

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RECEIVED
In Chambers of
U.S.D.J. Gershon

JUL 15 2002

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GRANT R. CURTIS, LEO MANGAN, TIMOTHY H.
MASLEY, JAMES W. NEAREN, RAIMOND IRNI,
PEDRO DIBRITO GOMEZ, DONALD E.
KESSLER, DAVID R. BEHANNA, ANDREA VARSI,
JONATHAN D. LYONS, KENNETH A. ORR,
LILLIAN M. VINCI, ANN MARIE NOEL,
MICHAEL V. LIPKIN, JOSHUA S. SHAINBERG,
PHILLIP J. MILLIGAN, AND ROBERT L. SHATLES,

Defendants.

99 Civ. 7357 (NG)

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U.S. DISTRICT COURT
EASTERN DISTRICT
NEW YORK

**FINAL JUDGMENT OF PERMANENT INJUNCTION
AND OTHER RELIEF AS TO DAVID R. BEHANNA**

Plaintiff Securities and Exchange Commission ("Commission"), having commenced this action by filing a Complaint For Injunctive And Other Relief on November 10, 1999, alleging that defendant David R. Behanna ("Behanna") violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §77q(a), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and Rules 13b2-1 and 13b2-2, 17 C.F.R. §§240.13b2-1 and 240.13b2-2, promulgated under Section 13(b) of the Exchange Act, 15 U.S.C. §78m(b), and that, as a controlling person of Windswept Environmental Group, Inc. ("Windswept"), defendant Behanna is liable pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a), for Windswept's violations of Sections 13(a) and 13(b) of the Exchange Act, 15 U.S.C. §§ 78m(a) and 78m(b), and Rules 12b-20, 13a-1,

13a-13, 13b2-1, and 13b2-2 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13, and 240.13b2-1, and 240.13b2-2, and defendant Behanna having executed the annexed Consent To Final Judgment Of Permanent Injunction And Other Relief As To Defendant David R. Behanna (“Consent”), having waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, having admitted the jurisdiction of this Court over him and over the subject matter of this action, and, without admitting or denying the allegations contained in the Complaint, except as to jurisdiction, having consented to the entry of this Final Judgment Of Permanent Injunction And Other Relief As To David R. Behanna (“Final Judgment”) without further notice:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Behanna be and hereby is permanently enjoined from, directly or indirectly, singly or in concert, in the offer or sale of any security, by the use of any means or instrument of transportation or communication in interstate commerce or by use of the mails:

- (A) employing any device, scheme or artifice to defraud; or
- (B) obtaining money or property by means of an 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 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).

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Behanna be and hereby is permanently enjoined and restrained from, directly or indirectly, singly or in concert, 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 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 violation of Section 10(b) of the Exchange Act, 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 defendant Behanna, while he directly or indirectly controls any issuer within the meaning of Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a), be and hereby is permanently enjoined and restrained from acting or omitting to act if such act or omission would result or results in such issuer:

- (A) failing to file with the Commission any report required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and the rules and regulations promulgated thereunder; or

(B) filing with the Commission a report required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. §78m(a), and the rules and regulations promulgated thereunder that (1) contains an untrue statement of material fact; (2) fails to include, in addition to the information required to be stated in such report, such further material information as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading; or (3) fails to disclose any information required to be disclosed therein,

in violation of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), or Rules 12b-20, 13a-1 or 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1 or 240.13a-13, unless defendant Behanna acted in good faith and did not directly or indirectly induce the act or omission constituting such violation(s) within the meaning of Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Behanna be and hereby is permanently enjoined and restrained from, directly or indirectly, singly or in concert, falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A), in violation of Rule 13b2-1, 17 C.F.R. § 240.13b2-1 promulgated under Section 13(b) of the Exchange Act, 15 U.S.C. § 78m(b).

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Behanna be and hereby is permanently enjoined and restrained from, directly or indirectly, singly or in concert, while an officer or director of an issuer,

- (A) making or causing to be made a materially false or misleading statement, or
- (B) omitting to state, or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements are made, not misleading,

to an accountant in connection with (1) any audit or examination of the financial statements of such issuer required to be made pursuant to the rules and regulations of the Exchange Act, 17 C.F.R. §§ 240.0-1 et seq., or (2) the preparation or filing of any document or report required to be filed with the Commission, in violation of Rule 13b2-2, 17 C.F.R. § 240.13b2-2, promulgated under Section 13(b) of the Exchange Act, 15 U.S.C. § 78m(b).

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Behanna shall pay \$25,000 as a civil penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). Such payment shall be made in three installments, as follows: \$10,000 within thirty (30) days from the date of the entry of this Final Judgment; an additional \$10,000 within sixty (60) days from the date of the entry of this Final Judgment; and an additional \$5,000 within ninety (90) days from the date of the entry of this Final Judgment. Behanna shall pay the civil penalty ordered by this Court to the United States Treasury by cashier's check, certified check or postal money order payable to the order of the "United States Treasury." The payments shall be transmitted to the Comptroller, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Simultaneously with making such payments, copies of the cashier's check, certified check or postal money order, front and back, as well as any accompanying correspondence, shall be transmitted to David Rosenfeld, Esq., Assistant Regional Director, U.S. Securities and Exchange

Commission, Northeast Regional Office, 233 Broadway, New York, New York 10279. Such transmission shall be made under cover of a letter that identifies the defendant, the name and civil action number of the litigation, the name of this Court and the Commission case number "NY-6315."

