

UNITED STATES DISTRICT COURT
for the
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

TWO-THIRDS INTERNATIONAL, INC.,
PETER J. ZACCAGNINO III,
JOHN L. KLEIN a/k/a JOHN KLEIN
LOFFREDO, MERRILL H. KLEIN,
and STERLING INTERNATIONAL
BAHAMAS LTD.,

Defendants,

BEST SYSTEMS, INC. and
WONDER GLASS PRODUCTS, INC.,

Relief Defendants.

CIVIL ACTION No.
98-1324-CIV ORL 18A

CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

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**FINAL JUDGMENT OF PERMANENT INJUNCTION
AS TO DEFENDANT MERRILL H. KLEIN**

The Plaintiff Securities and Exchange Commission commenced this action by filing its Complaint. Defendant Merrill H. Klein ("Klein") has submitted his Consent, which is incorporated by reference. In the Consent, Klein waived service of the Complaint upon him, admitted the jurisdiction of this Court over him and the subject matter of this action, waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and waived any right he might have to appeal from the

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entry of this Final Judgment. Without admitting or denying any of the allegations of the Complaint, except as to jurisdiction, Klein consents to the entry of this Final Judgment of Permanent Injunction and Other Relief.

It appearing that this Court has jurisdiction over Klein, and the subject matter of this case, and the Court being fully advised in the premises and there being no just cause for delay:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Klein, his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating 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] promulgated thereunder, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- (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,

in connection with the purchase or sale of any security.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Klein pay disgorgement in the amount of \$60,000, representing proceeds from the conduct alleged in the Complaint, plus prejudgment interest thereon in an amount to be calculated using the underpayment rates contained in 26 C.F.R. § 301.6621. Based upon Klein's sworn representations in his Statement of Financial Condition, which was submitted to the Commission along with other information, payment of all but \$2,395 from Republic National Bank Account Nos. 0131004920 and 0131005107 of disgorgement and prejudgment is waived, contingent upon the accuracy and completeness of such Statement of Financial Condition.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that based upon Klein's sworn representations in his Statement of Financial Condition, the Court is not ordering him to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. The determination not to impose civil penalties is contingent upon the accuracy and completeness of such Statement of Financial Condition.

IV.

If at any time following the entry of this Final Judgment the Commission obtains information indicating that Klein's 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 him, petition this Court for an order requiring payment of disgorgement and imposing a civil penalty. In connection

with any such petition, the only issues shall be whether the financial information provided by Klein was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, and the amount of civil penalty to be imposed. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Klein to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment, and the Commission may also request additional discovery. Klein may not, by way of defense to such petition, challenge the validity of the Consent or the Final Judgment, contest the allegations in the Complaint filed by the Commission, contest the amount of disgorgement to be ordered, or assert that payment of a civil penalty should not be ordered.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Klein appear and testify at the request of any party at any deposition, hearing or trial in any action arising out of the matters described in the Complaint in this action. In connection with any such deposition, hearing or trial, Carl F. Schoepl of Boca Raton, Florida is appointed as Klein's agent to receive on his behalf any notice or subpoena for his appearance and testimony. Any such notice or subpoena for Klein's appearance and testimony may be served on Klein or Carl F. Schoepl by mail. Any such notice or subpoena for Klein's appearance and testimony may be served beyond the territorial limits imposed by Rule 45 of the Federal Rules of Civil Procedure, providing the party requesting the testimony reimburses Klein's travel, lodging and subsistence expenses at then prevailing U.S. Government per diem rates. For purposes of enforcing any such subpoena for Klein's appearance and testimony. In the event that Klein invokes his privilege against self-incrimination under the Fifth Amendment

of the United States Constitution with respect to any of the matters described in the Complaint in this action or the production of any documents, upon a grant of immunity pursuant to 18 U.S.C. § 6001 et seq., Klein will respond to any subpoena served in the manner described above and provide truthful testimony. Klein will continue to be considered a party to this action for purposes of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401-22].

VI.

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

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Klein, upon entry of this Final Judgment, shall execute, in a form supplied by the Plaintiff, an acknowledgement of service of this Final Order and promptly return the acknowledgement to Plaintiff's counsel of record.


VIII.

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


* * * *

There being no reason for delay, the Clerk of the Court is hereby directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment forthwith.

SO ORDERED, this 26 day of July, 1999.


G. Kendall Sharp
United States District Court

Presented by:


Katherine Addleman

Michael R. MacPhail

Attorneys for Plaintiff

SECURITIES AND EXCHANGE COMMISSION

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