

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK
2002 JUL 10 10 31 AM

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

99 Civ. 7357 (NG)

**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.

RECEIVED
In Chambers of
U.S.D.J. Gershon
JUL 3 2002

**FINAL JUDGMENT OF PERMANENT INJUNCTION
AND OTHER RELIEF AS TO ANN MARIE NOEL**

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 Ann Marie Noel ("Noel") violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §77q(a), and 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 defendant Noel having executed the annexed Consent To Final Judgment Of Permanent Injunction And Other Relief As To Defendant Ann Marie Noel ("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 her 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 Ann Marie Noel (“Final Judgment”) without further notice:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Noel 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 Noel 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 Noel shall pay disgorgement in the amount of \$32,500, representing the ill-gotten gains as a result of the conduct alleged in the Complaint, together with pre-judgment interest thereon. Based upon defendant Noel's sworn representations in her Statement of Financial Condition, dated as of February 25, 2002 ("Financial Statement"), and other documents submitted to the Commission, payment of all but \$9,500 of the disgorgement and pre-judgment interest thereon is waived, contingent upon the accuracy and completeness of her Financial Statement. The payment of \$9,500 shall be made in four equal installments of \$2,375 according to the following schedule: (1) the first payment shall be made within sixty days from the date of entry of this Final Judgment; (2) the second payment shall be made within eight months from the date of entry of this Final Judgment; (3) the third payment shall be made within sixteen months from the date of entry of this Final Judgment; and (4) the final payment shall be made within twenty-four months from the date of entry of this Final Judgment.

Defendant Noel shall make all payments to the "Clerk of the Court – Eastern District of New York" at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, under cover of a letter that identifies Noel and the name and civil action number of this litigation. The funds to be paid shall be

deposited into an interest-bearing money market account with the Court Registry Investment System (the "CRIS Account"). Interest earned on the funds in the CRIS Account shall be credited to the CRIS Account and shall thereafter be treated in the same manner as principal. Further, funds in the CRIS Account shall be held until further Order of the Court, and shall be disbursed in accordance with a plan of equitable distribution to victims of Noel to be submitted by the Commission and approved by the Court. In no event shall any portion of the account be returned to Noel, her successors or assigns.

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."

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, based upon defendant Noel's sworn representations in her Financial Statement, and other documents submitted to the Commission, the Court is not ordering her to pay a civil penalty. The determination not to impose a civil penalty and to waive payment of all but \$9,500 of the disgorgement and pre-judgment interest thereon is contingent upon the accuracy and completeness of her Financial Statement. If at any time following the entry of this Final Judgment, the Commission obtains information indicating that defendant Noel's representations to the Commission in the Financial Statement concerning her 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 defendant Noel, petition this Court for an order requiring defendant Noel to pay the unpaid portion of the disgorgement, plus pre-judgment interest and post-judgment interest thereon, and the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by defendant Noel 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 defendant Noel 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. Defendant Noel 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 disgorgement, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment or post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

V.

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 Noel, her employees, agents, servants, and attorneys, and upon those persons in active concert or participation with her who receive actual notice of this Final Judgment by personal service or otherwise.

VI.

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

VII.

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.

VIII.

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.

IX.

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 Noel by first class mail to defendant Noel's attorneys, Lankler, Siffert & Wohl, LLP, Attn: Brian Fleischer, Esq. or John Siffert, Esq., 500 Fifth Avenue, 33rd Floor, New York, NY 10110-3398, or any other attorney entering an appearance for defendant Noel in this action.

**CONSENT TO FINAL JUDGMENT OF PERMANENT INJUNCTION
AND OTHER RELIEF AS TO DEFENDANT ANN MARIE NOEL**

1. Defendant Ann Marie Noel (“Noel”), being fully apprised of her 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 Ann Marie Noel (“Final Judgment”), appears and admits the in personam jurisdiction of this Court over her 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 Noel agrees that this Consent To Final Judgment Of Permanent Injunction And Other Relief As To Defendant Ann Marie Noel (“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 Noel waives any right she may have to appeal from the Final Judgment.

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

5. Defendant Noel acknowledges that she enters into this Consent voluntarily, and that this Consent, the Final Judgment, and defendant Noel’s Statement of Financial Condition, dated as of February 25, 2002 (“Financial Statement”), submitted to the Commission, embody

the entire understanding of the parties. Defendant Noel acknowledges and agrees that this proceeding, and her consent to the entry of the Final Judgment, 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 Noel acknowledges that she 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 Noel acknowledges and agrees that this proceeding and her 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 her. Consistent with the provisions of 17 C.F.R. 202.5(f), defendant Noel waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant 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 Noel acknowledges that the Court is not imposing a civil penalty and is requiring defendant Noel to pay the sum of \$9,500, rather than to pay the full \$32,500 in disgorgement plus pre-judgment interest thereon, based upon defendant Noel's sworn representations in her Financial Statement and other documents submitted to the Commission. Defendant Noel further acknowledges that the payment of \$9,500 shall be made in four equal installments of \$2,375, with the first payment to be made within sixty days from the date of entry of this Final Judgment, the second payment to be made within eight months from the date of entry of this Final Judgment, the third payment to be made within sixteen months from the date of entry of this Final Judgment, and the final payment to be made within twenty-four months from the date of entry of this Final Judgment. Defendant Noel further agrees and understands that, if at any time following the entry of the Final Judgment, the Commission obtains information indicating that defendant Noel's representations to the Commission concerning her 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 defendant Noel, petition this Court for an order requiring defendant Noel to pay the unpaid portion of the disgorgement, plus pre-judgment and post-judgment interest thereon, and the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information

provided by defendant Noel was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made. In any such petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering defendant Noel to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of the Court's Final Judgment. The Commission may also request additional discovery.

Defendant Noel 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 disgorgement, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment or post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

9. Defendant Noel 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 Noel 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 Noel 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 Noel's: (i) testimonial obligations; or (ii) right to take legal positions in litigation in which the Commission is not a party.

10. Defendant Noel 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 Noel agrees that, promptly after the Final Judgment has been entered by the Court, she will execute and return to the Commission an acknowledgment of receipt of the Final Judgment.

12. Defendant Noel 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 Noel agrees that first class mail to her attorneys, Lankler, Siffert & Wohl, LLP, Attn: Brian Fleischer, Esq. or John Siffert, Esq., 500 Fifth Avenue, 33rd Floor, New York, NY 10110-3398, or any other attorney entering an appearance for defendant Noel 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 Noel notifies the Commission of any alternative address by certified mail at the following address: Assistant Regional Director (Enforcement), U.S. Securities and Exchange Commission, Northeast Regional Office, 233 Broadway, New York, New York 10279, Attn: David Rosenfeld, Esq.

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

Dated: February 25, 2002

Ann Marie Noel
Ann Marie Noel

Acknowledged by:

STATE OF New York)
COUNTY OF New York)

ss.:

On this 25th day of February, 2002, before me personally appeared Ann Marie Noel, to me known to be the person who executed the foregoing Consent, and she acknowledged to me that she executed the same.

Adele D. Carmel
NOTARY PUBLIC

ADELE D. CARMEL
Notary Public, State of New York
No. 01CA5011796
Qualified in New York County
Commission Expires June 15, 2003

SO ORDERED.

Mina Gershen
United States District Judge

Dated: July 18, 2002
Brooklyn, New York