

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
Plaintiff,	:	
v.	:	Civil Action No.
	:	
J. DONALD NICHOLS, JEB L.	:	
HUGHES, AND C. SHELDON	:	
WHITTELSEY, IV,	:	
	:	
Defendants.	:	

**FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF
AGAINST J. DONALD NICHOLS**

Plaintiff Securities and Exchange Commission ("Commission"), having filed its Complaint herein, and Defendant J. Donald Nichols ("Nichols"), having entered a general appearance, having admitted the in personam jurisdiction of this Court over him and the jurisdiction of this Court over the subject matter of the action, having waived entry of findings of fact and conclusions of law under Rules 52 and 65 of the Federal Rules of Civil Procedure, without admitting or denying any of the allegations of the Commission's complaint, except as to jurisdiction and venue which he admits, and having consented to the entry of this Final Judgment of Permanent Injunction and Other Relief

Against Nichols ("Final Judgment"), and the Court being fully advised in the premises:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Nichols, and his agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, be and hereby are permanently enjoined and restrained from violating, directly or indirectly, Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, by:

1. employing any device, scheme or artifice to defraud;
2. obtaining money or property by means of any untrue statement of a material fact or any omission 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
3. engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, in the offer or sale of any security.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Nichols, and his agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, be and hereby are permanently enjoined and restrained from violating, directly or indirectly, 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], by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange, by:

1. employing any device, scheme or artifice to defraud;
2. 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
3. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Nichols, and his agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, be and hereby are permanently enjoined and restrained' from violating, directly or indirectly, Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13], by:

1. filing any materially untrue, incorrect, false or misleading annual report of any issuer with a security registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or any issuer which is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)];
2. filing any materially untrue, incorrect, false or misleading quarterly report of any issuer with a security registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or any issuer which is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; or

3. failing, in addition to information expressly required to be included in statements or reports filed with the Commission, to add such further material information, if any, as may be necessary to make required statements, in the light of the circumstances under which they are made, not misleading.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Nichols, and his agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, be and hereby are permanently enjoined and restrained from violating, directly or indirectly, Sections 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(2)(B), and 78m(b)(5)] and Rules 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§ 240.13b2-1 and 240.13b2-2], by:

1. failing to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of any issuer which has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or

any issuer which is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; or

2. failing to devise and maintain a system of internal accounting controls, of any issuer which has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or any issuer which is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)], sufficient to provide reasonable assurances that:

- (a) transactions are executed in accordance with management's general or specific authorization;
- (b) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets;
- (c) access to assets is permitted only in accordance with management's general or specific authorization; and

- (d) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences;
3. knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account of any issuer which has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or any company which is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)];
 4. falsifying or causing to be falsified, directly or indirectly, any book, record or account of any company which has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or any company which is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; or
 5. making, or causing to be made, materially false or misleading statements, or omitting to state, or causing another person to omit to state, any material fact necessary in order to make

statements made, in light of the circumstances under which such statements are made, not misleading, to an accountant in connection with (i) any audit or examination of the financial statements of an issuer required to be made pursuant to Section 13 [15 U.S.C. § 78m] of the Exchange Act or (ii) the preparation or filing of any document or report required to be filed with the Commission pursuant to Section 13 of the Exchange Act [15 U.S.C. § 78m] or otherwise.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Nichols, and his agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, be and hereby are permanently enjoined and restrained from violating, directly or indirectly, Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9], by using the mails or any means or instrumentality of interstate commerce or any facility of a national securities exchange or otherwise, to solicit or to permit the use of their names to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant

to Section 12 of the Exchange Act [15 U.S.C. § 781] by means of any proxy statement, form of proxy, notice of meeting, or other communication, written or oral, which contains any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Nichols shall pay a 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)] in the amount of \$110,000 to the United States Treasury within thirty (30) days of the date of this Order.

Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order made payable to the Securities and Exchange Commission; (B) mailed by certified mail to the Comptroller, Securities and Exchange Commission, 6432 General Green Way, Alexandria, VA 22312; and (C) submitted under a cover letter

which identifies Defendant Nichols as a defendant in this action, with a copy of said cover letter and money order or check sent to Richard P. Murphy, Assistant District Administrator, Atlanta District Office, Securities and Exchange Commission, 3475 Lenox Road, N.E., Suite 1000, Atlanta, Georgia 30326-1232.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over this matter for all purposes, including implementing and enforcing the terms of this Final Judgment, and may order other and further relief that this Court deems appropriate under the circumstances.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there is no just reason for delay and the Clerk of the Court is directed, pursuant to Rules 54(b), 58, and 77(d) of the Federal Rules of Civil Procedure, to enter this Final Judgment forthwith.

SO ORDERED, this 19 day of May, 2002.

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

D.C.T.
MAR 21 2002


UNITED STATES DISTRICT JUDGE

JUDGMENT ENTERED BY: Thomas, Clerk

By: JWA
Deputy Clerk

Clerk

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