

65 BATTIS, J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORIGINAL

SECURITIES AND EXCHANGE COMMISSION,

DPS
97 Civ. 9306 (AGS)

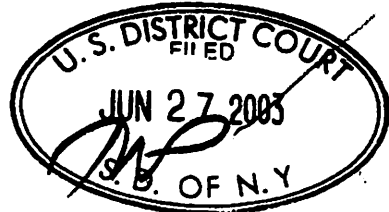
Plaintiff,

v.

FINAL JUDGMENT
OF PERMANENT
INJUNCTION AND
OTHER RELIEF
BY CONSENT AGAINST
STEPHEN EVERS

LEONARD ALEXANDER RUGE,
RICHARD WOLFF,
MAC BEAGELMAN,
MICHAEL SCOTT SYMONS,
RICHARD BALBER,
STEPHEN EVERS,
EUGENE FLAKSMAN,
MARK FURMAN,
ALEX GRINSHPON,
DANIEL KOLCHKOV,
JEFF SANDERS,
ALEX SOLON,
MARK ZABORSKY, and
JEFFERY STONE,

#03,1327



Defendants.

Plaintiff Securities and Exchange Commission ("Commission"), having commenced this action by filing a complaint on December 18, 1997 for a permanent injunction and other equitable relief, and defendant Stephen Evers having executed the attached Consent in which, without admitting or denying the allegations of the complaint, he admits the in personam jurisdiction of this Court over him, the jurisdiction of this Court over the subject matter of this action, and the service of the summons and complaint on him, waives the entry of findings of fact and conclusions of law pursuant of Rule 52 of the Federal Rules of Civil Procedure, and consents to the entry, without further notice, of this Final Judgment of Permanent Injunction and Other Relief by Consent Against Stephen Evers, and there being no just reason for delaying the entry of this Final Judgment:

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I.

IT IS ORDERED, ADJUDGED, AND DECREED that defendant Evers and his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, are hereby permanently enjoined and restrained, 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, from:

- (1) employing any device, scheme, or artifice to defraud;
- (2) obtaining money or property by means of any untrue statement of material fact or any omission 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; and
- (3) 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 of 1933, 15 U.S.C. § 77q(a).

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Evers and his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, are hereby permanently enjoined and restrained, 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 the mails, or of any facility of any national securities exchange, from:

- (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; and
- (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 thereunder, 17 C.F.R. § 240.10b-5.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Evers shall pay disgorgement to the United States Treasury in the amount of \$3,750, representing ill-gotten gains obtained by Evers as a result of the fraudulent conduct alleged in the Complaint, together with pre-judgment interest thereon in the amount of \$2,493.51. Based upon Evers' sworn representations in his Statement of Financial Condition dated August 9, 2002 and other documents submitted to the Commission, payment of pre-judgment interest in the amount of \$2,493.51 is waived, contingent upon the accuracy and completeness of his Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Evers' 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 Evers, petition the Court for an order requiring Evers to pay the above-referenced pre-judgment interest of \$2,493.51, and post-judgment interest thereon. In connection with any such petition, the only issue shall be whether the financial

information provided by Evers was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Evers 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. Evers may not, by way of 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 the above-referenced pre-judgment interest of \$2,493.51, and post-judgment interest thereon, should not be ordered; (4) contest the amount of pre-judgment and post-judgment interest; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all payments ordered under Paragraph III of this Final Judgment shall be made as follows:

- (A) such payment shall be made within 30 days from the date of entry of this Final Judgment;
- (B) such payments shall be (1) made by United States Postal Money Order, certified check, bank cashier's check or bank money order; (2) made payable to the Securities and Exchange Commission; (3) hand delivered or mailed to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (4) submitted under cover of a letter that identifies Stephen Evers as the defendant, the name and civil

action number of this litigation, and the court in which it was brought, Securities and Exchange Commission v. Leonard Alexander Ruge, et al., 97 Civ. 9306 (S.D.N.Y.) . The cover letter also shall identify that the payment is a payment towards the disgorgement ordered in this action;

- (C) simultaneous with making any payment pursuant to subparagraph (B) above, Evers shall transmit copies of any certified check or money order, front and back, together with the cover letter referenced in subparagraph (B) above, to Robert N. Knuts, Esq., Securities and Exchange Commission, 233 Broadway, New York, NY 10279.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for all purposes, including the implementation and enforcement of this Final Judgment.

VI.

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

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, there being no just reason for delay, the clerk of Court is hereby directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment forthwith.

