

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

KEITH MOHN,
MOHN ASSET MANAGEMENT, L.L.C.,
MOHN FINANCIAL GROUP, L.L.C.,
J. PATRICK KISOR,
PDK INTERNATIONAL, INC.,
AGAVE, LTD.,
GENESIS TRADING ASSOCIATES, L.L.C.,

Defendants, and

NCB INVESTMENTS, INC.,
PCM, L.L.C.,
JASON MALKIN,
GILBERT HOWARD,

Relief Defendants.

Case No. 02-74634
Hon. Patrick J. Duggan

U.S. DIST. COURT CLERK
EAST DIST. MICH
DETROIT

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FILED

**ORDER OF PERMANENT INJUNCTION AGAINST
J. PATRICK KISOR AND PDK INTERNATIONAL, INC.**

Plaintiff United States Securities and Exchange Commission ("Commission"), having filed a Complaint for Temporary Restraining Order, Preliminary and Permanent Injunction, and Other Equitable Relief ("Complaint"), and Defendants J. Patrick Kisor ("Kisor") and PDK International, Inc. ("PDK") (collectively, the "Kisor Defendants"), in their Consent and Stipulation filed with the Court and incorporated herein by reference ("Consent"), having acknowledged receipt of the Complaint and admitted the personal jurisdiction of this Court over them, and the Commission and the Kisor Defendants having waived the entry of Findings

of Fact and Conclusions of Law as provided by Rule 52 of the Federal Rules of Civil Procedure, and the Kisor Defendants, without admitting or denying the allegations of the Complaint except as to jurisdiction, and without trial, argument, or adjudication of any issue of fact or law, having consented to the entry of this Order of Permanent Injunction, and the Court, being fully advised in the premises, hereby states:

I.

IT IS ORDERED that Defendant Kisor, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with him who receive actual notice of this Order of Permanent Injunction by personal service or otherwise, and each of them, be and hereby are, permanently restrained and enjoined from, directly or indirectly, making use of the mails or any means or instrumentality of interstate commerce to sell any security through the medium of any prospectus or otherwise unless a registration statement is in effect as to such security; or to carry or cause to be carried through the mails or in interstate commerce by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale, in violation of Section 5(a) of the Securities Act of 1933. [15 U.S.C. §77e].

II.

IT IS FURTHER ORDERED that Defendant Kisor, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with him who receive actual notice of this Order of Permanent Injunction by personal service or otherwise, and each of them, be and hereby are, permanently restrained and enjoined from, directly or indirectly, 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 through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act of 1933 in violation of Section 5(c) of the Securities Act of 1933. [15 U.S.C. §77e(c)].

III.

IT IS FURTHER ORDERED that Defendants Kisor and PDK, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order of Permanent Injunction by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, in the offer or sale of any securities, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails:

- (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 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 transaction, practice or course of business which operates or would operate as a fraud or deceit upon any purchasers or prospective purchasers of any security,

in violation of Sections 17(a)(1), 17(a)(2) or 17(a)(3) of the Securities Act of 1933 [15 U.S.C. §§77q(a)(1), (2) or (3)].

IV.

IT IS FURTHER ORDERED that Defendants Kisor and PDK, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order of Permanent Injunction by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of securities, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange:

- (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 violation of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. 240.10b-5].

V.

IT IS FURTHER ORDERED that Defendant Kisor, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with him who receive actual notice of this Order of Permanent Injunction by personal service or otherwise, and each of them, be and hereby are, permanently restrained and enjoined from, directly or indirectly, making use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills) unless they are registered in accordance with Section 15(b) of the Exchange Act [15 U.S.C. §78o(b)].

VI.

IT IS FURTHER ORDERED that Defendant Kisor, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with him who receive actual notice of this Order of Permanent Injunction by personal service or otherwise, and each of them, be and hereby are, permanently restrained and enjoined from, directly or indirectly, making use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills) otherwise than on a

national securities exchange of which they are a member by means of any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, or by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, which statement or omission is made with knowledge or reasonable grounds to believe that it is untrue or misleading, in violation of Section 15(c)(1) of the Exchange Act [15 U.S.C. §78o(c)] and Rule 15c1-2 [17 C.F.R. §240.15c1-2] promulgated thereunder.

VII.

IT IS FURTHER ORDERED that Defendant Kisor, his officers, agents, servants, employees, attorneys, and those persons in active concert or participation with him who receive actual notice of this Order of Permanent Injunction by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails:

- (1) employing any device, scheme or artifice to defraud;
- (2) engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person,

in violation of Section 206(1) and 206(2) of the Investment Advisers Act of 1940 [15 U.S.C. §80b-6].

VIII.

IT IS FURTHER ORDERED that the Court's (1) Order Freezing Funds and Other Assets, Ordering Repatriation, Requiring an Accounting of Assets and the Identification of Assets, dated November 21, 2002; (2) Order to Financial Institutions Freezing Accounts of Defendants, dated November 21, 2002; and (3) Order Prohibiting the Alteration and Destruction of Documents, dated November 21, 2002, remain in full effect unless modified by this Court.

IX.

