

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DOCKETED  
JAN 28 2002

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|------------------------------|--|---|------------------------|
| _____                        |  | ) |                        |
| UNITED STATES SECURITIES     |  | ) |                        |
| AND EXCHANGE COMMISSION,     |  | ) |                        |
|                              |  | ) |                        |
| Plaintiff,                   |  | ) | 99 C 5023              |
| v.                           |  | ) |                        |
|                              |  | ) | Judge Ronald A. Guzman |
| KFIR BARZILAY, <i>et al.</i> |  | ) |                        |
|                              |  | ) |                        |
| Defendants.                  |  | ) |                        |
|                              |  | ) |                        |
|                              |  | ) |                        |
| _____                        |  | ) |                        |

**FINAL ORDER OF PERMANENT INJUNCTION AND OTHER RELIEF BY  
DEFAULT AGAINST DEFENDANTS KFIR BARZILAY, YAN DIKSHTEYN,  
BORIS FIDLER AND LAWRENCE PROSS**

This cause coming to be heard on Plaintiff Securities and Exchange Commission's ("Commission") Motion for Final Order of Permanent Injunction and Other Equitable Relief by Default Against Defendants Kfir Barzilay ("Barzilay"), Yan Dikshteyn ("Dikshteyn"), Boris Fidler ("Fidler"), and Lawrence Pross ("Pross") (collectively, "Defendants"); the Court having considered Plaintiff's Complaint, Plaintiff's Motion, Plaintiff's Memorandum in Support Of Motion For Final Order of Permanent Injunction and Other Relief By Default Against Defendants Barzilay, Dikshteyn, Fidler and Pross, and the evidence submitted in support thereof; the Court, being fully advised in the premises, finds:

1. That this Court has jurisdiction over the subject matter of this case and all of the parties hereto.
2. That Defendants Barzilay, Dikshteyn, Fidler and Pross have engaged in transactions, acts, practices and courses of business which constitute violations of the

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federal securities laws. Specifically, Defendants have engaged in transactions, acts, practices and courses of business which constitute violations of Section 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act of 1933, (“Securities Act”) [15 U.S.C. §§77q(a)(1), 77q(a)(2), and 77q(a)(3)], Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78 (b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder. In addition, Defendants have aided and abetted violations of Section 17(a) of the Exchange Act [15 U.S.C. §78q(a)] and Rule 17a-3 [17 C.F.R. 240.17a-3] promulgated thereunder. Defendants Fidler and Pross have also aided and abetted violations of Section 15(b)(7) of the Exchange Act [15 U.S.C. §§78o(b)(7)] and Rule 15b7-1 [17 C.F.R. §§240.15b7-1] promulgated thereunder.

3. That without an order permanently enjoining Defendants from violating the securities laws set forth herein, there is a substantial likelihood that Defendants will continue to violate the federal securities laws.

4. That it is necessary for the Defendants to pay disgorgement, plus prejudgment interest, and a civil penalty, in order to make their violations of the federal securities laws unprofitable and to deter future violations.

I.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Defendants Barzilay, Dikshteyn, Fidler and Pross, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, and each of them, be and are hereby permanently restrained and enjoined from, 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, directly or indirectly, employing any device, scheme or artifice to defraud, in violation of Section 17(a)(1) of the Securities Act of 1933 [15 U.S.C. § 77q(a)(1)].

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Barzilay, Dikshteyn, Fidler and Pross, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, and each of them, be and are hereby permanently restrained and enjoined from, 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 use of the mails, directly or indirectly, 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 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 Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Barzilay, Dikshteyn, Fidler and Pross, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, and each of them, be and are hereby permanently restrained and enjoined from, 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 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 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 violation of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Barzilay, Dikshteyn, Fidler and Pross, their officers, agents, partners, servants, employees, attorneys, and those persons in active concert or participation with them who

receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, as a principal or as an aider and abettor, causing any record made and kept pursuant to Section 17(a) [15 U.S.C. §78q(a)] of the Exchange Act and Rule 17a-3 promulgated thereunder [17 C.F.R. 240.17a-3] to be inaccurate, in violation of Section 17(a) [15 U.S.C. §78q(a)] of the Exchange Act and Rule 17a-3 promulgated thereunder [17 C.F.R. 240.17a-3].

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Fidler and Pross, their officers, agents, partners, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, as a principal or as an aider and abettor, as a registered broker or dealer or government securities dealer registered (or required to register) under Section 15C(a)(1)(a) or person associated with a registered broker or dealer or government securities dealer registered (or required to register) under Section 15C(a)(1)(a), effecting any transaction in, or inducing the purchase or sale of, any security unless such broker or dealer and all natural persons associated with such broker or dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors in accordance with Section 15(b)(7) of the Exchange Act [15 U.S.C. §78o(b)].

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Fidler and Pross, their officers, agents, partners, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, as a principal or as an aider and abettor, as a registered broker or dealer or person associated with a registered broker or dealer, effecting any transaction in, or inducing the purchase or sale of, any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards established by the rules of any national securities exchange or national securities association of which such broker or dealer is a member or under the rules of the Municipal Securities rulemaking Board (if it is subject to the rules of that organization) in accordance with Rule 15b7-1 [17 C.F.R. 240.15b7-1] promulgated under Section 15(b) of the Exchange Act [15 U.S.C. §78o(b)].

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Barzilay pay disgorgement of \$21,704, his ill-gotten gains, plus \$9,026 in pre-judgment interest.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Dikshteyn pay disgorgement of \$13,777, his ill-gotten gains, plus \$6,073 in pre-judgment interest.

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Fidler pay disgorgement of \$25,825, his ill-gotten gains, plus \$10,593 in pre-judgment interest.

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Pross pay disgorgement of \$66,604, his ill-gotten gains, plus \$27,325 in pre-judgment interest.

XI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that civil penalties pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act are appropriate against each of the Defendants and shall be imposed against Defendant Barzilay in the amount of \$ 110,000.00 against Defendant Dikshteyn in the amount of \$ 110,000.00, against Defendant Fidler in the amount of \$ 110,000.00, and against Defendant Pross in the amount of \$ 110,000.00.

XII.


IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants pay disgorgement, prejudgment interest, and civil penalties ordered herein within thirty (30) days of the entry of this Order. Payment of the disgorgement and prejudgment interest shall be made to the Clerk, U.S. District Court, Northern District of Illinois, 219 S. Dearborn St., Chicago, Illinois, 60604, by cashier's check, certified check or United States postal money order. The Clerk shall deposit this payment or payments into an interest-bearing account and shall deduct from the account any fee authorized by the

Judicial Conference of the United States. Payment of the civil penalties shall be: (1) made by cashier's check, certified check, or U.S. postal money order; (2) made payable to the United States Treasury; and (3) delivered or mailed to the Comptroller, United States Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312; and (4) submitted under a cover letter that identifies the Defendant as a defendant in this matter and the case number of this matter, a copy of which cover letter and money order or check shall be sent to Kathryn A. Pyszka, Securities and Exchange Commission, 500 W. Madison St., Ste. 1400, Chicago, Illinois 60661.

XIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for all purposes, including, but not limited to entertaining any applications for additional relief, and implementing and enforcing this Order.

IT IS SO ORDERED.

  
RONALD A. GUZMAN, JUDGE  
United States District Court  
Northern District of Illinois

Dated: 1/24/02