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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X	:	
SECURITIES AND EXCHANGE COMMISSION,	:	
	:	92 Civ. 8314 (JES)
Plaintiff,	:	
	:	
	:	
-against-	:	FINAL JUDGMENT OF
	:	PERMANENT INJUNCTION
	:	AND OTHER EQUITABLE
	:	RELIEF BY CONSENT
	:	AGAINST AVELLINO &
AVELLINO & BIENES,	:	BIENES, FRANK J.
FRANK J. AVELLINO, and	:	AVELLINO, AND MICHAEL
MICHAEL S. BIENES,	:	<u>S. BIENES</u>
	:	
Defendants.	:	
-----X	:	# <u>93,2049</u>

Plaintiff Securities and Exchange Commission (the "Commission"), having filed a Complaint against defendants Avellino & Bienes ("A&B"), Frank J. Avellino ("Avellino"), and Michael S. Bienes ("Bienes") for preliminary and permanent injunction and other equitable relief ("Complaint") on November 18, 1992, and the Court having entered an Order of Preliminary Injunction And Other Equitable Relief on Consent, on November 17, 1992 ("Order"), and defendants A&B, Avellino, and Bienes, in the

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attached Consent incorporated herein, having entered a general appearance, having admitted the in personam jurisdiction of this Court over them and the jurisdiction of this Court over the subject matter of this action, 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 denying the allegations of the Complaint, having consented, without trial, argument or adjudication of any issue of fact or law, to the entry of this Final Judgment of Permanent Injunction and Other Equitable Relief by Consent Against Avellino & Bienes, Frank J. Avellino, and Michael S. Bienes ("Final Judgment"), it is hereby:

I.

ORDERED, ADJUDGED AND DECREED that the attached Consents of defendants A&B, Avellino, and Bienes be and hereby are incorporated herein with the same force as if fully set forth herein.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants A&B, Avellino, and Bienes, their partners, agents, servants, employees, and attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service, facsimile, or otherwise, and each of them, be and hereby are permanently enjoined from,

directly or indirectly, singly or in concert, violating Section 5(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a)], by making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell securities through the use or medium of any prospectus or otherwise; or, by carrying or causing to be carried through the mails and in interstate commerce, any securities, by any means or instruments of transportation, for the purpose of delivery after sale, without a registration statement being in effect as to those securities.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants A&B, Avellino, and Bienes, their partners, agents, servants, employees, and attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service, facsimile, or otherwise, and each of them, be and hereby are permanently enjoined from, directly or indirectly, singly or in concert, violating Section 5(c) of the Securities Act [15 U.S.C. §§ 77e(c)], by 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 securities through the use or medium of any prospectus or otherwise, without a registration statement being filed as to such securities.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants A&B, Avellino, and Bienes, their partners, agents, servants, employees, and attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service, facsimile, or otherwise, and each of them, be and hereby are permanently enjoined from, directly or indirectly, singly or in concert, violating, or aiding and abetting violations of Section 7 of the Investment Company Act of 1940 ("Investment Company Act") [15 U.S.C. § 80a-7], by, while acting as an investment company organized or otherwise created under the laws of the United States or of a state, or aiding and abetting any such investment company:

- A. offering for sale, selling, or delivering after sale, by the use of the mails or any means or instrumentalities of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person; or offering for sale, selling, or delivering after sale any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by the use of the mails or any means or instrumentalities of interstate commerce; or
- B. purchasing, redeeming, retiring, or otherwise

acquiring, or attempting to acquire, by use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person; or

C. engaging in any business in interstate commerce.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants A&B, Avellino, and Bienes, shall each pay to the United States Treasury a civil penalty in the amount of \$250,000.00 for A&B, \$50,000.00 for Avellino, and \$50,000.00 for Bienes, pursuant to Section 20 of the Securities Act and Section 42 of the Investment Company Act [15 U.S.C. §77t and 80a-42]. These amounts shall be paid within ten (10) business days of the entry of this Final Judgment.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants A&B, Avellino, and Bienes, shall pay the civil penalties specified in Section V. above, to the United States Department of Treasury, by transmitting such payments in the form of a U.S. postal money order, a certified check, a bank cashier's check, or a bank money order made payable to the Comptroller, Securities and Exchange Commission. Such payments shall be mailed to:

