

ORIGINAL

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

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

JAN 26 2000

NANCY DOHERTY, CLERK

By _____
Deputy

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MICHAEL D. JENKINS,
LAWRENCE ARTHUR PETERSEN,
JAMIE T. TSUTSUI, and
MICHAEL L. KINNEY

Defendants.

CIVIL ACTION NO. 3-98CV1892-L

ENTERED ON DOCKET

JAN 27 2000

U.S. DISTRICT CLERK'S OFFICE

**FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF AS TO MICHAEL L. KINNEY**

This matter came before this Court on the application of plaintiff Securities and Exchange Commission ("Commission") by consent of defendant Michael L. Kinney ("Kinney"), for issuance of this Final Judgment in this action, providing the relief set out herein.

Kinney 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 him, 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; 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.

FINAL JUDGMENT AS TO
MICHAEL LEE KINNEY

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U.S. DISTRICT CLERK'S OFFICE

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

IT IS THEREFORE ORDERED:

I.

Defendant Kinney, 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 any security, 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 any device, scheme or artifice to defraud;
- (b) to make any untrue statement of a material fact or omit 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
- (c) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

II.

Defendant Kinney, 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 any security, 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 any device, scheme or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a 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

(c) to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any purchaser.

III.

Defendant Kinney, his agents, servants, employees, attorneys-in-fact and all persons in active concert or participation with them, who receive actual notice of this Final Judgment by personal service or otherwise, are permanently restrained and enjoined in the offer or sale of any security, 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, 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, as amended [15 U.S.C. § 77e].

IV.

Defendant Kinney, his agents, servants, employees, attorneys-in-fact and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from, directly or indirectly violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)], by using any means or instrumentality of interstate commerce, or of the mails, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless Kinney is registered as a broker or dealer with the Commission, or is otherwise exempt from registration.

V.

Defendant Kinney shall pay disgorgement in the amount of \$7,813 representing his gains from the conduct alleged in the Complaint, plus prejudgment interest thereon in the amount of \$3,436. Based on defendant Kinney's sworn representations in his Statement of Financial Condition dated October 1, 1999, and submitted to the Commission, payment of the disgorgement and prejudgment interest amounts is waived, contingent upon the accuracy and completeness of defendant Kinney's Statement of Financial Condition.

VI.

Based upon defendant Kinney's sworn representations in his Sworn Statement of Financial Condition dated October 1, 1999, and submitted to the Commission, the Court is not ordering him to pay a civil penalty pursuant to the provisions of 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)]. The

determination not to impose a civil penalty and waive payment of disgorgement and prejudgment interest, is contingent upon the accuracy and completeness of defendant Kinney's Sworn Statement of Financial Condition. If at any time following the entry of this Final Judgment, the Commission obtains information indicating that defendant Kinney's representations to 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 Kinney, petition this Court for an order requiring Kinney to pay disgorgement, prejudgment interest and a civil penalty. In connection with any such petition, the only issues shall be whether the financial information provided by defendant Kinney 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 its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering defendant Kinney to turn over funds and assets, directing the forfeiture of any assets, or sanctions for contempt of the Final Judgment, and the Commission may also request additional discovery. Defendant Kinney may not, by way of defense to such petition, challenge the validity of his Consent or this Final Judgment, contest the allegations in the Complaint filed by the Commission or that payment of disgorgement, prejudgment interest and a civil penalty should not be ordered.

VII.

The Consent filed herein 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 action and over defendant Kinney for all purposes, including for purposes of enforcing the terms of this Final Judgment.

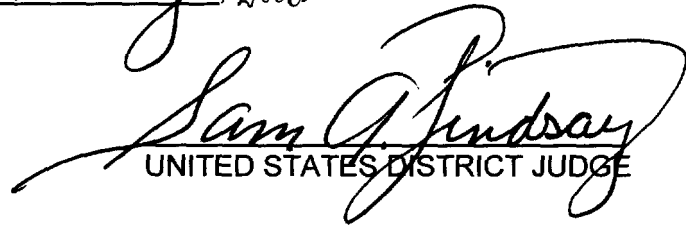
IX.

This Final Judgment may be served upon defendant Kinney 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

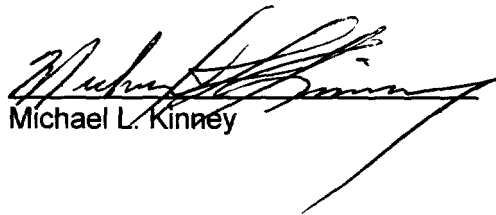
X.

There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Final Judgment as to defendant Kinney pursuant to Rule 54 of the Federal Rules of Civil Procedure.

SIGNED this 26th day of January, 2000.


UNITED STATES DISTRICT JUDGE

Agreed as to Form and Content


Michael L. Kinney

