

ORIGINAL

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
ENTERED

DEC 30 2003

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

Michael N. Milby, Clerk of Court

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

Charles D. Erwin and Michael J. McGhan,

Defendants.

H 03 - 5764
C.A. No. ____ ()

FINAL JUDGMENT AS TO DEFENDANT MICHAEL J. McGHAN

The Securities and Exchange Commission having filed a Complaint and Defendant Michael J. McGhan ("McGhan") having entered a general appearance; consented to the Court's jurisdiction over him and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that McGhan and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce,

or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit 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) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

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

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of 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) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that McGhan and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Commission Rule 13b2-2 [17 C.F.R. §240.13b2-2], directly or indirectly,

- (a) by making or causing to be made a materially false or misleading statement, or
- (b) by 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 were made, not misleading to an accountant in connection with
 - (1) any audit or examination of the financial statements of the issuer required to be made; or
 - (2) the preparation or filing of any document required to be filed with the Commission.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that McGhan and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violation of Sections 13(a) and 13(b)(2) of the Exchange Act [15 U.S.C. §§78m(a) and 78m(b)(2)] and Rules 12b-20, 13a-1 and 13

a-13 [17 C.F.R. §§240.12b-20, 240.13a-1, and 240.13a-13] by knowingly providing substantial assistance to an issuer that

- (a) fails to file with the Commission
 - (1) such information and documents as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 12 of the Exchange Act [15 U.S.C. §78l], and
 - (2) such annual reports, certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports, as the Commission may prescribe;
- (b) fails to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer;
- (c) fails to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that –
 - (1) transactions are executed in accordance with management's general or specific authorization;
 - (2) transactions are recorded as necessary (A) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (B) to maintain accountability for assets;

- (3) access to assets is permitted only in accordance with managements' general or specific authorization; and
 - (4) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences;
- (d) fails 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 were made, not misleading, to that information expressly required to be included in a statement or report;
- (e) fails to file in a timely fashion with the Commission annual reports on the appropriate form authorized or prescribed for each fiscal year; or
- (f) fails to file in a timely fashion quarterly reports, as required by Rule 13a-13 [17 C.F.R. §240.13a-13].

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], McGhan is prohibited, for five years following the date of entry of this Final Judgment, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that McGhan shall pay a civil penalty in the amount of \$80,000 pursuant to Section 21(d)(3) of the Exchange Act [15

U.S.C. § 78u(d)(3)]. McGhan shall make this payment within ninety (90) business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Michael J. McGhan as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. A copy of the cover letter and of the form of payment shall be simultaneously transmitted to Spencer C. Barasch, Associate District Administrator, Securities and Exchange Commission, Fort Worth Office, 801 Cherry Street, 19th Floor, Fort Worth, Texas 76102.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that McGhan shall comply with all of the undertakings and agreements set forth therein.


VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

IX.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: December 29, 2003


UNITED STATES DISTRICT JUDGE