

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

SYMBOL TECHNOLOGIES, INC. et al.,

Defendants.

FILED C1M
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ FEB 07 2006 ★

LONG ISLAND OFFICE

C.V. No. 04 - 2276 (LDW)

**FINAL CONSENT JUDGMENT OF PERMANENT INJUNCTION AND OTHER
RELIEF AS TO DEFENDANT LEONARD GOLDNER**

Plaintiff Securities and Exchange Commission ("Commission") having filed a complaint ("Complaint") alleging that defendant Leonard Goldner ("Goldner") violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Sections 10(b), 13(b)(5) and 16(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(b)(5) and 78p(a)], and Rules 10b-5, 13b2-1 and 16a-3 [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.16a-3] and alleging that defendant Goldner is liable as a controlling person, pursuant to §20(a) of the Exchange Act [15 U.S.C. §78t(a)], for violations by Symbol Technologies, Inc. of Sections 13(a), 13(b)(2) and 14(a) of the Exchange Act, [15 U.S.C. §§ 78m(a), 78m(b)(2), 78n(a) and Rules 12b-20, 13a-1, 13a-13, 14a-3 and 14a-9, [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13, 240.14a-3, 240.14a-9], and plaintiff Commission having voluntarily withdrawn, with prejudice, its requests for disgorgement, with prejudgment interest, and civil penalties against defendant Goldner in view of his \$2 million civil forfeiture payment in connection with his guilty plea in *United States v. Leonard Goldner, et al.*, 04-Cr-519 (LDW) (E.D.N.Y.), and defendant Goldner

having executed the Consent of Defendant Leonard Goldner ("Consent") annexed hereto and incorporated herein, having acknowledged service of summons and the Complaint and waiving the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, having admitted to 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, which are admitted, and having consented to the entry of this Final Consent Judgment Of Permanent Injunction And Other Relief As To Defendant Leonard Goldner ("Final Judgment") without further notice:

I.

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

- (A) employing any device, scheme, or artifice to defraud;
- (B) obtaining money or property by means of any untrue statement of 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
- (C) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser,

in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Goldner is permanently restrained and enjoined from, directly or indirectly, in connection with 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 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) 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 promulgated thereunder [17 C.F.R. § 240.10b-5].

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Goldner is permanently restrained and enjoined from, directly or indirectly, singly or in concert:

- (A) knowingly circumventing or knowingly failing to implement a system of internal ~~accounting controls or knowingly falsifying any book, record or account described~~ in Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)], in violation of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]; or
- (B) 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].

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Goldner is permanently restrained and enjoined from, directly or indirectly, controlling any person who:

- (A) fails 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) files 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)], Rules 12b-20, 13a-1 or 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1 or 240.13a-13], unless defendant Goldner acts in good faith and does not directly or indirectly induce the act or acts constituting the violations.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Goldner is permanently restrained and enjoined from, directly or indirectly, controlling any person who:

- (A) fails to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of an issuer; or
- (B) fails to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that
 - (1) transactions are executed in accordance with management's general or specific authorization;
 - (2) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles, or any other criteria applicable to such statements, and to maintain accountability for assets;
 - (3) access to assets is permitted only in accordance with management's general or specific authorization; and
 - (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences,

in violation of Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)], unless defendant Goldner acts in good faith and does not directly or indirectly induce the act or acts constituting

the violation.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Goldner is permanently restrained and enjoined from, directly or indirectly, controlling any person who, directly or indirectly, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, solicits or permits the use of its name to solicit any proxy or consent or authorization in respect of any security (other than an exempt security) registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78I]:

- (A) while failing to furnish each person solicited, concurrently or previously, with a written proxy statement containing the information specified in Schedule 14A [17 C.F.R. § 14a-101] or with a written proxy statement included in a registration statement filed under the Securities Act on Form S-4 [17 C.F.R. § 239.25] and containing the information specified in such Form; and
- (B) by means of any proxy statement, form of proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading,

in violation of Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rules 14a-3 [17 C.F.R. §240.14a-3] and 14a-9 [17 C.F.R. § 240.14a-9], unless defendant Goldner acts in good faith and does not directly or indirectly induce the act or acts constituting the violation.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Goldner is permanently restrained and enjoined from, directly or indirectly, violating Section 16(a) of the Exchange Act, [15 U.S.C. § 78p(a)] and Rule 16a-3 [17 C.F.R. §240.16a-3] by:

- (A) failing to file with the Commission and with any national securities exchange a statement on Form 4 [17 C.F.R. §104] in accordance with the requirements of Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rule 16a-3 [17 C.F.R. §240.16a-3]; or
- (B) filing with the Commission and with any national securities exchange a statement on Form 4 [17 C.F.R. §104] that misstates information required to be included in such Form 4 pursuant to Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rule 16a-3 [17 C.F.R. §240.16a-3].

