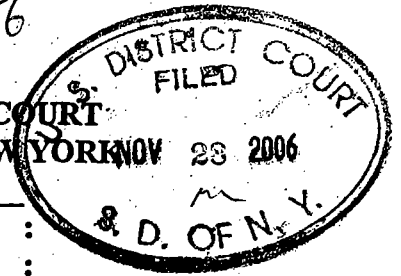


#56



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DAVID ABISH, CHRISTOPHER BETTS, MARK
CHARVAT, MICHAEL COHN, JAMES CORCORAN,
CHARLES DISTEFANO, PAUL FEENY, STEPHEN
GOURLAY, BRIAN KEARNEY,
MICHAEL MACCAULL, TIMOTHY MATTHEWS,
ROBERT PRATT, MARIO RODRIGUEZ,
WILLIAM SCUTERI, SCOTT SIEGEL,
DONALD TURNEY, ANDREW TURSI AND DAVID
WEEKS,

Defendants.

00 Civ. (0978) (BSJ)

#06, 2512

**FINAL JUDGMENT OF
PERMANENT INJUNCTION
AND OTHER RELIEF AS TO
DEFENDANT ANDREW TURSI**

Plaintiff Securities and Exchange Commission ("Commission"), having filed a Complaint ("Complaint") on February 9, 2000, charging Defendant Andrew Tursi ("Defendant" or "Tursi") with violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rules 10b-5, 17 C.F.R. § 240.10b-5 and 10b-6, 17 C.F.R. § 240.10b-6, thereunder; and the Commission, having submitted a motion to the Court requesting an order: (1) granting summary judgment with respect to the all the Commission's claims against Tursi; (2) requiring that Tursi disgorge the ill-gotten gains he obtained from his unlawful conduct plus prejudgment interest; (3) assessing civil penalties against the Defendant under Section 21(d)(3) of the Exchange Act; and (4) such other and further

file 2-1-2007

relief as the Court may deem just and proper, and the Court, having granted the Commission's Motion:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment of Permanent Injunction and Other Relief as to Andrew Tursi ("**Final Judgment**") by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, 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], by using 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) to employ any device, scheme, or artifice to defraud;
- (b) to make 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) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this **Final Judgment** by personal

service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] 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 use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of 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) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this **Final Judgment** by personal service or otherwise are permanently restrained and enjoined from violating Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and Rules 101 and 102 of Regulation M [17 C.F.R. § 242.101 and 17 C.F.R. §242.102], by, in connection with a distribution of securities, directly or indirectly, bidding for, purchasing, or attempting to induce any person to bid for or purchase, the security that is the subject of the distribution, or any reference security, during the applicable restricted period, which is defined as:

- (1) For any security with an average daily trading volume value of \$100,000 or more of an issuer whose common equity securities have a public float value of \$25

million or more, the period beginning on the later of one business day prior to the determination of the offering price or such time that a person becomes a distribution participant, and ending upon such person's completion of participation in the distribution;

- (2) For all other securities, the period beginning on the later of five business days prior to the determination of the offering price or such time that a person becomes a distribution participant, and ending upon such person's completion of participation in the distribution; and
- (3) In the case of a distribution involving a merger, acquisition, or exchange offer, the period beginning on the day proxy solicitation or offering materials are first disseminated to security holders, and ending upon the completion of the distribution,

while acting as an underwriter, prospective underwriter, broker, dealer, or other person who has agreed to participate or is participating in the distribution, or as an affiliated purchaser of such distribution participant, in the absence of an applicable exception or exemption under Sections 101(b) or 101(c) of Regulation M [17 C.F.R. § 242.101(b) or 101(c)].

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Tursi shall disgorge \$511,477.98, plus prejudgment interest thereon in the amount of \$471,537.84, for a total of \$983,015.82. Such payment shall be made to the Clerk of this Court, together with a cover letter identifying Tursi 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**. A copy of the cover letter and payment shall be simultaneously transmitted to Mark K. Schonfeld, Esq., Regional Director, U.S. Securities and Exchange Commission, Northeast Regional Office, 3 World Financial Center, Room 4300, New York, New York 10281, Attn: Elisabeth L. Goot, Esq.

The Clerk shall deposit the payment into an interest bearing account with the Court Registry Investment System ("CRIS"). The payment, together with any interest and income earned thereon, shall be held by the CRIS until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, 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.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Tursi shall pay a civil penalty in the amount of \$75,000 pursuant to Section 20(d)(2) of the Securities Act [15 U.S.C. §§ 77t(d)(2)] and Section 21 (d)(3)(B) of the Exchange Act [15 U.S.C. § 78u(d)(3)(B)], and Rule 17 CFR 201.1002 thereunder. Such payment shall be made to the United States Treasury ("Treasury") within thirty (30) business days from the date of entry of this **Final Judgment** by cashier's check, certified check, U.S. postal money order, or bank money order payable to the order of the "United States Securities and Exchange Commission." The payment shall be transmitted to the Comptroller, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549, under cover of letter identifying the name and civil action number of this litigation and the name of Defendant and identifying the payment as

disgorgement. A copy of the cover letter and payment shall be simultaneously transmitted to Mark K. Schonfeld, Esq., Regional Director, U.S. Securities and Exchange Commission, Northeast Regional Office, 3 World Financial Center, Room 4300, New York, New York 10281, Attn: Elisabeth L. Goot, Esq.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Federal Rule of Civil Procedure 65(d), this **Final Judgment** shall be binding on Tursi, his officers, agents, servants, employees, attorneys, and upon those persons in active concert or participation with ~~her~~^{him} who receive actual notice of this **Final Judgment** by personal service or otherwise.

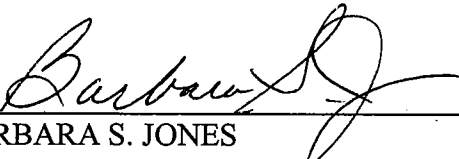
VII.

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

SO ORDERED:

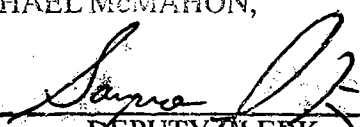


BARBARA S. JONES
UNITED STATES DISTRICT COURT JUDGE

Date: 11/20/06

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON 11/28/06

A CERTIFIED COPY
J. MICHAEL McMAHON, CLERK

BY 

DEPUTY CLERK