

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

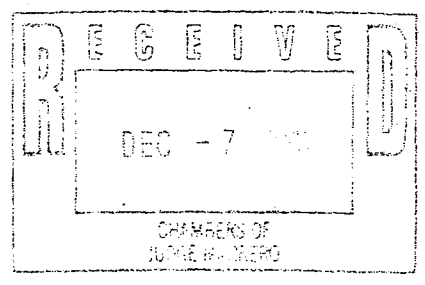
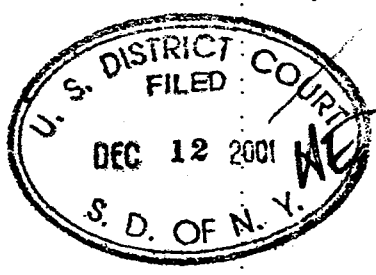
00 Civ. 1963 (VM)

ORIGINAL

JOHN FREEMAN,  
JAMES COOPER,  
BENTON ERSKINE,  
ANTHONY SEMINARA,  
NORMAN LEHRMAN,  
LINDA KARLSEN,  
TIMOTHY SIEMERS,  
NORMAN GROSSMAN,  
LAWRENCE SCHWARTZ,  
MICHAEL AKVA,  
ROBERT FRICKER,  
RICHARD ZELMAN,  
BRADLEY BURKE,  
BENJAMIN COOPER,  
CHAD L. CONNER,  
DEON BENSON,  
GORDON K. ALLEN, JR.,  
JON GEIBEL, and  
WILLIAM H. BORDERS II,

Defendants.

# 01,2283



DL

**FINAL JUDGMENT AGAINST  
DEFENDANT LAWRENCE SCHWARTZ**

This Court having determined that:

1. Plaintiff SECURITIES AND EXCHANGE COMMISSION ("COMMISSION")

duly commenced this action by filing its COMPLAINT;

2. Defendant LAWRENCE SCHWARTZ (“SCHWARTZ”) in the attached CONSENT OF LAWRENCE SCHWARTZ (“CONSENT”), the provisions of which are expressly incorporated herein, has entered a general appearance; admitted the jurisdiction of this Court over himself and over the subject matter of this action; waived filing of an answer and the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure; waived any right which he may have to appeal from this FINAL JUDGMENT AGAINST DEFENDANT LAWRENCE SCHWARTZ (“FINAL JUDGMENT”); and, without admitting or denying any of the allegations of the COMPLAINT except as to jurisdiction, consented to the entry of this FINAL JUDGMENT; and

3. This Court has jurisdiction over Defendant SCHWARTZ and the subject matter of this action:

I.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant SCHWARTZ, his agents, servants, employees, 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 restrained and enjoined from, directly or indirectly, violating Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)], and Rule 10b-5 promulgated 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.

## II.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant SCHWARTZ, 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, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 promulgated thereunder [17 C.F.R. § 240.14e-3], in connection with any tender offer or request or invitation for tenders, by engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (1) purchasing or selling or causing to be purchased or sold any securities or securities convertible into or exchangeable for any securities or any option or right to obtain or to dispose of any of the foregoing securities sought or to be sought in a tender offer, after any person has taken a substantial step or steps to commence, or has commenced, such tender offer (the "offering person"), while in possession of material information relating to such tender offer that they know or have reason to know is nonpublic and know or have reason to know was acquired directly or indirectly from the offering person, the issuer of the securities sought or to be sought by such tender offer, or any person acting on behalf of the offering person or such issuer, unless within a reasonable time

prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise, or

- (2) communicating material, nonpublic information relating to a tender offer, which information they know or have reason to know is nonpublic and know or have reason to know was acquired directly or indirectly from the offering person, the issuer of the securities sought or to be sought by such tender offer, or any person acting on behalf of the offering person or such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in Paragraph II (1) above.

