

5/14/98

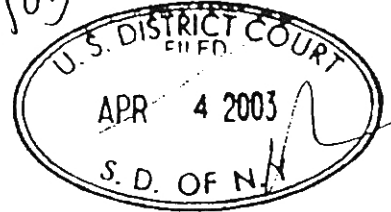
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

5/18/98

4/4/03

SECURITIES AND EXCHANGE COMMISSION,



Plaintiff,

-against-

CAROL C. MARTINO AND  
CMA NOEL, LTD., ET AL.,

98 CV 3446 (MP)

Defendants.

#03,0623

GERARD HARYMAN AND  
JTM LIMITED,

Relief Defendants.

JUDGMENT

This action having duly come on for summary judgment against Defendants Carol C. Martino ("Martino") and CMA Noel Ltd. ("CMA"), and Relief Defendants Gerard Haryman ("Haryman") and JTM Limited (collectively the "Defendants") before the Honorable Milton Pollack, Senior United States District Judge, and a Decision consisting of Findings of Fact and Conclusions of Law having been rendered and deliberation having been had, it is

ORDERED, ADJUDGED and DECREED that:

1. The Commission's motion for summary judgment against Martino, CMA, Haryman, and JTM LIMITED IS GRANTED and the Defendants' cross motion is DENIED;
2. Martino, her agents, servants, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise, and each of them, are permanently restrained and enjoined from future violations of § 17(a) of the Securities Act, 15 U.S.C. § 77q(a), § 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5;

3. Martino, her agents, servants, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise, and each of them, are permanently restrained and enjoined from future violations of the Commission Order dated April 1, 1992 and §§ 15(a) and 15(b)(6)(B)(i) of the Exchange Act, 15 U.S.C. §§ 78o(a) and 78o(b)(6)(B)(i);

4. CMA, its officers, agents, servants, employees, and attorneys-in-fact, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise, and each of them, are permanently restrained and enjoined from future violations of § 15(a) of the Exchange Act, 15 U.S.C. § 78o(a);

5. Within thirty (30) days of the date of this Judgment, Martino and CMA shall disgorge ~~\$4,416,000.00~~ that they obtained as a result of their brokerage activities, plus ~~\$3,386,842.92~~ in prejudgment interest. Payment shall be made by U.S. 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." This payment shall be transmitted to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way Stop 0-3, Alexandria, VA 22312, under cover of a letter that identifies the defendant, the name and civil action number of this litigation, and the court in which it was brought. The cover letter shall also contain the investigation name (*In The Matter Of Certain Mergers And Regulation S Transactions*) and the case number assigned by the Commission staff (NY-6136), and shall identify the payment as disgorgement and prejudgment interest. A copy of the cover letter and of any money orders or checks, front and back, shall be simultaneously submitted to Jack Kaufman, Esq., Securities and Exchange Commission, 233 Broadway, New York, N.Y. 10279;

6. Soneet R. Kapila (the "Receiver") of the firm of *Kapila & Company*, 1000 South Federal Highway, Suite 200, Fort Lauderdale, Florida is appointed to act as receiver for the 75-foot yacht named "Je T'aime" (the "Yacht"). The Court hereby empowers and orders the Receiver to:

- A. take and retain immediate possession, custody, and control of the Yacht;
- B. take all steps he deems necessary to secure and protect the Yacht;
- C. engage and employ persons, in his discretion, to assist him in carrying out his duties and responsibilities hereunder;

D. acquire and retain all rights and powers that Martino, Haryman, and JTM Limited ("Yacht Defendants") have to manage, control, operate, and maintain the Yacht;

E. liquidate the Yacht on an expedited basis, with a view to securing fair market value for the sale of the Yacht;

F. upon liquidation of the Yacht, the Receiver shall pay out of the Yacht sale proceeds, less the Receiver's costs, expenses and fees (as described below), the sum of \$1.28 million by U.S. 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." This payment shall be transmitted to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way Stop 0-3, Alexandria, VA 22312, under cover of a letter that identifies the defendant, the name and civil action number of this litigation, and the court in which it was brought. The cover letter also shall contain the investigation name (*In The Matter Of Certain Mergers And Regulation S Transactions*) and the case number assigned by the Commission staff (NY-6136), and shall identify the payment as partial payment of the disgorgement and prejudgment interest. A copy of the cover letter and of any money orders or checks, front and back, shall be simultaneously submitted to Jack Kaufman, Esq., Securities and Exchange Commission, 233 Broadway, New York, N.Y. 10279; and

G. take such further action as the Court shall deem equitable, just and appropriate under the circumstances upon proper application; any unexpended balance of the Yacht proceeds shall be payable as directed by the Court on application therefor as interest may appear.

7. The Receiver shall report to the Court and the parties within 30 days of the entry of this Judgment (and on each 30 day period thereafter), subject to such extensions as may be granted in writing by the Commission or the Court, the following information.

A. that the Receiver is in possession, custody, and control of the Yacht; and

B. identify all efforts made by the Receiver to liquidate the Yacht at its fair market value;

8. The Receiver shall not be required to post any bond or security in connection with the Yacht, provided however that if the Receiver chooses to procure such a bond or security, the

Yacht Defendants shall pay the reasonable costs and expenses thereof;

9. All applications for costs, fees, and expenses of the Receiver and those employed by him shall be made by application to the Court, setting forth in reasonable detail the nature of such costs, fees, and expenses. At least ten days before making such an application to the Court, the Receiver shall submit the application to the Commission, which may advise the Court whether it has any objection. Upon approval of any such application by the Court, the Receiver may pay himself and those employed by him from the proceeds obtained from the liquidation of the Yacht;

10. The Receiver and all persons whom he may engage or employ to assist him in carrying out his duties and obligations hereunder shall not be liable for any act or omission of the Receiver or such person, or any of their partners, employees, or agents, unless it shall be proven that the Receiver or such other person acted in bad faith. This provision shall apply to claims based on conduct during the term of any agreement that may be entered into between the Receiver and any other person who may be engaged or employed by the Receiver hereunder, even if such claims are filed after the termination of any such agreement;

11. The Yacht Defendants shall indemnify, defend, and hold harmless the Receiver and his firm and his or its agents, employees, consultants, successors, and assigns, from and against all actions (pending or threatened and whether at law or in equity in any forum), liabilities, damages, losses, costs, and expenses arising from conduct or omission of the Receiver or his firm or his or its agents, employees, and consultants under the terms of this Judgment;

12. The Yacht Defendants and their officers, directors, agents, servants, employees, and attorneys-in-fact shall:

- A. deliver the Yacht forthwith to the Receiver in partial satisfaction of this Judgment;
- B. take all action necessary to permit the Receiver to perform his functions set forth above in Paragraph 8, including providing to the Receiver all information requested relating to the Yacht;
- C. take no action, directly or indirectly, to hinder, obstruct, delay, or otherwise interfere in any manner with the actions of the Receiver or any other person engaged or employed by the Receiver to assist him in carrying out his

