

POLLACK, J.

CARMEN J. LAWRENCE (CL-9154)
ATTORNEY FOR THE PLAINTIFF
SECURITIES AND EXCHANGE COMMISSION
7 WORLD TRADE CENTER
13TH FLOOR
NEW YORK, NEW YORK 10048
(212) 748-8066



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Docketed as #3

SECURITIES AND EXCHANGE COMMISSION, :

98 CIV. 3446(mp)

Plaintiff, :

-against-

FINAL JUDGMENT OF
PERMANENT INJUNCTION
AGAINST DEFENDANT
ILAN ARBEL BY CONSENT

PAUL J. MONTLE, LS CAPITAL CORPORATION, :
PAUL V. CULOTTA, CAROL CATHERINE :
MARTINO, CMA NOEL, LTD., MARIO J. :
IACOVIELLO, ILAN ARBEL, and :
EUROPE CAPITAL CORPORATION, :

98,1132

Defendants.

Plaintiff Securities and Exchange Commission ("Commission"), having commenced this action by filing a Complaint charging defendant Ilan Arbel with violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a) and 77e(c), and Sections 13(d) and 16(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78m(d) and 78p(a), and Rules 13d-1, 16a-2, and 16a-3 promulgated thereunder, 17 C.F.R. §§ 240.13d-1, 240.16a-2, and 240.16a-3, defendant Arbel having admitted to the in personam and subject matter jurisdiction of this Court, 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 the allegations of the Commission's Complaint, having executed the annexed Consent To The Entry Of Final Judgment ("Consent") incorporated herein:

I.

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

- (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 a registration statement is in effect as to such securities; or
- (b) carrying such 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 for delivery after sale, unless a registration statement is in effect 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 any securities, unless a registration statement has been filed as to such securities, or

while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h, in violation of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and (c).

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Arbel is permanently restrained and enjoined from, directly or indirectly, singly or in concert, within ten (10) days after becoming, directly or indirectly, the beneficial owner, as defined for purposes of Section 13(d) of the Exchange Act, 15 U.S.C. § 78m(d), of more than five (5) percent of any equity security of a class described in Section 13(d)(1) of the Exchange Act, 15 U.S.C. 78m(d)(1), failing to file or cause to be filed with the Commission, and to send or cause to be sent to the issuer of such equity security and to any national securities exchange where such equity security is traded, statements containing the information required by Section 13(d) of the Exchange Act, 15 U.S.C. § 78m(d), and Rule 13d-1 promulgated thereunder, 17 C.F.R. § 240.13d-1, which are complete and accurate in all respects; and, if any material change occurs in the facts set forth in such statements, from failing promptly to file or cause to be filed with the Commission, and to send or cause to be sent to the issuer of such equity security and to any

national securities exchange where such equity security is traded, the amendments to such statements required by Section 13(d) of the Exchange Act, 15 U.S.C. § 78m(d), Rule 13d-2 promulgated thereunder, 17 C.F.R. § 240.13d-2, and Schedule 13D, 17 C.F.R. § 240.13d-101, in violation of Section 13(d) of the Exchange Act, 15 U.S.C. § 78m(d), and Rule 13d-1 promulgated thereunder, 17 C.F.R. §§ 240.13d-1.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Arbel is permanently restrained and enjoined from, directly or indirectly, singly or in concert, after becoming, directly or indirectly, the beneficial owner, as defined for purposes of Section 16(a) of the Exchange Act, 15 U.S.C. § 78p(a), of more than ten (10) percent of any equity security (other than an exempted security) which is registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, or after becoming a director or officer of the issuer of such equity security, failing to file or cause to be filed with the Commission within ten (10) days after becoming such officer, director, or ten (10) percent shareholder, a statement on Form 3, 17 C.F.R. § 249.103, which is complete and accurate in all respects, indicating Arbel's direct or indirect beneficial ownership of all equity securities of such issuer; and if there has been a change in Arbel's ownership of such equity securities during any subsequent calendar month, from failing to file or cause to be filed with the Commission (and, if such equity