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, this Final Judgment is binding upon defendant Behanna, his employees, agents, servants, and 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.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the annexed Consent of defendant Behanna be, and hereby is, incorporated herein with the same force as if fully set forth herein.

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

XI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff Commission may effect service of this Final Judgment, and all other papers in this action, upon defendant Behanna by first class mail to defendant Behanna's attorney, Larry H. Krantz, Esq., Krantz & Berman, 369 Lexington Avenue, 16th Floor, New York, NY 10017, or any other attorney entering an appearance for defendant Behanna in this action.

**CONSENT TO FINAL JUDGMENT OF PERMANENT INJUNCTION
AND OTHER RELIEF AS TO DEFENDANT DAVID R. BEHANNA**

1. Defendant David R. Behanna (“Behanna”), being fully apprised of his rights, having had the opportunity to confer with legal counsel, and having read and understood the terms of the Final Judgment Of Permanent Injunction And Other Relief As To David R. Behanna (“Final Judgment”), appears and admits the in personam jurisdiction of this Court over him and the subject matter jurisdiction of this Court, 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, hereby consents to the entry, without further notice, of the Final Judgment.

2. Defendant Behanna agrees that this Consent To Final Judgment Of Permanent Injunction And Other Relief As To Defendant David R. Behanna (“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. Defendant Behanna waives any right he may have to appeal from the Final Judgment.

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

5. Defendant Behanna acknowledges that he enters into this Consent voluntarily, and that this Consent and the Final Judgment embody the entire understanding of the parties.

Defendant Behanna acknowledges and agrees that this proceeding, and his Consent are for the purposes of resolving this civil action only, that no tender, offer, promise, threat or representation of any kind has been made by plaintiff Commission or any member, officer, attorney, agent, or representative thereof, with regard to: (A) this civil action, that is not explicitly stated in this Consent and the Final Judgment; (B) any administrative proceeding brought or to be brought before the Commission involving the Final Judgment or the facts underlying this action; (C) any other Commission civil action or administrative proceeding not involving the facts underlying this action; (D) any administrative, civil or criminal liability arising from the facts underlying this action in any action or proceeding brought or to be brought by any third party, other agency or criminal authority; or (E) immunity from any such administrative, civil or criminal action or proceeding.

6. Defendant Behanna acknowledges that he has been informed and understands that plaintiff 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, if the Commission has not already done so.

7. Defendant Behanna 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, extend to, affect or preclude any other proceeding which may be brought against him. Consistent with the provisions of 17 C.F.R. § 202.5(f), defendant Behanna waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant Behanna

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.

8. Defendant Behanna agrees and undertakes to pay a civil penalty in the amount of \$25,000.

9. Defendant Behanna 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, defendant Behanna agrees 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 is without factual basis. If defendant Behanna breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to the Court's active docket. Nothing in this provision affects defendant Behanna's: (i) testimonial obligations; or (ii) right to take legal positions in litigation in which the Commission is not a party.

10. Defendant Behanna hereby 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.

11. Defendant Behanna agrees that, promptly after the Final Judgment has been

entered by the Court, he will execute and return to the Commission an acknowledgment of receipt of the Final Judgment.

12. Defendant Behanna agrees that this Court shall retain jurisdiction of this matter for all purposes, including the implementation, modification and enforcement of the Final Judgment.

13. Defendant Behanna agrees that first class mail to his attorney, Larry H. Krantz, Esq., Krantz & Berman, 369 Lexington Avenue, 16th Floor, New York, NY 10017, or any other attorney entering an appearance for defendant Behanna in this action, shall be deemed personal service for all correspondence, service and notices as to any matters related to the Final Judgment, unless defendant Behanna notifies the Commission of any alternative address by certified mail at the following address: David Rosenfeld, Esq., Assistant Regional Director, U.S. Securities and Exchange Commission, Northeast Regional Office, 233 Broadway, New York, New York 10279.

14. Defendant Behanna acknowledges that this Consent embodies the entire understanding of the parties concerning resolution of this action.

Dated: 6/27, 2002

David R. Behanna
David R. Behanna

Acknowledged by:

STATE OF New York)

ss.:

COUNTY OF SUFFOLK)

On this 27TH day of JUNE, 2002, before me personally appeared David R. Behanna, to me known to be the person who executed the foregoing Consent, and he acknowledged to me that he executed the same.

William T. Bell
NOTARY PUBLIC

WILLIAM T. BELL
Notary Public, State of New York
No. 52-4527718
Qualified in Suffolk County
Commission Expires March 30, 192004

SO ORDERED.

Mina Marsh
United States District Judge

Dated: July 22, 2002
Brooklyn, New York