

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 99-8378-CIV-ZLOCH

Magistrate Judge Seltzer

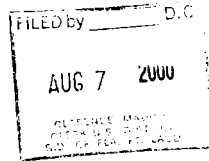
UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

GATEWAY TECHNOLOGIES, INC.;
THE CHEYENNE HOLDING CORP.;
RANDOLPH S. ROSS AND TIMOTHY
J. KAVANAGH.

Defendants.



**FINAL JUDGMENT OF PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF AS TO DEFENDANT TIMOTHY J. KAVANAGH**

Plaintiff the United States Securities and Exchange Commission ("the Commission")
having filed a Complaint in the above-captioned action, and Defendant Timothy J. Kavanagh
("Kavanagh") having entered a general appearance, having waived the entry of findings of fact
and conclusions of law under Federal Rule of Civil Procedure 52, and without admitting or
denying any of the allegations of the Complaint, except as to jurisdiction, which is admitted, and
having consented to entry of this Final Judgment of Permanent Injunction and Other Equitable
Relief ("Final Judgment"), and it appearing that this Court has jurisdiction over Defendant
Kavanagh and the subject matter hereof:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Kavanagh, his agents, servants, employees and attorneys, and those 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 violating Section 17(a) of the Securities Act of 1933, as amended (“Securities Act”) [15 U.S.C. § 77q(a)] by, in the offer or sale of any security 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:

- 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 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 any person.

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Kavanagh, his agents, servants, employees and attorneys, and those 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 violating Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), as amended [15 U.S.C. § 78j(b)]

and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by, 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, in connection with the purchase or sale of any security:

- 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.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Kavanagh, his agents, servants, employees and attorneys, and those 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 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] by acting as a broker or dealer and making use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (in the absence of an applicable exemption) without being registered with the Commission in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)].

IV.

Defendant Kavanagh has submitted a sworn financial statement and other financial information and has asserted his financial inability to pay disgorgement or prejudgment interest. The Commission has reviewed the sworn financial statement and other information provided by Defendant Kavanagh and has determined that Defendant Kavanagh does not have the financial ability to pay disgorgement or prejudgment interest. It is therefore ORDERED, ADJUDGED, AND DECREED that Defendant Kavanagh is liable for disgorgement of \$20,000.00 plus prejudgment interest, but that payment of such amount by Defendant Kavanagh is waived based on Defendant Kavanagh's demonstrated inability to pay and contingent upon the accuracy and completeness of the sworn financial statement and other financial information provided by Defendant Kavanagh.

V.

Defendant Kavanagh has submitted a sworn financial statement and other financial information and has asserted his financial inability to pay a civil penalty. The Commission has reviewed the sworn financial statement and other information provided by Defendant Kavanagh and has determined that Defendant Kavanagh does not have the financial ability to pay a civil penalty. It is therefore ORDERED, ADJUDGED AND DECREED that the Court is not directing Defendant Kavanagh to pay a civil penalty based on Defendant Kavanagh's demonstrated inability to pay and contingent upon the accuracy and completeness of the sworn financial statement and other financial information provided by Defendant Kavanagh.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if at any time following the entry of this Final Judgment the Commission obtains information indicating that Defendant Kavanagh's sworn financial statement or any other financial information provided by Defendant Kavanagh was inaccurate or incomplete in any material respect when made or provided, the Commission may petition this Court for an order requiring payment of the full amount of disgorgement specified above plus prejudgment interest, imposing civil penalties, and imposing additional remedies the Commission would have had in this proceeding if the Consent and Undertaking of Defendant Timothy J. Kavanagh ("Consent") had not been accepted by the Commission. In connection with any such petition, the only issues shall be whether the financial statement or information provided by Defendant Kavanagh was inaccurate or incomplete in any material respect as of the time such representations were made or provided, the amount of prejudgment interest, the amount of civil penalties to be imposed, and whether any additional remedies should be imposed. Defendant Kavanagh may not, by way of defense to such petition, contest the Consent or this Final Judgment, the allegations in the Complaint, the amount of disgorgement to be ordered, the appropriateness of civil penalties, or the Court's authority to impose additional remedies available in the original proceeding.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, in connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendant Kavanagh shall, at the

