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NORTHERN DISTRICT OF OHIO
CLEVELAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES
SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

THOMAS M. DURKIN and
JOHN E. ORIN, JR.,

Defendants.

1:02CV 1505

Judge O'Malley

FINAL JUDGMENT AND ORDER OF PERMANENT INJUNCTION AND
OTHER RELIEF AGAINST THOMAS M. DURKIN

Plaintiff Securities and Exchange Commission ("Commission") has filed a Complaint for Permanent Injunction and Other Equitable Relief ("Complaint") in this matter, and Defendant Thomas M. Durkin ("Defendant") has, in his Consent and Stipulation attached hereto and incorporated herein, acknowledged receipt of the Complaint, admitted the jurisdiction of this Court over him and over the subject matter thereof, and without admitting or denying the allegations of the Complaint, except as to jurisdiction, and without trial, argument or adjudication of any facts or law herein, consented to the entry of this Final Judgment and Order of Permanent Injunction and Other Relief Against Thomas M. Durkin ("Final Judgment"). The Commission and Defendant have waived the entry of findings of fact and conclusions of law, as provided

by Rule 52 of the Federal Rules of Civil Procedure. The Court having jurisdiction over the parties and the subject matter hereof, and being fully advised in the premises:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, be and are hereby permanently restrained and enjoined from, directly or indirectly, 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 Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant, his officers, agents, partners, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, be and hereby are permanently

restrained and enjoined from, as a principal or as an aider and abettor, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, (1) employing any device, scheme or artifice to defraud any client or prospective client, and (2) engaging in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client in violation of Section 206(1) and 206(2) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-6(1) and (2)].

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant, his officers, agents, partners, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, as a principal or as an aider and abettor, failing to make and keep for prescribed periods such records (as defined in section 3(a)(37) of the Securities Exchange Act of 1934), furnish such copies thereof and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors in violation of Section 204 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-4] and Rule 204-1(a)(2) thereunder [17 C.F.R. § 275.204-1(a)(2)].

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant pay disgorgement in the amount of \$280,000 plus pre-judgment interest as a result of the conduct alleged in the Complaint. Based upon Defendant's sworn representations in his Statement of Financial Condition dated March 8, 2002 and other documents submitted to

the Commission, payment of the disgorgement and pre-judgment interest thereon is waived, contingent upon the accuracy and completeness of his Statement of Financial Condition and other documents submitted to the Commission.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that based upon Defendant's sworn representations in his Statement of Financial Condition dated March 8, 2002 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 payment of the disgorgement and pre-judgment interest thereon is contingent upon the accuracy and completeness of his Statement of Financial Condition and other documents submitted to the Commission. If at any time following the entry of this Final Judgment, the Commission obtains information indicating that Defendant'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, petition the Court for an order requiring Defendant to pay the unpaid portion of the 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 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 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 may not, by way of a defense to such petition: (1) challenge the validity of the Consent or this 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 the attached Consent and Stipulation of Defendant be, and is hereby, incorporated herein with the same force and effect as if fully set out herein and that Defendant shall comply with his Consent.

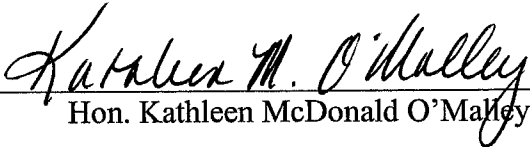
VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for all purposes, including, but not limited to entertaining any applications for additional relief, and implementing and enforcing this Final Judgment.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there being no just reason for delay, the Clerk of the Court is hereby directed to enter this Final Judgment and Order of Permanent Injunction and Other Relief Against Thomas M. Durkin.

IT IS SO ORDERED.



Hon. Kathleen McDonald O'Malley

Dated: _____

8/15/02



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

U.S. DISTRICT COURT
DISTRICT OF OHIO
CLEVELAND

UNITED STATES
SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

THOMAS M. DURKIN and
JOHN E. ORIN, JR.,

Defendants.

1:02CV 1505

CIVIL ACTION
FILE NO.

JUDGE O'MALLEY

MAG. JUDGE HEMANN

CONSENT AND STIPULATION OF THOMAS M. DURKIN

- A. Defendant Thomas M. Durkin ("Defendant"):
 1. Acknowledges receipt of and waives service of the Complaint for Permanent Injunction and Other Equitable Relief ("Complaint") of Plaintiff Securities and Exchange Commission ("Commission") in this action and admits the jurisdiction of this Court over him and over the subject matter hereof;
 2. Without admitting or denying the allegations of the Complaint, except as to jurisdiction, which is admitted, hereby voluntarily consents to the entry of the attached Final Judgment and Order of Permanent Injunction and Other Relief Against Thomas M. Durkin ("Final Judgment") against him without further notice;

3. Enters into this Consent and Stipulation (“Consent”) voluntarily and acknowledges that no threats, offers, promises or inducements of any kind whatsoever have been made by the Commission or anyone else in consideration of this Consent;
4. Waives any right that he may have to appeal from the Final Judgment;
5. Understands that the terms of the Final Judgment are enforceable through contempt proceedings and that in any such proceeding he may not contest the validity of this Consent or the Final Judgment;
6. Agrees that he will not oppose enforcement of the Final Judgment on the ground that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objections based thereon;
7. Agrees that he does not and will not oppose the validity of the attached Final Judgment on any jurisdictional ground;
8. Waives service upon him of the Final Judgment, agrees that the Final Judgment may be presented by the Commission to the Court for signature and entry without further notice, and agrees that the entry of the Final Judgment by the Court and filing with the Clerk of the United States District Court for the Northern District of Ohio will constitute notice to him of the terms and conditions of such Final Judgment;
9. 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 waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant 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;

10. Agrees that the Court shall retain jurisdiction of this matter for all purposes;

11. Hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996 or any other provision of law to pursue reimbursement of attorney's fees or other fees, expenses or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement; and

12. 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 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 hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If Defendant 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’s: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation in which the Commission is not a party.

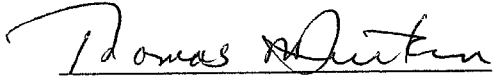
B. Defendant acknowledges that the Court is not imposing a civil penalty or requiring payment of any of the \$280,000 in disgorgement plus pre-judgment interest based on Defendant’s sworn representations in his statement of Financial Condition dated March 8, 2002 and other documents submitted to the Commission. Defendant further consents that if at any time following the entry of the Final Judgment the Commission obtains information indicating that Defendant’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, petition the Court for an order requiring Defendant to pay the unpaid portion of the

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 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 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 may not, by way of a 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.

C. The Commission and Defendant agree that this Consent shall be incorporated by reference into the Final Judgment with the same force and effect as if fully set forth therein.

D. The Commission and Defendant waive the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.


Thomas M. Durkin


Dated: April 21, 2002

Sworn before me this 21st
day of April, 2002


NOTARY PUBLIC

HEATHER BLANKENSHIP
Notary Public, State of Ohio, Cuy. Cty.
My Commission Expires February 14, 2007

My Commission expires:


Erik J. Lillya
Linda Ieleja Gerstman
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(312) 353-7390

Dated: 7/31/02