

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

99 Civ. 7357 (NG)

**GRANT R. CURTIS, LEO MANGAN, TIMOTHY H.
MASLEY, JAMES W. NEAREN, RAIMOND IRNI,
PEDRO DIBRITO GOMEZ, DONALD E.
KESSLER, DAVID R. BEHANNA, ANDREA VARSI,
JONATHAN D. LYONS, KENNETH A. ORR,
LILLIAN M. VINCI, ANN MARIE NOEL,
MICHAEL V. LIPKIN, JOSHUA S. SHAINBERG,
PHILLIP J. MILLIGAN, AND ROBERT L. SHATLES,**

Defendants.

**FINAL JUDGMENT OF PERMANENT INJUNCTION
AND OTHER RELIEF AS TO DEFENDANT KENNETH A. ORR**

Plaintiff Securities and Exchange Commission ("Commission"), having commenced this action by filing a Complaint For Injunctive And Other Relief on November 10, 1999, alleging that defendant Kenneth A. Orr ("Orr") violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and defendant Orr having executed the annexed Consent To Final Judgment Of Permanent Injunction And Other Relief As To Defendant Kenneth A. Orr ("Consent"), having withdrawn his answer, having waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, having admitted the jurisdiction of this Court over him and over the subject matter of this action, and, without admitting or denying the allegations contained

in the Complaint, except as to jurisdiction, having consented to the entry of this Final Judgment Of Permanent Injunction And Other Relief As To Defendant Kenneth A. Orr (“Final Judgment”) without further notice:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Orr be and hereby is permanently enjoined from, directly or indirectly, singly or in concert, in the offer or sale of any security, by the use of any means or instrument of transportation or communication in interstate commerce or by use of the mails:

- (A) employing any device, scheme or artifice to defraud; or
- (B) obtaining money or property by means of an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (C) engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser,

in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Orr be and hereby is permanently enjoined and restrained from, directly or indirectly, singly or in concert, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- (A) employing any device, scheme, or artifice to defraud;
- (B) making any untrue statement of a material fact or omitting to state a material fact

necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

- (C) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person,

in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Orr shall disgorge \$55,000, plus prejudgment interest on that disgorgement in the amount of \$44,029.51, for a total of \$99,029.51. Defendant Orr shall satisfy the \$99,029.51 obligation by making the following payments: (1) within 180 days from the date of entry of this Final Judgment, defendant Orr shall pay \$55,000 (constituting the disgorgement), plus post-judgment interest on that amount from the date of entry of this Final Judgment until paid in full, at the post-judgment interest rate set forth at 28 U.S.C. §§ 1961(a) & (b) (hereinafter the “Post-Judgment Interest Rate”); and (2) within 365 days from the date of the entry of this Final Judgment, defendant Orr shall pay \$44,029.51 (constituting prejudgment interest), plus post-judgment interest on that amount from the date of entry of this Final Judgment until paid in full, at the Post-Judgment Interest Rate.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Orr shall pay a civil penalty of \$55,000 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77(t)(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78(u)(d)(3). The payment of the \$55,000 civil penalty, plus post-judgment interest on that amount from the date of entry of

this Final Judgment until paid in full, shall be made within 60 days from the date of the entry of this Final Judgment.

V.

Defendant Orr shall make the payments described in the above paragraphs III. and IV. to the “Clerk of the Court – Eastern District of New York” at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, under cover of a letter that identifies Orr and the name and civil action number of this litigation. The funds to be paid shall be deposited into an interest-bearing money market account with the Court Registry Investment System (the “CRIS Account”). Interest earned on the funds in the CRIS Account shall be credited to the CRIS Account and shall thereafter be treated in the same manner as principal. Further, funds in the CRIS Account shall be held until further Order of the Court, and shall be disbursed in accordance with a plan of equitable distribution to victims of Orr to be submitted by the Commission and approved by the Court. In no event shall any portion of the account be returned to Orr, his successors or assigns.

Simultaneously with making such payments, copies of the cashier’s check, certified check or postal money order, front and back, as well as any accompanying correspondence, shall be transmitted to David Rosenfeld, Esq., Assistant Regional Director, U.S. Securities and Exchange Commission, Northeast Regional Office, 233 Broadway, New York, New York 10279. Such transmission shall be made under cover of a letter that identifies the defendant, the name and civil action number of the litigation, the name of this Court and the Commission case number “NY-6315.”

VI.

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

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the annexed Consent of defendant Orr be, and hereby is, incorporated herein with the same force as if fully set forth herein.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED 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.

IX.

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

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff Commission may effect service of this Final Judgment, and all other papers in this action, upon defendant Orr by first class mail to defendant Orr's attorney, Ira Lee Sorkin, Carter Ledyard & Milburn, 2 Wall Street, New York, N.Y. 10005-2072, or any other attorney entering an

appearance for defendant Orr in this action.