IT IS FURTHER ORDERED that Defendants Kisor and PDK disgorge all ill-gotten gains received by them as a result of the conduct alleged in the Commission's Complaint, plus prejudgment interest on those amounts. This Court will set the specific amount of disgorgement, and will determine whether to impose civil penalties on Kisor and PDK, and in what amount, in a separate hearing upon due notice and motion by the Commission. At that hearing, the issues will be limited to determining (i) the amount of disgorgement to be ordered and (ii) the amount of civil penalties to be ordered against Kisor and PDK. At that hearing, Kisor and PDK agree that the allegations of the Commission's Complaint will be taken as true and that Kisor and PDK will be precluded from arguing that they did not violate the federal securities laws in the manner set out in the Commission's Complaint. Nothing herein shall be construed to prevent and/or otherwise bar Kisor and PDK from challenging the amount of disgorgement or civil penalties. Nothing in this Order affects Kisor or PDK's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation in which the Commission is not a party.

X.

IT IS FURTHER ORDERED that the Commission is expressly authorized to engage in continued discovery regarding any unresolved issue in the case with respect to the Kisor Defendants or any other defendant, which shall include, but not be limited to, discovery for purposes of determining the amount of ill-gotten gain and civil penalties.

XI.

IT IS FURTHER ORDERED that the attached Consent and Stipulation of Kisor and PDK be, and hereby is, incorporated herein with the same force and effect as if fully set out.


XII.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this action for all purposes, including enforcement of this Order of Permanent Injunction.

XIII.

IT IS FURTHER ORDERED that, there being no just reason for delay, the Clerk of the Court is hereby directed to enter this Order of Permanent Injunction.

IT IS SO ORDERED.



HONORABLE PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

DEC 19 2002

Dated: _____.

UNITED STATES DISTRICT COURT
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SECURITIES AND EXCHANGE COMMISSION,

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NCB INVESTMENTS, INC.,
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GILBERT HOWARD,

Relief Defendants.

: Case No. 02-74634
: Hon. Patrick J. Duggan

**CONSENT AND STIPULATION OF
J. PATRICK KISOR AND PDK INTERNATIONAL, INC.
TO ORDER OF PERMANENT INJUNCTION AND OTHER RELIEF**

A. Defendants J. Patrick Kisor ("Kisor") and PDK International, Inc. ("PDK")

(collectively, the "Kisor Defendants"), hereby:

1. Acknowledge they have received a copy of the Summons and Complaint for Temporary Restraining Order, Preliminary and Permanent Injunction, and Other Equitable Relief ("Complaint") filed by Plaintiff Securities and Exchange Commission ("Commission") in this action and admit the jurisdiction of this Court over them;
2. Without admitting or denying the allegations of the Complaint, except as to personal jurisdiction, which is admitted, voluntarily consent to the entry of the attached Order of Permanent Injunction ("Injunction Order") without further notice;

3. Acknowledge that no tender, offer, promise or threat of any kind whatsoever has been made by the Commission, its staff, or anyone else in consideration of this Consent and Stipulation;
4. Understand that the terms of the Injunction Order are enforceable through contempt proceedings, and that, in any such proceedings, they may not challenge the validity of this Consent and Stipulation or of the Injunction Order;
5. Agree that they will not oppose enforcement of the Injunction Order on the grounds that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waive any objections based thereon;
6. Waive any right they may have to appeal from the Injunction Order;
7. Agree that the Injunction Order may be presented to the Court by the Commission for consideration and entry without further notice, waive service of the Injunction Order and agree that the entry of the Injunction Order by the Court and its filing by the Clerk of the Court will constitute notice of its terms and conditions;
8. Understand and agree 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. In compliance with this policy, the Kisor Defendants agree: (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 and Stipulation, the Kisor

Defendants hereby withdraw any papers filed in this action to the extent that they deny, directly or indirectly, any allegation in the Complaint. If the Kisor Defendants breach this agreement, the Commission may petition the Court to vacate the Injunction Order and restore this action to its active docket. Nothing in this provision affects the Kisor Defendants': (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation in which the Commission is not a party;

9. Waive any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein, consistent with the provisions of 17 C.F.R. §202.5(f);

10. Acknowledge 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;

11. Waive 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 Kisor or PDK to defend against this action. For these purposes, Kisor and PDK agree that they are

not the prevailing parties in this action since the parties have reached a good faith settlement; and

12. Agree that the court shall retain jurisdiction of the matter for all purposes.

B. The Kisor Defendants and the Commission waive entry of findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure.

C. The Kisor Defendants and the Commission agree that this Consent and Stipulation shall be made a part of the attached Injunction Order.

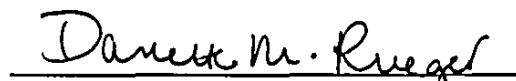
Accepted by Defendant J. Patrick Kisor:



J. Patrick Kisor

Subscribed and Sworn to Before me

this 16th day of December, 2002.



Notary Public
My Commission expires:



DANETTE M. RUEGER
Notary Public, State of Ohio
My Commission Expires
March 11, 2006

[ADDITIONAL SIGNATURES ON NEXT PAGE]

Accepted by Defendant PDK International, Inc.:

PDK International BY J. Patrick Kisor
PDK International, Inc.
By: J. Patrick Kisor, its authorized agent



DANETTE M. RUEGER
Notary Public, State of Ohio
My Commission Expires
March 11, 2006

Subscribed and Sworn to Before me

this 16th day of December, 2002.

Danette Rueger
Notary Public
My Commission expires:

Accepted by Plaintiff U.S. Securities and Exchange Commission:

Kristen A. Harris
Amy S. Cotter
Kristen A. Harris

One of the Attorneys for Plaintiff
175 West Jackson Blvd.
Suite 900
Chicago, IL 60604

Dated: 12/17, 2002