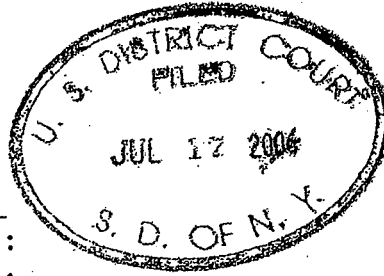


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

00 Civ. 5575 (PKC)

-against-

PHILLIP HERMAN, MARC WEIN, MILLENNIUM
SERVICES CORP., and BRANIN INVESTMENTS,
INC.,

Defendants.

06, 1558

**FINAL CONSENT JUDGMENT OF
PERMANENT INJUNCTION AND OTHER RELIEF
AS TO DEFENDANT PHILIP HERMAN**

Plaintiff Securities and Exchange Commission ("Commission"), having commenced this action by filing a Complaint ("Complaint") on July 27, 2000, charging Philip Herman ("Herman"), Marc Wein ("Wein"), Millennium Services Corp. ("Millennium"), and Branin Investments, Inc. ("Branin") with violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c)], Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5]; and Herman, having accepted service of the summons issued to him and the Complaint, having admitted to the jurisdiction of this Court over him and over the subject matter of this action, having waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and, without admitting or denying the allegations contained in the Commission's

Complaint (except as to jurisdiction, which are admitted), having executed the attached **Consent of Defendant Philip Herman (“Consent”)** incorporated herein, and having consented to the entry without further notice of this **Final Consent Judgment Of Permanent Injunction And Other Relief As To Defendant Philip Herman (“Final Judgment”)**:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Herman, be, and hereby is, permanently enjoined and restrained from, directly or indirectly:

- A. unless a registration statement is in effect as to a security,
 - 1. making use of any means or instrument of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
 - 2. carrying or causing to be carried through the mails or in interstate commerce by any means or instrument of transportation any such security for the purpose of sale or for delivery after sale; or

- B. 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,

in violation of Sections 5(a) or 5(c) of the Securities Act [15 U.S.C. §§ 77e(a),(c)].

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Herman be, and hereby is, permanently enjoined and restrained from, directly or indirectly, in the offer or sale of any securities by the use of any means or instrument of transportation or communication in interstate commerce or by the use of the mails:

- A. employing any device, scheme, or artifice to defraud;
- B. 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 light of the circumstances under which they were made, not misleading;
or
- C. engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser,

in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Herman be, and hereby is, permanently enjoined and restrained from, directly or indirectly, 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 the 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 connection with the purchase or sale of any security, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Herman, jointly and severally with Branin, is liable for disgorgement of \$396,288, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$246,110, and postjudgment interest thereon in the amount of \$45,115, for a total of \$687,513. The payment of \$687,513 shall be made according to the payment schedule described in paragraph VI. below.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Herman, jointly and severally with Branin, shall pay a civil penalty in the amount of \$200,000 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C § 78u(d)]. The payment of \$200,000 shall be made according to the payment schedule described in paragraph VI. below.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Herman (unless such obligations are paid by Branin) shall pay the obligations described in paragraphs IV. and V. above by making the following payments: (a) upon entry of this **Final Judgment**, Herman shall direct the person or entity with whom he entered into an escrow agreement prior to the entry of this **Final Judgment** to pay \$280,000 held in escrow; (b) following the entry of this **Final Judgment**, Herman (unless such payments are paid by Branin) shall pay ten (10) payments of \$60,751.30, payable quarterly with payments due on the first day of January, April, July and October. Payments under this paragraph shall be made to the Clerk of this Court, together with a cover letter identifying Herman (unless such payments are paid by Branin) 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**. Herman shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. Herman relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Herman.

The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS"). These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the CRIS until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income

earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States.

