

ORIGINAL

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FILED
CLERK, U.S. DISTRICT COURT
JUN 3 1999
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION

Civil Action No.

99-02209 ER
AIJX

Plaintiff,

~~[PROPOSED]~~ FINAL JUDGMENT
OF PERMANENT INJUNCTION AS
TO STEVAN A. BIRNBAUM

vs.

STEVAN A. BIRNBAUM,

Defendant.

ENTERED
CLERK, U.S. DISTRICT COURT
JUN 7 1999
CENTRAL DISTRICT OF CALIFORNIA
BY ["Commission"] DEPUTY

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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

Plaintiff Securities and Exchange Commission
having filed its Complaint for Violations of the Federal Securities
Laws ("Complaint"), and Defendant Steven A. Birnbaum, having entered
into the attached Consent and Undertakings of Steven A. Birnbaum
("Consent"), filed simultaneously with this Final Judgment of
Permanent Injunction and incorporated by reference herein, having
entered a general appearance, having acknowledged service upon him
of the Complaint, having admitted the Court's jurisdiction over him
and over the subject matter of this action, having waived service of
process, having waived the filing of an answer, 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

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7.

1 denying any of the allegations of the Complaint; except as to
2 jurisdiction, which the defendant admits, having consented to the
3 entry of this Final Judgment, and it further appearing that this
4 Court has jurisdiction over Defendant Stevan A. Birnbaum, and the
5 subject matter hereof, and the Court being fully advised in the
6 premises:

7 I.

8 IT IS HEREBY ORDERED that Stevan A. Birnbaum, his agents,
9 servants, employees, attorneys, and those persons in active concert
10 or participation with him who receive actual notice of this Final
11 Judgment by personal service or otherwise, and each of them, are
12 permanently enjoined and restrained from violating, directly or
13 indirectly, by use of the means or instrumentalities of interstate
14 commerce, the mails, or any facility of any national securities
15 exchange:

- 16 (a) Section 10(b) of the Securities Exchange Act of 1934 [15
17 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17
18 C.F.R. § 240.10b-5] by: (1) employing any device, scheme
19 or artifice to defraud, (2) making any untrue statement of
20 a material fact or omitting to state a material fact
21 necessary in order to make the statements made, in the
22 light of the circumstances under which they were made, not
23 misleading, or (3) engaging in any act, practice, or
24 course of business which operates or would operate as a
25 fraud or deceit upon any person, in connection with the
26 purchase or sale of any security; and

1 (b) Section 14(e) of the Securities Exchange Act of 1934 [15
2 U.S.C. § 78n(e)] and Rule 14e-3 promulgated thereunder [17
3 C.F.R. § 240.14e-3] by:

4 (1) trading in the securities sought or to be sought in a
5 tender offer while in possession of material
6 information relating to said tender offer which the
7 defendant knows or has reason to know is nonpublic
8 and has been acquired, directly or indirectly, from
9 the offering person, the issuer of the securities
10 sought or to be sought by such tender offer, or any
11 officer, director, partner, employee, or other person
12 acting on behalf of the offering person or such
13 issuer, without disclosing a reasonable time prior to
14 trading such information and its source; or

15 (2) communicating material information relating to a
16 tender offer, which information the defendant knows
17 or has reason to know is nonpublic and knows or has
18 reason to know was acquired, directly or indirectly,
19 from the offering person, the issuer of the
20 securities sought or to be sought by such tender
21 offer, or any officer, director, partner, employee,
22 or other person acting on behalf of the offering
23 person or such issuer, to any other person under
24 circumstances in which it is reasonably foreseeable
25 that such communication is likely to result in
26 violation of Rule 14e-3 [17 C.F.R. § 240.14e-3]
27 promulgated under the Securities Exchange Act of
28 1934.

1 II.

2 IT IS FURTHER ORDERED that Stevan A. Birnbaum shall pay
3 disgorgement in the amount of \$83,528, representing his gains, and
4 the gains derived from trading in his children's trust accounts, as
5 alleged in the Complaint, plus prejudgment interest thereon in the
6 amount of \$22,826. These funds shall be paid in accordance with
7 Paragraph V below.