Commission's request, on reasonable notice and without service of a subpoena, provide documents and other discovery and testify truthfully at depositions, hearings, trials and other proceedings, except where Kavanagh may validly raise any privilege against self-incrimination under the Fifth Amendment of the United States Constitution. The ordinary and reasonable costs of such discovery or testimony will be borne by the Commission. In the event Kavanagh invokes his privilege against self-incrimination under the Fifth Amendment of the United States Constitution with respect to any matter about which the Commission may inquire or any document or other discovery requested by the Commission, Defendant Kavanagh shall provide such testimony or discovery if he receives a grant of immunity pursuant to 18 U.S.C. § 6001 *et seq.* Defendant Kavanagh shall also 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].

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for a period of three years from the date hereof, Defendant Kavanagh, his agents, servants, employees and attorneys, and those 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, are hereby restrained and enjoined from destroying, mutilating, concealing, altering, or disposing of any document referring or relating in any manner to:

- a) the acts, practices and transactions described in the Commission's complaint;
- b) communications between or among any of the defendants or their employees or agents;

- c) funds received from investors, members, or any other person; or
- d) the location and disposition of funds received from investors, members, or any other person.

As used in this order, "document" means the original and all non-identical copies (whether non-identical because of handwritten notation or otherwise) of all written, graphic, audio or video matter, however produced, and any other tangible record, or electronic data compilation capable of reproduction in tangible form, including, without limitation, computer databases, electronic mail, telephone answering machine or other audiotapes, videotapes, correspondence, memoranda, minutes, telephone records, reports, studies, telexes, diaries, calendar entries, contracts, and letters of agreement, and including any and all existing drafts of all documents.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the annexed Consent of Defendant Kavanagh be incorporated herein with the same force and effect as if fully set forth herein.

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction over this action for the purpose of implementing and enforcing the terms and conditions of this Final Judgment and for all other purposes.

XI.

There being no just reason for delay, the clerk is hereby directed to enter this Final Judgment immediately and without further notice.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida this 2nd day of August, 2000.


WILLIAM J. ZLOCH
Chief United States District Judge

Copies furnished:

Thomas M. Piccone, Esq.
Jennifer Ostrom, Esq.
For Plaintiff

Robert Stok, Esq.
For Defendants Cheyenne,
Ross and Kavanaugh

Gateway Technologies, Inc.
Defendant
2049 Century Park East, #1100
Los Angeles, California 90067
and
Jason Byrne
8965 Santa Monica, #202
West Hollywood, California 90069

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 99-8378-CIV-ZLOCH

Magistrate Judge Seltzer

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

GATEWAY TECHNOLOGIES, INC.;
THE CHEYENNE HOLDING CORP.;
RANDOLPH S. ROSS AND TIMOTHY
J. KAVANAGH,

Defendants.

CONSENT AND UNDERTAKING OF DEFENDANT TIMOTHY J. KAVANAGH

1. Defendant Timothy J. Kavanagh ("Kavanagh"), having read and understood the Complaint in this action and having read and understood the attached proposed Final Judgment of Permanent Injunction and Other Relief as to Defendant Kavanagh ("Final Judgment"), and solely for purposes of consenting to the entry of the Final Judgment: (i) enters a general appearance; (ii) admits the personal jurisdiction of this Court over him; (iii) admits the jurisdiction of this Court over the subject matter of this action; and (iv) admits that he was served with a summons and the Complaint.

2. Kavanagh, without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, which he admits, hereby consents to the entry, without further notice, of the Final Judgment in the form attached to this Consent and Undertaking ("Consent"), restraining

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and enjoining him from engaging in transactions, acts, practices and courses of business which constitute or would constitute violations of Sections 17(a) of the Securities Act of 1933, as amended [15 U.S.C. § 77q(a)], and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934, as amended [15 U.S.C. §§ 78j(b) and 78o(a)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; ordering him to disgorge \$20,000.00 plus prejudgment interest, but providing for waiver of payment of disgorgement and prejudgment interest based on a demonstrated inability to pay; and not imposing civil money penalties based on a demonstrated inability to pay.