Comptroller
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

under cover of letter that identifies the defendant, the name and the case number of this litigation, and the name of the court. A copy of the cover letter shall be simultaneously transmitted to Keith W. Miller, Branch Chief, Securities and Exchange Commission, 7 World Trade Center, New York, New York 10048.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Trustee, Lee S. Richards ("Trustee"), of the law firm Richards Spears Kibbe & Orbe, appointed pursuant to the Order, shall retain authority, custody and control over Chemical Bank Account No. 611120216, which contains the funds reserved to cover the checks distributed to noteholders. The Trustee shall direct that a stop order be placed on all checks issued to noteholders from this account that have not been redeemed as of the date of the entry of this Final Judgment. The Trustee shall issue replacement checks to these noteholders. The Trustee shall also pay to A&B from this account \$3,383.95, which constitutes monies that are separate from the funds reserved to cover the checks distributed to noteholders. This payment shall be made within 10 days of the entry of the Final Judgment. The Trustee shall use his best efforts to distribute all monies remaining in the account, after the payment to A&B of the \$3,383.95, to those noteholders who failed to present their original checks for

payment. At the conclusion of 90 days from the date the replacement checks are issued, any monies remaining in this account shall be transmitted to the United States Department of the Treasury, by transmitting such monies to:

Comptroller
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

under cover of letter that states the name and the case number of this litigation, the name of the court, and specifies that this money is being sent pursuant to Section VII. of this Final Judgment. A copy of the cover letter shall be simultaneously transmitted to Keith W. Miller, Branch Chief, Securities and Exchange Commission, 7 World Trade Center, New York, New York 10048.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Trustee shall retain authority, custody and control over the proceeds resulting from the liquidation of four A&B noteholder accounts: Harry and Elaine Simon Account #1, Harry and Elaine Simon Account #2, Harry Simon Keogh Account, and the Jordan Sands Account. These funds are currently subject to an Order of Attachment issued in Dillon v. Simon, et al., New York Supreme Court, I.A.S. Part 3, Nassau County, May 8, 1992, as amended December 18, 1992 (Burke, J.), and a Temporary Restraining Order issued in National Westminster Bank USA v. Simon, et al., New York Supreme Court, I.A.S. Part 55, New York County, February 18, 1993 (Tom, J.).

The Trustee shall retain the power to distribute these monies, whether to the noteholders or to another person or entity, pursuant to an order of this Court, or an order entered in either Dillon v. Simon or National Westminster Bank USA v. Simon. Any monies that are not distributed within 60 days after final judgments have been entered in both Dillon v. Simon and National Westminster Bank v. Simon, shall be transmitted to the United States Department of the Treasury, by transmitting such monies to:

Comptroller
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

under cover of letter that states the name and the case number of this litigation, the name of the Court, and specifies that this money is being sent pursuant to Section VIII. of this Final Judgment. A copy of the cover letter shall be simultaneously transmitted to Keith W. Miller, Branch Chief, Securities and Exchange Commission, 7 World Trade Center, New York, New York 10048.

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Trustee shall distribute \$4,156.16, presently held by the Trustee, to the noteholders who have submitted claims for interest earned from November 16, 1992 until the date the redemption check was sent by the Trustee to the noteholder. Such distribution shall be made within 10 days of the entry of this Final Judgment.

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Final Judgment does not constitute a determination of any claim of any A&B noteholder against A&B, Avellino, or Bienes, including, but not limited to, claims for the redemption of any note issued by A&B which was not previously redeemed, and the payment of interest from November 16, 1992 until the date the redemption check was sent by the Trustee to the noteholder.

XI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for all purposes, including the implementation and enforcement of the Final Judgment.

XII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of the Court is hereby directed to enter this Final Judgment.

Complaint upon it, appears and admits the in personam jurisdiction of this Court over it and the jurisdiction of this Court over the subject matter of this action, and hereby consents to the entry of the annexed Final Judgment without further notice, and without admitting or denying the allegations contained in the Complaint of plaintiff Securities and Exchange Commission ("Commission").

2. Defendant A&B agrees that this Consent shall be incorporated by reference in and be made part of the Final Judgment to be entered against it.

3. Defendant A&B waives any right it may have to appeal the Final Judgment.

4. Defendant A&B enters into this Consent voluntarily and acknowledges that no tender, offer, promise or threat of any kind has been made by plaintiff Commission or any of its members, officers, agents or representatives in consideration of this Consent.

