the Commission may also request additional discovery. Gross may not, by way of defense to such petition, challenge the validity of this Consent or the Final Judgment, contest the allegations in the Complaint filed by the Commission or assert that payment of a civil penalty should not be ordered.

VII.

The Consent filed herein be, and the same is hereby, incorporated in this Final Judgment with the same force and effect as if fully set forth herein.

VIII.

This Court shall retain jurisdiction over this matter and over Gross for purposes of enforcing the terms of this Final Judgment and for all other purposes.

IX.

This Final Judgment may be served upon Gross in person or by mail either by the United States marshal, by the Clerk of the Court or by any member of the staff of the Commission.

DATED and SIGNED this 16<sup>th</sup> day of March, ~~1999~~ <sup>2000</sup>.

  
UNITED STATES DISTRICT JUDGE

Agreed as to Form and Substance:

  
MERLE B. GROSS

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Attorney for Defendant Merle B. Gross