

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
2002 JUL 3 10:13 AM

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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.

99 Civ. 7357 (NG)

RECEIVED
In Chambers of
U.S.D.J. Gershon
JUL 3 2002

**FINAL JUDGMENT OF PERMANENT INJUNCTION
AND OTHER RELIEF AS TO RAIMOND IRNI**

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 Raimond Irni ("Irni") violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a), 77e(c), and 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 Irni having executed the annexed Consent To Final Judgment Of Permanent Injunction And Other Relief As To Raimond Irni ("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 Judgment Of Permanent Injunction And Other Relief As To Raimond Irni ("Final Judgment") without further notice:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Irni be and hereby is permanently enjoined from, directly or indirectly, singly or in concert:

- (A) making use of any means or instrument of transportation or communication in interstate commerce or of the mails to sell any security of any issuer, through the use or medium of any prospectus or otherwise, unless and until a registration statement is in effect as to such securities; or
- (B) carrying or causing to be carried through the mails or in interstate commerce, by any means or instrument of transportation, for the purpose of sale or for delivery after sale, any security of any issuer, unless and until a registration statement is in effect as to such securities; or
- (C) making use of any means or instrument 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 any security of any issuer, unless and until a registration statement has been filed with the Commission as to such securities, or while a registration statement 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,

in violation of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c).

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Irni 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).

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Irni 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 Rule 10b-5
thereunder, 17 C.F.R. § 240.10b-5.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Irni pay disgorgement in the amount of \$200,000, representing the ill-gotten gain as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon. Based upon defendant Irni's sworn representations in his Statement of Financial Condition dated October 31, 2001 ("Financial Statement"), and other documents submitted to the Commission, payment of all of the disgorgement and pre-judgment interest thereon is waived, contingent upon the accuracy and completeness of his Financial Statement.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that based on Defendant Irni's sworn representations in his Financial Statement and other documents submitted to the Commission, the Court is not ordering him to pay a civil penalty. The determination not to impose a civil penalty and to waive the disgorgement and pre-judgment interest thereon is contingent upon the accuracy and completeness of his Financial Statement. If at any time following the entry of this Final Judgment the Commission obtains information indicating that defendant Irni'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, in its sole discretion and without prior notice to defendant Irni, petition the Court for an order requiring defendant Irni to pay \$200,000 of disgorgement, pre-judgment and post-judgment interest thereon, and the maximum

civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by defendant Irni 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 Irni to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Defendant Irni may not, by way of defense to such petition: (1) challenge the validity of this Consent or the Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

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 Irni, 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 Irni 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 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 Irni by delivering a copy to defendant Irni at 1405 Royce Street #3, Brooklyn, NY 11234, or any attorney entering an appearance for defendant Irni in this action.

**CONSENT TO FINAL JUDGMENT OF PERMANENT INJUNCTION
AND OTHER RELIEF AS TO DEFENDANT RAIMOND IRNI**

1. Defendant Raimond Irni ("Irni"), 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 Raimond Irni ("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 ("Commission"), except as to jurisdiction, hereby consents to the entry of the Final Judgment without further notice.

2. Defendant Irni agrees that this Consent To Final Judgment Of Permanent Injunction And Other Relief As To Raimond Irni ("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 Irni waives any right he may have to appeal from the Final Judgment.

4. Defendant Irni 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 Irni acknowledges that he enters into this Consent voluntarily, and that this Consent, the Final Judgment, and defendant Irni's Statement of Financial Condition, dated October 31, 2001 ("Financial Statement"), submitted to the Commission, embody the entire understanding of the parties. Defendant Irni 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. Defendant Irni 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 Irni acknowledges and agrees that this proceeding and his Consent are for the purposes of resolving this proceeding only, in conformity with the provisions of 17 C.F.R. 202.5(f), and do 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 Irni waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant Irni 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 Irni acknowledges that the Court is not imposing a civil penalty or requiring payment of \$200,000 of disgorgement and pre-judgment interest thereon based on defendant Irni's sworn representations in his Financial Statement and other documents submitted to the Commission. Defendant Irni agrees and understands that if at any time following the entry of the Final Judgment the Commission obtains information indicating that defendant Irni'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 defendant Irni, petition the Court for an order requiring defendant Irni to pay \$200,000 in disgorgement, pre-judgment and post-judgment interest thereon, and the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by defendant Irni was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In any such petition, the Commission may move the Court to consider all available remedies, including, but not limited to, ordering defendant Irni to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of the Court's Final Judgment. The Commission may also request additional discovery. Defendant Irni may not, by way of defense to such petition: (1) challenge the validity of this Consent or the Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment and

post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

9. Defendant Irni 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 Irni agrees 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. If defendant Irni 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 Irni's: (i) testimonial obligations; or (ii) right to take legal positions in litigation in which the Commission is not a party.

10. Defendant Irni 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 Irni 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.

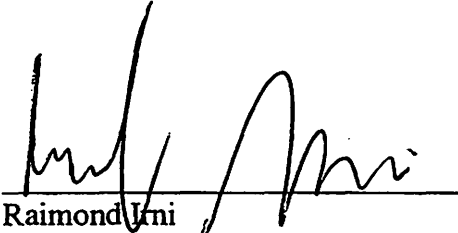
12. Defendant Irni agrees that this Court shall retain jurisdiction of this matter for all purposes, including the implementation, modification and enforcement of the Final Judgment.

13. Defendant Irni agrees that first class and certified mail to him at 1405 Royce

Street #3, Brooklyn, NY 11234, or any attorney entering an appearance for defendant Irni 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 Irni notifies the Commission of any alternative address by certified mail at the following address: Assistant Regional Director (Enforcement), U.S. Securities and Exchange Commission, Northeast Regional Office, 233 Broadway, New York, New York 10279, Attn: David Rosenfeld, Esq.

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

Dated: May 1, 2002

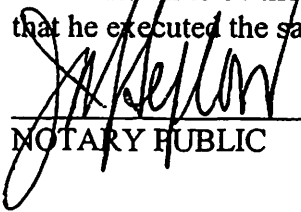

Raimond Irni

Acknowledged by:

STATE OF NY)
COUNTY OF Kings)


ss.:

On this 1st day of May, 2002, before me personally appeared Raimond Irni, to me known to be the person who executed the foregoing Consent, and he acknowledged to me that he executed the same.


NOTARY PUBLIC

IRA F. SEFLOW
Notary Public, State of New York
No. 02SE5037612
Qualified in Kings County
Commission Expires January 3, 2003

SO ORDERED.


United States District Judge

Dated: July 18, 2002
Brooklyn, New York