8 III.

9 IT IS FURTHER ORDERED that Stevan A. Birnbaum shall pay
10 disgorgement in the amount of \$92,548, representing the gains
11 derived from trading in the accounts of the Partnership and his
12 fiancée as alleged in the Complaint, plus prejudgment interest
13 thereon in the amount of \$25,290. These funds shall be paid in
14 accordance with Paragraph V below.

15
16 IV.

17 IT IS FURTHER ORDERED that Stevan A. Birbaum shall pay a civil
18 penalty of \$83,528 pursuant to Section 21A(a) of the Securities
19 Exchange Act of 1934 [15 U.S.C. § 78u-1(a)], which shall be paid in
20 accordance with Paragraph VI below.

21 V.

22 IT IS FURTHER ORDERED that, with respect to the monies ordered
23 to be paid pursuant to Paragraphs II and III of this Final Judgment,
24 Stevan A. Birnbaum shall pay the disgorgement amount and the
25 prejudgment interest thereon within ten days of entry of this Final
26 Judgment to the Clerk of Court, U.S. District Court for the Southern
27 District of Georgia, Savannah Division, 125 Bull Street, Savannah,
28 Georgia 31412. Payment shall be made by cashier's check, certified

1 check or postal money order, under cover of a letter that identifies
2 the defendant, the name and case number of this litigation and the
3 name of this Court, and also references SEC v. Susan L. Hirsch et
4 al., Civil Action No. 497-60. A copy of the cover letter shall be
5 simultaneously transmitted to counsel for the Commission in this
6 action. Payments made under this paragraph are to be placed in an
7 interest bearing account as required by Rule 67 of the Federal Rules
8 of Civil Procedure and thereafter disbursed as directed by Order of
9 the Court.

10 VI.

11 IT IS FURTHER ORDERED that, with respect to the monies ordered
12 to be paid pursuant to Paragraph IV of this Final Judgment, Stevan
13 A. Birnbaum shall pay the civil penalty within ten days of entry of
14 this Final Judgment. All payments made pursuant to this paragraph
15 shall be made by (a) United States money order, certified check,
16 bank cashier's check or bank money order, (b) made payable to the
17 Securities and Exchange Commission, (c) mailed by certified mail
18 (return receipt requested) to the Comptroller, United States
19 Securities and Exchange Commission, 450 Fifth Street, N.W., Mail
20 Stop 2-5, Washington, D.C. 20549, and (d) submitted under cover
21 letter identifying Stevan A. Birnbaum as the defendant in this
22 action, the case number of this action, the name of the Court, and
23 the Commission's file number (HO-3060), a copy of which cover letter
24 and proof of payment shall be sent to Christian J. Mixter of the
25 Division of Enforcement, Chief Litigation Counsel, Securities and
26 Exchange Commission, 450 Fifth Street, N.W., Mail Stop 8-8,
27 Washington, D.C. 20549.

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VII.

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2 IT IS FURTHER ORDERED that the Consent is incorporated herein
3 with the same force and effect as if fully set forth herein, and
4 that Stevan A. Birnbaum shall comply with all of the undertakings
5 and agreements incorporated herein.

VIII.

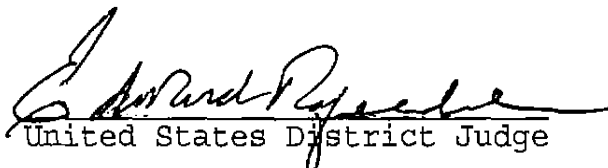
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7 IT IS FURTHER ORDERED that this Court shall retain jurisdiction
8 for the purpose of enforcing the Final Judgment.

9
10 IX.

11 There being no cause for delay, the Clerk of the Court is
12 directed, pursuant to Rule 54(b) of the Federal Rules of Civil
13 Procedure, to enter this Final Judgment forthwith.

14
15 Dated:

JUN 03 1999


United States District Judge