

9/18/00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

#38

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

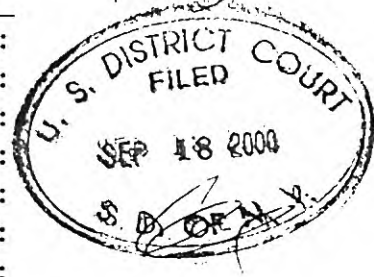
v.

MARLON D. TROPEANO and
DAVID BARROSO, JR.,

Defendants,
and

GOLF EMPORIUM CORPORATION, ISABEL
MUNOZ, and V.M.C. HOLDINGS INC.,

Relief Defendants.



99 Civ. 10260 (JSR)

FINAL CONSENT
JUDGMENT
OF PERMANENT
INJUNCTION AND
OTHER RELIEF
AS TO
DAVID BARROSO, JR.

Plaintiff Securities and Exchange Commission (the "Commission") having commenced this action by filing a Complaint for Injunctive And Other Relief on October 5, 1999 charging defendant David Barroso, Jr. ("Barroso"), with violating Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5, and defendant Barroso having executed the annexed Consent of David Barroso, Jr. (the "Consent"), 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 Consent Judgment of Permanent Injunction and Other Relief As To David Barroso, Jr. (the "Final Judgment") without further notice:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant Barroso 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 the 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 Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5.

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Commission, having relied on the sworn representations in Barroso's Financial Statement, and Barroso having agreed, the Court is not ordering Barroso to pay a civil penalty pursuant to Section

21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). The determination not to impose a civil penalty is contingent upon the accuracy and completeness of the Financial Statement.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if, at any time following the entry of this Final Judgment, the Commission obtains information indicating that defendant Barroso's representations to the Commission in the Financial Statement 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 with five days prior notice to Barroso, petition this Court for an order imposing a civil penalty against Barroso. In connection with any such petition, the only issue shall be whether the information provided by Barroso was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering defendant Barroso to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment, and the Commission may also request additional discovery. Barroso may not, by way of defense to such petition, challenge the validity of the annexed Consent or the Final Judgment, contest the allegations in the Complaint filed by the Commission, or assert that the payment of a civil penalty should not be ordered.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Barroso's counterclaims against the Securities and Exchange Commission are dismissed with prejudice.

V.

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 Barroso, his officers, agents, servants, employees, and attorneys-in-fact, and upon those persons in active concert or participation with Barroso who receive actual notice of this Final Judgment by personal service or otherwise.

VI.

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

VII.

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.

VIII.

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 pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IX.

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 Barroso by sending a copy via first class mail to defendant Barroso at 75-23 113th Street, Forrest Hills, New York 11375.

CONSENT OF DAVID BARROSO, JR.

1. Defendant David Barroso, Jr. ("Barroso"), being fully apprised of his rights, having had the opportunity to confer with legal counsel, having read and understood the terms of the Final Consent Judgment of Permanent Injunction and Other Relief As To David Barroso, Jr. (the "Final Judgment"), appears and admits the *in personam* jurisdiction of this Court over him and the subject matter jurisdiction of this Court, 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 (the "Commission"), except as to jurisdiction, hereby consents to the entry, without further notice, of the Final Judgment.
2. Barroso agrees that this Consent of David Barroso, Jr. (the "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. Barroso waives any right he may have to appeal from the Final Judgment.
4. Barroso 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. Barroso acknowledges that he enters into this Consent voluntarily, and that this Consent, the Final Judgment, and defendant Barroso's Statement of Financial Condition, dated September 11, 2000 ("Financial Statement"), submitted to the Commission, embody the entire understanding of the parties. Barroso 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, 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. Barroso acknowledges that he has been informed and understands that Plaintiff Commission, at its sole and 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, if the Commission has not already done so.
7. Barroso further acknowledges that a willful violation of any of the terms or provisions of the Final Judgment may place him in contempt of this Court and subject him to civil or criminal sanctions.

8. Barroso acknowledges and agrees that this Consent and the entry of the Final Judgment are for the purposes of this civil action only, in conformity with the provisions of 17 C.F.R. § 202.5(f), and do not resolve, extend to, affect or preclude any other proceeding that has been or may be brought against Barroso. Among other things, defendant Barroso waives any right he may have to assert that, under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, the relief sought or consented to in this civil action, including the seeking or imposition of any remedy or civil penalty herein, bars any criminal action, or that any criminal action bars the relief consented to in this action.
9. Barroso acknowledges that the Court is not ordering him to pay a civil penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), based upon the accuracy and completeness of Barroso's sworn representations to the Commission concerning his assets, income, liabilities, and net worth, as described in his Financial Statement. Barroso further agrees and understands that, if at any time following the entry of this Final Judgment, the Commission obtains information indicating that Barroso 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 with five days prior notice to Barroso petition this Court for an order imposing a civil penalty, plus post-judgment interest. In connection with any such petition, the only issue shall

be whether the financial information provided by Barroso was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering defendant Barroso to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment, and the Commission may also request additional discovery. Barroso may not, by way of defense to such petition, challenge the validity of this Consent or the Final Judgment, contest the allegations in the Complaint filed by the Commission, or assert that the payment of a civil penalty should not be ordered.

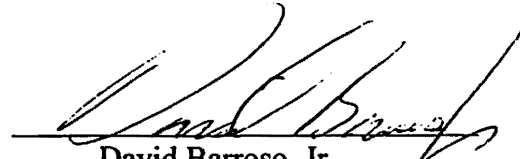
10. Barroso understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." 17 C.F.R. § 202.5(e). In compliance with this policy, defendant Barroso agrees: (i) not to take any action or to 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; and (ii) that upon the filing of this Consent, defendant Barroso hereby withdraws any papers filed in this action to the extent that he denies any allegation in the Complaint. If defendant Barroso breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this case to its active docket. Nothing in this provision affects defendant Barroso's testimonial obligations or right to take legal positions in litigation in which the Commission is not a party.

11. Barroso hereby consents and agrees not to raise any claim against the Commission related to or arising from the facts alleged in the Complaint or from any related action taken or not taken by the Commission prior to the filing of this Consent.
12. Barroso 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.
13. Barroso 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.
14. Barroso agrees that this Court shall retain jurisdiction of this matter for all purposes, including the implementation, modification, and enforcement of the Final Judgment.
15. Barroso agrees that first class and certified mail to his residence, 75-23 113th Street, Apartment 2F, Forest Hills, New York 11375, or his attorney shall be deemed personal service for all correspondence, service and notices as to any matters related to the Final Judgment, unless Barroso notifies the Commission of any alternative address by certified

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mail at the following address: Associate Regional Director (Enforcement), U.S. Securities and Exchange Commission, Northeast Regional Office, 7 World Trade Center, New York, New York 10048, Attn: Barry Rashkover, Esq.

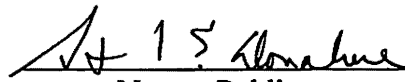
Dated: September 11, 2000


David Barroso, Jr.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 11th day of September, 2000, before me personally appeared David Barroso, Jr., to me known to be the person who executed the foregoing Consent.

Stephen E. Donahue
Notary Public, State of New York
No. 02DO6020334
Qualified in New York County
Commission Expires March 01, 2001


Notary Public

SO ORDERED:

Dated: New York, New York,
September 15, 2000


UNITED STATES DISTRICT JUDGE

THIS DOCUMENT WAS ENTERED
IN THE PUBLIC ACCESS E-FILE DOCKET ON 9/19/00