The Commission may by motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this **Final Judgment** shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Herman shall not, after offset or reduction in any Related Investor Action based on Herman's payment of disgorgement in this action, further benefit by offset or reduction of any part of Herman's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Herman shall, within thirty (30) days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this **Final Judgment**. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Herman by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if Herman (unless such payment is paid by Branin) fails to pay any single payment, or part of any single payment, described in paragraph VI. above, within five (5) days of the specified payment date for such payment as described in paragraph VI. above, the installment payment terms of paragraph VI. above shall no longer apply, and the full amount of Herman's remaining unpaid disgorgement, prejudgment interest, and civil penalty shall be immediately due, owing and payable. The Commission may enforce the Court's judgment for disgorgement and prejudgment interest and civil penalties by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after five (5) days following Herman's failure to pay any single payment, or part of any single payment, on the specified payment date for such payment as described in paragraph VI. above (unless such payment is paid by Branin). In such event, Herman shall also pay post-judgment interest in accordance with 28 U.S.C. § 1961 on the unpaid balance due under the terms of this **Final Judgment**. In response to any such civil contempt motion by the Commission, Herman may assert any legally permissible defense.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, pursuant to Federal Rule of Civil Procedure 65(d), this **Final Judgment** shall be binding on Herman, his agents, servants, employees, attorneys, and upon those persons in active concert or participation with him who receive actual notice of this **Final Judgment** by personal service or otherwise.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, implementing and enforcing the terms and conditions of this **Final Judgment**.

X.

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 Herman shall comply with all of the undertakings and agreements set forth therein.

XI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there is no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk of the Court is hereby ordered to enter this **Final Judgment** forthwith and without further notice.

**CONSENT OF DEFENDANT
PHILIP HERMAN**

1. Defendant Philip Herman ("Herman"), having accepted service of the summons issued to him and the complaint in this action, having read and understood the terms of the annexed **Final Consent Judgment Of Permanent Injunction And Other Relief As To Defendant Philip Herman ("Final Judgment")**, appears and admits the jurisdiction of this Court over him and over the subject matter of this action, waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure and, without admitting or denying the allegations contained in the Complaint of Plaintiff Securities and Exchange Commission ("Commission"), except as to jurisdiction, which are admitted, hereby consents to the entry, without further notice, of the **Final Judgment** in the form annexed hereto and incorporated by reference herein.

2. Herman acknowledges that the civil penalty paid pursuant to the **Final Judgment** may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, the civil penalty shall be treated as a penalty paid to the government for all purposes, including tax purposes. To preserve the deterrent effect of the civil penalty, Herman agrees that he shall not, after offset or reduction in any Related Investor Action based on Herman's payment of disgorgement in this action, further benefit by offset or reduction of any part of Herman's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Herman agrees that he shall, within thirty (30) days after entry of a final order granting

the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this action. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Herman by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

3. Herman agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Herman pays pursuant to the **Final Judgment**, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Herman further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Herman pays pursuant to the **Final Judgment**, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

4. Herman agrees that this **Consent of Defendant Philip Herman ("Consent")** shall be incorporated by reference in and made part of the annexed **Final Judgment** with the same force and effect as if fully set forth therein.

5. Herman waives the right, if any, to appeal from the **Final Judgment**.

6. Herman enters into this **Consent** voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member,

officer, employee, agent, or representative of the Commission to induce Herman to enter into this **Consent**.

7. Consistent with 17 C.F.R. § 202.5(f), this **Consent** resolves only the claims asserted against Herman in this civil proceeding. Herman acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Herman waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Herman further 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. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Herman understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

8. Herman 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, Herman 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**, Herman hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If Herman breaches this agreement, the Commission may petition the Court to vacate the **Final Judgment** and restore this action to its active docket. Nothing in this paragraph affects Herman's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

9. Herman 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 Herman to defend against this action. For these purposes, Herman agrees that he is not the prevailing party in this action since the parties have reached a good faith settlement.

10. Herman will not oppose the enforcement of the **Final Judgment** on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

11. Herman waives service of the **Final Judgment** and agrees that entry of the **Final Judgment** by the Court and filing with the Clerk of the Court will constitute notice to Herman of its terms and conditions. Herman further agrees to provide counsel for the Commission, within

thirty days after the **Final Judgment** is filed with the Clerk of the Court, with an affidavit or declaration stating that Herman has received and read a copy of the **Final Judgment**.

12. Herman agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the **Final Judgment**.

13. Herman agrees that the Commission may present the annexed **Final Judgment** to the Court for signature and entry without further notice.




Philip Herman

STATE OF NEW JERSEY

COUNTY OF Burlington) ss.:

On this 28th day of MARCH, 2005, before me personally appeared Philip Herman, to me known to be the person who executed the foregoing **Consent of Defendant Philip Hermaz**.



Notary Public

COLLEEN P. PALECKI
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES 6/17/2008

SO ORDERED:



UNITED STATES DISTRICT COURT JUDGE

Date:

July 17, 2006

THIS DOCUMENT WAS FILED IN
DISTRICT OF NEW JERSEY
7/17/06