CONSENT OF STEPHEN EVERS

1. Defendant Stephen Evers, having read and understood the terms of the Final Judgment of Permanent Injunction and Other Relief by Consent against Stephen Evers, having admitted the jurisdiction of this Court over him and over the subject matter of this civil action and the service of the summons and complaint upon him, having waived the entry of findings of fact and conclusions of the 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") filed on December 18, 1997, except as to jurisdiction, which is admitted, hereby consents to the entry, without further notice, of this Final Judgment.

2. Evers agrees that this Consent shall be incorporated by reference in, and made part of, the Final Judgment to be presented to the Court for signature, filing and entry contemporaneously herewith.

3. Evers waives any rights he may have to appeal from the Final Judgment.

4. Evers acknowledges that any willful violation of any of the terms or provisions of the Final Judgment may place him in contempt of this Court and may subject him to civil or criminal sanctions.

5. Evers acknowledges that he enters into this Consent voluntarily and that no tender, offer, promise, threat, or representation of any kind has been made by the Commission or any member, officer, attorney, agent or representative thereof to induce him to enter into this Consent.

6. Evers acknowledges that no promise or representation has been made by the Commission or its staff with regard to: (a) any criminal liability that may have arisen or may arise from the facts underlying this civil action; or (b) immunity from any such criminal liability.

7. Evers acknowledges that he has been informed and understands that the Commission, at its sole and exclusive discretion, may refer or grant access to this matter, or any information or evidence gathered in connection therewith or derived therefrom, to any person or entity having appropriate administrative, civil, or criminal jurisdiction.

8. Evers 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), Evers waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Evers 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.

9. Evers acknowledges that neither this Consent nor the annexed Final Judgment precludes the Commission from instituting administrative proceedings against Evers based upon

or relating to any of the matters alleged in the complaint herein or upon the entry of the annexed Final Judgment.

10. Evers acknowledges that the Final Judgment, including this Consent, embodies the entire understanding of the parties.

11. Evers 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 allegation in the complaint or order for proceedings" (17 C.F.R. § 202.5(e)). In compliance with this policy, Evers agrees 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. If Evers breaches this agreement, the Commission's Division of Enforcement may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this provision affects Evers': (a) testimonial obligations; or (b) right to take legal or factual positions in litigation in which the Commission is not a party.

12. Evers acknowledges and agrees to pay disgorgement to the United States Treasury in the amount of \$3,750 representing ill-gotten gains obtained by Evers as a result of the fraudulent conduct alleged in the Complaint, together with pre-judgment interest thereon in the amount of \$2,493.51. Evers acknowledges and agrees that based upon Evers' sworn representations in his Statement of Financial Condition dated August 9, 2002 and other documents submitted to the Commission, payment of pre-judgment interest in the amount of \$2,493.51 is waived. Evers acknowledges and agrees that the determination to waive payment of the above-referenced pre-judgment interest is contingent upon the accuracy and completeness of

Evers' Statement of Financial Condition, and that if at any time following the entry of this Final Judgment the Commission obtains information indicating that Evers' 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 Evers, petition the Court for an order requiring Evers to pay the above-referenced pre-judgment interest of \$2,493.51, and post-judgment interest thereon. Evers acknowledges and agrees that in connection with any such petition, the only issue shall be whether the financial information provided by Evers was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, and that in its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Evers to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. Evers acknowledges and agrees that the Commission may also request additional discovery, and that Evers may not, by way of 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 the above-referenced pre-judgment interest of \$2,493.51, and post-judgment interest thereon, should not be ordered; (4) contest the amount of pre-judgment and post-judgment interest; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

13. Evers 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 Evers to defend

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

14. Evers consents and agrees that the Final Judgment may be presented by the Commission to the Court for signature and entry without further notice and delay.

15. Evers agrees that first-class mail to him at:

Stephen Evers
17614 Lake Park Road
Boca Raton, Florida 33487

shall be deemed personal service for all correspondence, service and notices as to any matter related to this Consent and the Final Judgment, unless Evers notifies the Commission of any alternative address by first-class mail at the following address:

U.S. Securities and Exchange Commission
Northeast Regional Office
233 Broadway
New York, New York 10279
Attn: Robert N. Knuts, Esq.

Date: 8/29, 2002

By: Stephen L Evers
Stephen Evers

State of Florida)
) ss.:
County of Palm Beach

On this 29th day of Aug, 2002, before me personally came Stephen Evers, to me known and known to me to be the person who executed the foregoing Consent of Stephen Evers, and he acknowledged to me that he executed the same.

Sandra Lynch
Notary Public



My Commission expires: _____

Date: June 26, 2003
X New York, New York

SO ORDERED:
Deborah A. Battis
United States District Judge

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON 6-30-03