### III.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant SCHWARTZ shall pay disgorgement in the amount of \$786,402, representing his gains from the conduct alleged in the COMPLAINT, plus prejudgment interest in the amount of \$97,689. Defendant SCHWARTZ shall pay \$884,091 into the Registry of the Court. Each payment shall be made by cashier's check, certified check, or postal money order drawn to the order of "Clerk, United States District Court, Southern District of New York," submitted with a cover letter that identifies SCHWARTZ as a defendant in this action, the caption and the civil action number of this action, and the name of this Court. Defendant SCHWARTZ agrees to make an initial payment of \$294,697 within ten (10) days of the entry of the FINAL JUDGMENT, a second payment of \$294,697 plus the appropriate postjudgment interest within six (6) months of the entry of FINAL JUDGMENT, and a final payment of \$294,697 plus the appropriate postjudgment interest within eighteen (18) months of the entry of the FINAL JUDGMENT. The Clerk of this Court, or the financial Deputy Clerk, is hereby directed to deposit said checks or money orders

into an account for this case with the Court Registry Investment System (the "C.R.I.S. Account"). Funds in the C.R.I.S. Account shall be held until further order of this Court. Upon payment of the funds into the C.R.I.S. Account, SCHWARTZ relinquishes all rights, as well as the rights of his heirs, successors, or assigns, to these monies and any interest thereon. A copy of the cover letters and money orders or checks shall also be sent to William R. Baker III, Associate Director, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0801.

#### IV.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant SCHWARTZ shall pay a civil penalty of \$786,402 to the United States Treasury pursuant to Section 21A(a) of the Insider Trading and Securities Fraud Enforcement Act of 1988 [15 U.S.C. § 78u-1(a)]. SCHWARTZ agrees to make an initial payment of \$262,134 within ten (10) days of the entry of the FINAL JUDGMENT, a second payment of \$262,134 within six (6) months of the entry of FINAL JUDGMENT, and a final payment of \$262,134 plus the appropriate postjudgment interest within eighteen (18) months of the entry of the FINAL JUDGMENT. Each payment shall be: (a) made by United States postal money order, certified check, bank cashier's check or bank money order; (b) made payable to the Securities and Exchange Commission; (c) hand-delivered or mailed to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (d) submitted with a cover letter that identifies SCHWARTZ as a defendant in this action, the caption and the civil action number of this action, and the name of this Court. A copy of the cover letters and money orders or checks shall also be sent to William R. Baker III, Associate Director, Division of

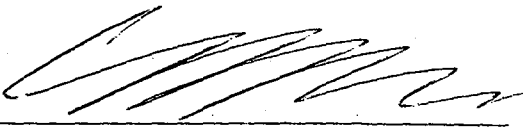
Enforcement, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0801.

V.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the annexed CONSENT be, and hereby is, incorporated herein with the same force and effect as if fully set forth herein.

VI.

The CONSENT to the entry of this FINAL JUDGMENT, submitted herewith, covers the claims in the COMPLAINT of the COMMISSION against SCHWARTZ, and the Court finds on the basis of the whole record of this case before the Court, that the claims in the COMPLAINT against the remaining Defendants are severable from those covered by this FINAL JUDGMENT; it appearing appropriate to do so, the Court expressly determines that there is no just reason for delay in the entry of this FINAL JUDGMENT in the form submitted, and the same is approved by the Court and the Court expressly directs that this FINAL JUDGMENT shall be entered herein as a separate judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure in favor of the COMMISSION and against SCHWARTZ terminating the claims in the COMPLAINT as to him accordingly.

  
UNITED STATES DISTRICT JUDGE  
Victor Marrero *pm*

Dated: 7 December, 2000

A CERTIFIED COPY  
J. MICHAEL McMAHON, CLERK  
BY   
DEPUTY CLERK

THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON 12/17/01

## CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the State of Maryland, I am over the age of eighteen years and not a party to the above-entitled action; my business address is 450 Fifth Street, N.W., Washington, D.C., 20549. On December 4, 2001, I served copies of the attached Consent of Lawrence Schwartz by delivering it by Federal Express to:

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Attorney for defendant Timothy Siemers

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Grover & Bloch, PC  
3 New York Plaza  
New York, New York 10004  
Attorney for defendant John Freeman

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 4, 2001 at Washington, D.C.



Peter H. Bresnan (PB-9168)