3. Kavanagh understands and agrees to comply with the policy of the United States Securities and Exchange Commission (“Commission”) “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, Kavanagh agrees: (i) not to take any action or 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 and Final Judgment are without factual basis; and (ii) that if Kavanagh breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and place this case on its active docket. Nothing in this provision affects Kavanagh’s testimonial obligations or right to take legal positions in litigation in which the Commission is not a party.

4. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Kavanagh

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undertakes and agrees that, at the Commission's request, on reasonable notice and without service of a subpoena, he will provide documents and other discovery and testify truthfully at depositions, hearings, trials and other proceedings, except that Kavanagh does not hereby waive any privilege against self-incrimination under the Fifth Amendment of the United States Constitution. The ordinary and reasonable costs of such discovery or testimony will be borne by the Commission. In the event Kavanagh invokes his privilege against self-incrimination under the Fifth Amendment of the United States Constitution with respect to any matter about which the Commission may inquire or any document or other discovery requested by the Commission, Kavanagh agrees that he will provide such testimony or discovery if he receives a grant of immunity pursuant to 18 U.S.C. § 6001 et seq. Kavanagh further agrees that he shall 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].

5. Kavanagh waives service of the Final Judgment upon him and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to him of the terms and conditions of the Final Judgment. Kavanagh further agrees that he will execute an Acknowledgment of Receipt of Final Judgment ("Acknowledgment") within 14 days of the date the Court enters a final Judgment, and that he will promptly file the original of the Acknowledgment, fully executed, with the Court, with copies to counsel for Plaintiff.

6. Kavanagh waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

7. Kavanagh waives any right he may have to appeal from the entry of the Final Judgment.

8. Kavanagh acknowledges that this Consent and the Final Judgment embody the entire agreement resolving this action. Kavanagh further acknowledges that this Consent is entered into voluntarily and of his own accord, and that no offers, promises, inducements or threats of any kind have been made by the Commission or by any member, officer, agent, employee or representative thereof to induce him to enter into this Consent. Kavanagh acknowledges that he is specifically aware of the provisions of 17 C.F.R. § 202.5(f).

9. Kavanagh agrees that this Consent shall be annexed to the Final Judgment, and that this Consent hereby is incorporated into the Final Judgment. Kavanagh agrees that he 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 he may have based thereon.

10. Kavanagh agrees that the Final Judgment may be presented by the Commission's representatives to the Court for signature and entry without further notice.

11. Kavanagh agrees that the Court shall retain jurisdiction of this action for purposes of administering and enforcing the Final Judgment and for all other purposes.

12. Kavanagh acknowledges that this Consent and the Final Judgment do not bind any agency of government other than the Commission. Consistent with the provisions of 17 C.F.R. §

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202.5(f), Kavanagh waives any claim of Double Jeopardy based upon the settlement of this matter,

including the imposition of any remedy or civil penalty.

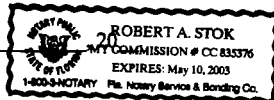
Dated: June 28, 2000.

Timothy J. Kavanagh
Timothy J. Kavanagh

On this 28th day of June, 2000, Timothy J. Kavanagh personally appeared ✓
before me and executed the foregoing Consent and Undertaking of Defendant Timothy J.
Kavanagh.

[Signature]
Notary Public

My Commission expires on the 2 day of _____



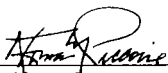
Approved as to form:

[Signature]
Robert Stok, Esq.
Attorney for Defendant Timothy J. Kavanagh

June 28, 2000
Date

REQUEST FOR ENTRY

Plaintiff United States Securities and Exchange Commission respectfully requests entry of the Final Judgment as to Timothy J. Kavanagh submitted with this Consent.



Jennifer A. Ostrom
Thomas M. Piccone
Attorney for Plaintiff
Securities and Exchange Commission
1801 California Street, Suite 4800
Denver, CO 80202
Telephone: (303) 844-1000
FAX: 303-844-1010

8.4.00

Date