**CONSENT TO FINAL JUDGMENT OF PERMANENT INJUNCTION
AND OTHER RELIEF AS TO DEFENDANT KENNETH A. ORR**

1. Defendant Kenneth A. Orr (“Orr”), being fully apprised of his rights, having had the opportunity to confer with legal counsel, and having read and understood the terms of the Final Judgment Of Permanent Injunction And Other Relief As To Defendant Kenneth A. Orr (“Final Judgment”), appears and admits the in personam jurisdiction of this Court over him and the subject matter jurisdiction of this Court, withdraws his 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 Final Judgment.

2. Defendant Orr agrees that this Consent To Final Judgment Of Permanent Injunction And Other Relief As To Defendant Kenneth A. Orr (“Consent”) shall be incorporated by reference in and made part of the Final Judgment to be presented to the Court for signature, filing and entry contemporaneously herewith.

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

4. Defendant Orr acknowledges that any willful violation of any of the terms of the Final Judgment may place him in contempt of this Court and subject him to civil or criminal sanctions.

5. Defendant Orr acknowledges that he enters into this Consent voluntarily, and that this Consent and the Final Judgment embody the entire understanding of the parties. Defendant Orr acknowledges and agrees that his consent to the entry of the Final Judgment is for the purpose 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 with regard to: (A) this civil action, that is not explicitly stated in this Consent and the Final Judgment; (B) any administrative proceeding brought or to be brought before the Commission involving the Final Judgment or the facts underlying this action; (C) any other Commission civil action or administrative proceeding not involving the facts underlying this action; (D) any administrative, civil or criminal liability arising from the facts underlying this action in any action or proceeding brought or to be brought by any third party, other agency or criminal authority; or (E) immunity from any such administrative, civil or criminal action or proceeding.

6. Defendant Orr acknowledges that he has been informed and understands that plaintiff Commission, at its sole and exclusive discretion, 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, if the Commission has not already done so.

7. Defendant Orr acknowledges and agrees that his Consent is for the purpose of resolving this proceeding only, in conformity with the provisions of 17 C.F.R. § 202.5(f), and does not resolve, affect, or preclude any other proceeding which may be brought against him. Consistent with the provisions of 17 C.F.R. § 202.5(f), defendant Orr waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant Orr acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory

disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding.

8. Defendant Orr acknowledges that the Court is ordering him to pay a \$55,000 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), and is requiring defendant Orr to pay disgorgement in the amount of \$55,000 representing gains from the unlawful conduct alleged in the Complaint, together with prejudgment interest in the amount of \$44,029.51. In addition, defendant Orr shall pay post-judgment interest on the outstanding balance of the total obligation (\$154,029.51) from the date of entry of this Final Judgment until paid in full.

9. Defendant Orr understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings," 17 C.F.R. § 202.5(e). In compliance with this policy, defendant Orr agrees not to take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating the impression that the Complaint is without factual basis. If defendant Orr breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to the Court's active docket. Nothing in this provision affects defendant Orr's: (i) testimonial obligations; or (ii) right to take legal positions in litigation in which the Commission is not a party.

10. Defendant Orr hereby consents and agrees that the Final Judgment may be presented by the Commission to the Court for signature and entry without further notice and delay.

11. Defendant Orr agrees that, promptly after the Final Judgment has been entered by the Court, he will execute and return to the Commission an acknowledgment of receipt of the Final Judgment.

12. Defendant Orr agrees that this Court shall retain jurisdiction of this matter for all purposes, including the implementation, modification and enforcement of the Final Judgment.

13. Defendant Orr agrees that first class mail to his attorney, Ira Lee Sorkin, Carter Ledyard & Milburn, 2 Wall Street, New York, N.Y. 10005-2072, or any attorney entering an appearance for defendant Orr in this action, shall be deemed personal service for all correspondence, service and notices as to any matters related to the Final Judgment, unless defendant Orr notifies the Commission of any alternative address by certified mail at the following address: David Rosenfeld, Esq., Assistant Regional Director, U.S. Securities and Exchange Commission, Northeast Regional Office, 233 Broadway, New York, New York 10279.

14. Defendant Orr acknowledges that this Consent embodies the entire understanding of the parties concerning resolution of this action.

Dated: 8-30, 2002

Kenneth A. Orr
Kenneth A. Orr

Acknowledged by:

STATE OF NEW YORK

ss.:

COUNTY OF NEW YORK

On this 30 day of August, 2002, Kenneth A. Orr, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Kathy Sansouci
NOTARY PUBLIC

VERITY SANSOUCI
Notary Public, State of New York
No. 01SA6039018
Qualified in Queens County
Commission Expires March 20, 2005

SO ORDERED.

Nina Gerch
United States District Judge

Dated: Sept 13, 2002
Brooklyn, New York