5. Defendant A&B further acknowledges that a violation of any of the terms or provisions of the Final Judgment may place it in contempt of this Court and subject it to civil and criminal sanctions.

6. Defendant A&B further acknowledges that it 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 civil, administrative or criminal jurisdiction. ~~In~~ this connection, defendant A&B acknowledges that no representations regarding the above have been made so as to induce it to enter into this Consent.

7. Defendant A&B acknowledges that no promise or representation has been made by plaintiff Commission or its staff with regard to: (1) any criminal liability that may have arisen or that may arise from the facts underlying this action; or (2) immunity from such criminal liability.

8. Defendant A&B further acknowledges that it has been informed that plaintiff Commission has not waived, and does not waive, consistent with the principles of res judicata, collateral estoppel, and the doctrine of finality of judgments, its rights to commence, at its sole and exclusive option: (a) any civil action, civil or criminal contempt proceedings, or administrative proceedings against defendant A&B, its partners, agents, servants, employees and attorneys-in-fact as a result of this matter; or (b) any further proceedings or action against defendant A&B arising from or related to facts not alleged in the Complaint.

9. Defendant A&B waives any right it may have to assert that, under the Double Jeopardy Clause, the relief consented to in this civil action bars any criminal action, ~~or~~ that any criminal action bars the relief consented to in this action.

10. Defendant A&B agrees to pay a civil penalty in the amount of \$250,000.00, which amount is referred to in Section V. of the Final Judgment.

11. Defendant A&B agrees to accept service by regular mail of all process with respect to this matter, and any proceeding or actions in connection therewith or deriving therefrom, including process relating to any depositions, hearings, trials or other court or administrative proceedings or investigations, by service upon Ira Lee Sorkin, Squadron, Ellenoff, Plesent, Sheinfeld & Sorkin, 551 Fifth Avenue, New York, New York 10176.

12. Defendant A&B further acknowledges that this Consent embodies the entire understanding of the parties.

13. Defendant A&B agrees that the Final Judgment may be presented by the Commission to the Court for signature and entry without further notice.

14. Defendant A&B consents that this Court shall retain jurisdiction of this action for the purpose of implementing and enforcing the terms and conditions of the Final Judgment for all purposes.

15. Defendant A&B acknowledges that Frank J. Avellino and Michael S. Bienes have the authority to bind A&B to the terms of this Consent. Defendant A&B agrees to be bound to this Consent upon the signatures of Frank J. Avellino and Michael S. Bienes. Frank J. Avellino and Michael S. Bienes, in both their

RESOLUTION
OF
AVELLINO & BIENES

RESOLVED, that

Frank J. Avellino and Michael S. Bienes are hereby authorized and directed to execute on behalf of Avellino & Bienes the Consent dated June 4, 1993 to the Securities and Exchange Commission as attached hereto and made part hereof.

FRANK J. AVELLINO

Frank J. Avellino
General Partner, Avellino & Bienes

MICHAEL S. BIENES

Michael S. Bienes
General Partner, Avellino & Bienes

DIANNE K. BIENES

Dianne K. Bienes
General Partner, Avellino & Bienes

State of Florida)
) ss.:
County of Broward)

The foregoing instrument was acknowledged before me this 4th day of June, 1993, by Frank J. Avellino who is personally known to me or produced Florida Driver's License A 145-260-36-225 as identification.



Notary: Kathleen H. Pike
Print Name: KATHLEEN H. PIKE
Notary Public, State of Florida
My commission expires: Sept. 6, 1996

Court over the subject matter of this action, and hereby consents to the entry of the annexed Final Judgment without further notice and without admitting or denying the allegations contained in the Complaint of plaintiff Securities and Exchange Commission ("Commission").

2. Defendant Avellino agrees that this Consent shall be incorporated by reference in, and be made part of, the Final Judgment to be entered against him.

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

4. Defendant Avellino enters into this Consent voluntarily and acknowledges that no tender, offer, promise or threat of any kind has been made by plaintiff Commission or any of its members, officers, agents or representatives in consideration of this Consent.

5. Defendant Avellino further acknowledges that a 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 and criminal sanctions.