security is registered on a national securities exchange, also with the exchange), within ten (10) days of the close of each such subsequent calendar month, a statement on Form 4, 17 C.F.R. § 249.104, which is complete and accurate in all respects, indicating Arbel's ownership at the close of the calendar month and such changes in his ownership as have occurred during each such calendar month, as required by Section 16(a) of the Exchange Act, and Rules 16a-2 and 16a-3, 17 C.F.R. §§ 240.16a-2, 240.16a-3, promulgated thereunder; and if Arbel was at any time during the fiscal year of an issuer of an equity security subject to Section 16(a) of the Exchange Act a person subject to Section 16 with respect to that issuer, from failing to file or cause to be filed with the Commission (and, if such equity security is registered on a national securities exchange, also with the exchange), within forty-five days after the issuer's fiscal year-end, a statement on Form 5, 17 C.F.R. § 249.105, which is complete and accurate in all respects, indicating all holdings and transactions that should have been, but were not, previously reported on Forms 3, 4, or 5, as required by Section 16(a) of the Exchange Act, and Rules 16a-2 and 16a-3, 17 C.F.R. §§ 240.16a-2, 240.16a-3, promulgated thereunder, in violation of Section 16(a) of the Exchange Act, 15 U.S.C. § 78p(a), and Rules 16a-2 and 16a-3 promulgated thereunder, 17 C.F.R. §§ 240.16a-2 and 240.16a-3.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Arbel shall pay disgorgement of \$218,118, representing his gains from the conduct alleged in the Commission's Complaint, plus \$100,338.32 in prejudgment interest thereon, for a total of \$318,456.32. Arbel's obligation to pay that sum shall be joint and several with the disgorgement and prejudgment interest obligation of co-defendant Europe American Capital Corp. ("Europe American"). Such payment shall be made to the United States Treasury ("Treasury") in the manner described in Paragraph VI below.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Arbel shall pay \$100,000.00 to the Treasury as a civil penalty pursuant to Section 21(d) of the Exchange Act, 15 U.S.C §78u(d).

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Arbel's payment obligations are due as follows:

(1) \$209,228.16, which represents a portion of his disgorgement and prejudgment interest obligation, which is joint and several with co-defendant Europe American shall be due within ten (10) days of the entry of this Final Judgment; and (2) \$209,228.16, which represents the remainder of the joint and several disgorgement and prejudgment interest obligation and Arbel's penalty, shall be due within ninety (90) days thereafter.

The payments shall be made to the United States Treasury by postal money order, certified check, bank cashier's check or bank money order, payable to the order of the United States Securities and Exchange Commission. The payments shall be transmitted to the Comptroller, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, under the cover of letter identifying the name and civil action number of this litigation and Europe American and Arbel. A copy of the cover letter and payment shall be simultaneously transmitted to Carmen J. Lawrence, Esq., Regional Director, Securities and Exchange Commission, 7 World Trade Center, New York, N.Y. 10048, Attn: Theresa M. Ward, Esq.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Final Judgment is binding upon defendant Arbel, his agents, servants, employees, and attorneys, and upon those persons in active concert or participation with defendant Arbel who receive actual notice of this Final Judgment by personal service or otherwise, pursuant to Federal Rule of Civil Procedure 65(d).

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the annexed Consent Of Ilan Arbel To The Entry Of Final Judgment shall be and hereby is incorporated herein with the same force as if fully set forth herein.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this action for all purposes, including, but not limited to, implementing and enforcing the terms and conditions of this Final Judgment.

X.

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

CONSENT OF ILAN ARBEL TO THE ENTRY OF FINAL JUDGMENT

1. Defendant Ilan Arbel, upon the advice of his counsel and being fully apprised of his rights, having read and understood the terms of the annexed Final Judgment Of Permanent Injunction Against Defendant Ilan Arbel By Consent ("Final Judgment"), appears and admits the in personam and subject matter jurisdiction of this Court, waives the filing of an answer, waives 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 the allegations contained in the Complaint of plaintiff Securities and Exchange Commission ("Commission") except as to jurisdiction, hereby consents to the entry, without further notice, of the annexed Final Judgment.

2. Arbel agrees that this Consent Of Ilan Arbel To Entry Of Final Judgment ("Consent") shall be incorporated by reference in and made part of the annexed Final Judgment to be presented to the Court for signature, filing, and entry contemporaneously herewith.