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], defendant Goldner is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15

U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

IX.

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

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the provisions of the annexed Consent be, and the same hereby are, incorporated in this Final Judgment with the same force and effect as if fully set forth herein.

XI.

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.

XII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

CONSENT OF DEFENDANT LEONARD GOLDNER

1. Defendant Leonard Goldner ("defendant Goldner"), being fully apprised of his rights, having had the opportunity to confer with legal counsel, having read and understood the terms of the annexed Final Consent Judgment Of Permanent Injunction And Other Relief As To Defendant Leonard Goldner ("Final Judgment"), appears and admits to the jurisdiction of this Court over him and over the subject matter of this action, waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure and, without further notice, trial or argument, and without admitting or denying the allegations of the Complaint filed by plaintiff Securities and Exchange Commission ("Commission"), except as to jurisdiction, which are admitted, hereby consents to the entry of the annexed Final Judgment.

2. Defendant Goldner agrees that this Consent Of Defendant Leonard Goldner ("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 Goldner waives any right he may have to appeal from the Final Judgment.

4. Defendant Goldner 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 Goldner acknowledges that he enters into this Consent voluntarily, and~~ that, other than the acceptance of his offer to consent to the entry of an administrative order pursuant to Rule 102(e) of the Commission's Rules of Practice, this Consent and the Final Judgment embody the entire understanding of himself and the Commission. Defendant Goldner

acknowledges and agrees that this proceeding, and his Consent to the entry of the Final Judgment, are for the purposes of resolving this civil action only, and that no tender, offer, promise, threat or representation of any kind has been made by the Commission or any member, officer, attorney, agent or representative thereof with regard to: (a) any criminal liability arising from the facts underlying this action; or (b) immunity from any such criminal liability.

6. Defendant Goldner acknowledges that he has been informed and understands that the 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 Goldner acknowledges that, in conformity with the provisions of 17 C.F.R. § 202.5(f), his Consent and the entry of the annexed Final Judgment do not resolve, affect or preclude any other proceeding that has been or may be brought against him or anyone else. Among other things, defendant Goldner waives any right he may have to assert that, under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, the relief sought or consented to in this civil action, including the seeking or imposition of any remedy or civil penalty herein, bars any criminal action, or that any criminal action bars the relief consented to in this action.

8. Defendant Goldner 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.

9. Defendant Goldner 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 Goldner agrees: (i) not to take any action or to 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; and (ii) that upon the filing of this Consent, defendant Goldner hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If defendant Goldner breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this provision affects defendant Goldner's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings in which the Commission is not a party.

10. Defendant Goldner agrees that this Court shall retain jurisdiction of this matter for purposes of implementing and enforcing the terms and conditions of the Final Judgment and for all other purposes.

11. Defendant Goldner hereby consents and agrees that the annexed Final Judgment may be presented by the Commission to the Court for signature and entry without further notice or delay.

12. Defendant Goldner 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 based thereon.

13. Defendant Goldner waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to defendant Goldner of its terms and conditions. Defendant Goldner agrees to execute and provide to the Commission a written declaration pursuant to 28 U.S.C. § 1746 acknowledging his receipt of the Final Judgment no later than twenty (20) days after a copy of the Final Judgment has been received by defendant Goldner's counsel, Andrew J. Geist, Esq., O'Melveny & Myers, LLP, Times Square Tower, 7 Times Square, New York, NY 10036.

14. Defendant Goldner hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by defendant Goldner to defend against this action.

For these purposes, defendant Goldner agrees that he is not the prevailing party in this action since the parties have reached a good faith settlement.

Dated: New York, New York

Dec. 6, 2005



Leonard Goldner

On Dec. 6, 2005, Leonard Goldner, a person known to me, personally appeared before me and executed the foregoing Consent.

Lena Cennamo

Notary Public

Commission expires:

LENA-CENNAME
Notary Public, State of New York
No. 41-4845521
Qualified In Queens County
Commission Expires Jan. 31, 20 10

SO ORDERED:


UNITED STATES DISTRICT JUDGE

2/7/06

CENTRAL Islip, NY