

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DOCKETED

AUG 26 2003

UNITED STATES SECURITIES AND	)	
EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	No. 02 C 7195
	)	Judge Milton I. Shadur
v.	)	
	)	Magistrate Judge Martin C. Ashman
TERRY L. KIRCH,	)	
	)	
Defendant.	)	

FINAL JUDGMENT

The Securities and Exchange Commission ("SEC") and Defendant, Terry L. Kirch ("Kirch), having filed Cross-Motions for Summary Judgment pursuant to FRCP 56 and this Court's Local Rule 56.1, this Court having considered the Cross-Motions for Summary Judgment and the respective supporting Memoranda, Responses, Replies, and Affidavits, Declarations and other matters of record, the Court having issued its Memorandum Opinion and Order dated June 20, 2003, ("Order"), which is incorporated herein by reference,

THE COURT FINDS:

- A. Kirch has given an undertaking that he will not violate the securities laws at any time in the future;
- B. Kirch has given an undertaking that he will have his attorneys review all future trades in stock of companies with which Kirch has any relationship to ascertain that such trades comply with the federal securities laws;
- C. Kirch has given an undertaking that he will not at any time in the future seek or obtain reinstatement in the "Software Executive Roundtable";

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D. Kirch has given an undertaking that he will not appeal from the Court's Order or Final Judgment in this cause; and

E. The SEC has advised the Court that it will comply with its July 11, 2003 submission to the Court that it will not object to or appeal the Court's Order of June 20, 2003 or this Final Judgment, subject to Defendant Kirch's compliance with the Court's Order, the Final Judgment and the undertakings set forth above.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. Kirch shall pay disgorgement of \$45,687.50, representing losses avoided as a result of the conduct alleged in the Complaint, and prejudgment interest thereon in the amount of \$12,813.42, for a total of \$58,500.92. Kirch shall satisfy this obligation by paying \$58,500.92 within ten (10) business days to the Clerk of this Court, together with a cover letter identifying Kirch as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Kirch shall simultaneously transmit photocopies of such payment and letter to the SEC's counsel in this action. By making this payment, Kirch relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Kirch. The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS"). These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the CRIS until further order of the Court. In accordance with the guidelines set by the Director of the Administrative Office of the United States Court, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not

exceed that authorized by the Judicial Conference of the United States. The SEC may propose a plan to distribute the Fund subject to the Court's approval.

2. Kirch shall pay a civil penalty in the amount of \$43,875.69 within ten (10) business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Terry L. Kirch as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment.

3. Upon payment by Kirch of the amounts set forth above, Kirch shall be entitled to satisfaction and release of the judgment hereby entered subject to Kirch's compliance with the terms of the Order, the Final Judgment and the undertakings set forth above.

4. Kirch's compliance with the undertakings set forth above, shall not be construed as an admission of liability by Kirch.

5. The SEC retains the right to seek, (by Motion to this Court and/or by Appeal), additional civil penalties and a civil injunction against Kirch if Kirch does not consent to or comply with the Court's Order, the Final Judgment and the undertakings set forth above and Kirch retains the right to appeal any order imposing additional civil penalties or civil injunction entered by this Court.

6. This Court shall retain jurisdiction of this matter for purposes of enforcing the terms of this Final Judgment.

7. Nothing in this Order shall be construed as a permanent injunction or as providing any injunctive relief.

DATED: Aug 22, 2003

ENTER:



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Milton I. Shadur,  
Senior United States District Judge