3. Arbel waives any right he may have to appeal from the Final Judgment.

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

5. Arbel acknowledges that he enters into this Consent voluntarily and that this Consent and the Final Judgment embody the entire understanding of the parties. Arbel acknowledges and

agrees that this proceeding, and his consent to the entry of the Final Judgment, are for the purposes of resolving this civil action only, and that no tender, offer, promise, threat or representation of any kind has been made by plaintiff Commission or any member, officer, attorney, agent, or representative thereof, to induce him to enter into this Consent.

6. . . . Arbel acknowledges that he has been informed and understands that plaintiff Commission, at its sole or exclusive discretion, may have referred or granted, or 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.

7. Arbel acknowledges and agrees that this Consent and the entry of the Final Judgment are for the purpose of resolving this civil action 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 Arbel. Among other things, Arbel waives any right he may have to assert that under the Double Jeopardy Clause of the United States Constitution the relief consented to in this civil action, including the imposition of any remedy or civil penalty herein, bars any criminal action, or that any criminal action bars the relief consented to in this civil action.

8. . . . Arbel agrees to execute and return promptly acknowledgements of receipt of the Final Judgment once the Final

Judgment has been entered by the Court and forwarded to him for this purpose.

9. Arbel agrees that first class mail to Richard J. Blumberg, Esq., his counsel, at 260 Madison Avenue, New York, New York, 10016, or any other attorney who enters an appearance for Arbel in this action, shall be deemed personal service for all correspondence, service and notices as to any matter related to this Consent and the Final Judgment.

10. Arbel agrees to pay disgorgement and prejudgment interest in the total amount of \$318,456.32, which is a joint and several obligation with co-defendant Europe American, and a civil money penalty in the amount of \$100,000 to the United States Treasury ("Treasury") pursuant to Section 21(d) of the Exchange Act, 15 U.S.C. § 78(u)(d).

11. Arbel agrees to pay the total judgment amount of \$418,456.32, as follows: (1) \$209,228.16, which represents a portion of his disgorgement and prejudgment interest obligation, which is joint and several with co-defendant Europe American Capital Corp. shall be due within ten (10) days of the entry of this Final Judgment; and (2) \$209,228.16, which represents the remainder of Arbel's joint and several disgorgement and prejudgment interest obligation and his penalty, shall be due within ninety (90) days thereafter. The payments shall be made to the United States Treasury by postal money order, certified check, bank cashier's check or bank money order, 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 the cover of letter identifying the name and civil action number of this litigation and Europe American and Arbel. A copy of the cover letter and payment shall be simultaneously transmitted to Carmen J. Lawrence, Esq., Regional Director, Securities and Exchange Commission, 7 World Trade Center, New York, N.Y. 10048, Attn: Theresa M. Ward, Esq.

12. Arbel acknowledges that he has read, understands, and agrees to comply with the policy of the Commission, set forth in 17 C.F.R. §202.5(e), not to permit a defendant to consent to a final judgment that imposes a sanction while denying any allegation or finding in the final judgment or complaint. Arbel agrees not to take any action or make or cause to be made any public statement denying, directly or indirectly, any allegation or finding in the Complaint. Arbel further agrees not to take any action or make or cause to be made any public statement which creates, or tends to create, the impression that the Complaint is without factual basis. If Arbel breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and reinstate this action. Nothing in this paragraph affects Arbel's testimonial obligations or his right to take legal positions in other non-Commission litigation or proceedings.

13. Arbel consents that this Court shall retain jurisdiction of this matter for all purposes, including, but not

limited to, implementing and enforcing the terms and conditions of this Final Judgment.

14. Arbel hereby consents and agrees that the Final Judgment may be presented by the Commission to the Court for signature, filing and entry without further notice or delay.

Dated: May 12, 1998

STATE OF New York)
COUNTY OF New York) ss.

: Ilan Arbel
Ilan Arbel

On this 12th day of May, 1998, before me personally appeared Ilan Arbel, to me known and known to be the person who executed the foregoing Consent and he acknowledged that he executed the same.

Ann L. Bennewitz
NOTARY PUBLIC

ANN L. BENNEWITZ
Notary Public, State of New York
No. 31-5268773
Qualified in New York County
Commission Expires Sept. 30, 1998

SO ORDERED

Dated: New York, New York

May 15, 1998

Michael Pollack
Senior UNITED STATES DISTRICT JUDGE mc