6. Defendant Avellino further 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 civil, administrative or criminal jurisdiction. In this connection, defendant Avellino acknowledges that no

representations regarding the above have been made so as to induce him to enter into this Consent.

7. Defendant Avellino acknowledges that no promise or representation has been made by plaintiff Commission or its staff with regard to: (1) any criminal liability that may have arisen or that may arise from the facts underlying this action; or (2) immunity from such criminal liability.

8. Defendant Avellino further acknowledges that he has been informed that plaintiff Commission has not waived, and does not waive, consistent with the principles of res judicata, collateral estoppel, and the doctrine of finality of judgments, its rights to commence, at its sole and exclusive option: (a) any civil action, civil or criminal contempt proceedings, or administrative proceedings against defendant Avellino, his agents, servants, employees and attorneys-in-fact as a result of this matter; or (b) any further proceedings or action against defendant Avellino arising from or related to facts not alleged in the Complaint.

9. Defendant Avellino waives any right he may have to assert that, under the Double Jeopardy Clause, the relief consented to in this civil action bars any criminal action, or that any criminal action bars the relief consented to in this action.

10. Defendant Avellino agrees to pay a civil penalty in the amount of \$50,000.00, which amount is referred to in Section V. of the Final Judgment..

11. Defendant Avellino agrees to accept service by regular mail of all process with respect to this matter, and any proceeding or actions in connection therewith or deriving therefrom, including process relating to any depositions, hearings, trials or other court or administrative proceedings or investigations, by service upon Ira Lee Sorkin, Squadron, Ellenoff, Plesent, Sheinfeld & Sorkin, 551 Fifth Avenue, New York, New York 10176.

12. Defendant Avellino further acknowledges that this Consent embodies the entire understanding of the parties.

13. Defendant Avellino agrees that the Final Judgment may be presented by the Commission to the Court for signature and entry without further notice.

Court over the subject matter of this action, and hereby consents to the entry of the annexed Final Judgment without further notice and without admitting or denying the allegations contained in the Complaint of plaintiff Securities and Exchange Commission ("Commission").

2. Defendant Bienes agrees that this Consent shall be incorporated by reference in, and be made part of, the Final Judgment to be entered against him.

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

4. Defendant Bienes enters into this Consent voluntarily and acknowledges that no tender, offer, promise or threat of any kind has been made by plaintiff Commission or any of its members, officers, agents or representatives in consideration of this Consent.

5. Defendant Bienes further acknowledges that a 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 and criminal sanctions.

6. Defendant Bienes further 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 civil, administrative or criminal jurisdiction. In this connection, defendant Bienes acknowledges that no

representations regarding the above have been made so as to induce him to enter into this Consent.

7. Defendant Bienes acknowledges that no promise or representation has been made by plaintiff Commission or its staff with regard to: (1) any criminal liability that may have arisen or that may arise from the facts underlying this action; or (2) immunity from such criminal liability.

8. Defendant Bienes further acknowledges that he has been informed that plaintiff Commission has not waived, and does not waive, consistent with the principles of res judicata, collateral estoppel, and the doctrine of finality of judgments, its rights to commence, at its sole and exclusive option: (a) any civil action, civil or criminal contempt proceedings, or administrative proceedings against defendant Bienes, his agents, servants, employees and attorneys-in-fact as a result of this matter; or (b) any further proceedings or action against defendant Bienes arising from or related to facts not alleged in the Complaint.

9. Defendant Bienes waives any right he may have to assert that, under the Double Jeopardy Clause, the relief consented to in this civil action bars any criminal action, or that any criminal action bars the relief consented to in this action.

10. Defendant Bienes agrees to pay a civil penalty in the amount of \$50,000.00, which amount is referred to in Section V. of the Final Judgment..

11. Defendant Bienes agrees to accept service by regular mail of all process with respect to this matter, and any proceeding or actions in connection therewith or deriving therefrom, including process relating to any depositions, hearings, trials or other court or administrative proceedings or investigations, by service upon Ira Lee Sorkin, Squadron, Ellenoff, Plesent, Sheinfeld & Sorkin, 551 Fifth Avenue, New York, New York 10176.

12. Defendant Bienes further acknowledges that this Consent embodies the entire understanding of the parties.

13. Defendant Bienes agrees that the Final Judgment may be presented by the Commission to the Court for signature and entry without further notice.

