

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	99 C 5023	DATE	9/17/2002
CASE TITLE	S.E.C. vs. BARZILAY, et al		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) Filed motion of [use listing in "Motion" box above.]
- (2) Brief in support of motion due _____.
- (3) Answer brief to motion due _____. Reply to answer brief due _____.
- (4) Ruling/Hearing on _____ set for _____ at _____.
- (5) Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) Trial[set for/re-set for] on _____ at _____.
- (8) [Bench/Jury trial] [Hearing] held/continued for _____ at _____.
- (9) This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
 FRCP4(m) Local Rule 41.1 FRCP41(a)(1) FRCP41(a)(2).
- (10) [Other docket entry] Pursuant to Stipulation, ENTER ORDER OF DISMISSAL WITH PREJUDICE AS TO DEFENDANT ERNEST SALGAN.
Pursuant to Consent and Stipulation of defendant Garri Zhigun, ENTER FINAL JUDGMENT AGAINST DEFENDANT GARRI ZHIGUN.
- (11) [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials TBK	Date/time received in central Clerk's Office	number of notices	Document Number 128
			date docketed	
			docketing deputy initials CDY	
			date mailed notice	
			mailing deputy initials	

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES)
AND EXCHANGE COMMISSION,)
)
Plaintiff,)
v.)
)
KFIR BARZILAY, <i>et al.</i>)
)
Defendants.)
)
)
)
)

DOCKETED
SEP 23 2002

99 C 5023

Judge Ronald Guzman

CONSENT AND STIPULATION OF DEFENDANT GARRI ZHIGUN

- A. Defendant Garri Zhigun ("Defendant Zhigun"):
1. Acknowledges receipt of the Complaint for Permanent Injunction and Other Equitable Relief ("Complaint") of Plaintiff Securities and Exchange Commission ("Commission") in this action and waives service thereof, and admits the jurisdiction of this Court over him and over the subject matter hereof;
 2. Without admitting or denying the allegations of the Complaint, except as to jurisdiction, which is admitted, hereby voluntarily consents to the entry of the attached Final Judgment Against Defendant Garri Zhigun ("Judgment") without further notice;
 3. Enters into this Consent and Stipulation ("Consent") voluntarily and acknowledges that no threats, offers, promises or inducements of any

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kind whatsoever have been made by the Commission or anyone else in consideration of this Consent;

4. Waives any right that he may have to appeal from the Judgment;

5. Understands that the terms of the Judgment are enforceable through contempt proceedings and that in any such proceeding, he may not contest the validity of this Consent or the Judgment;

6. Agrees that he will not oppose enforcement of the Judgment on the ground that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objections based thereon;

7. Agrees that he does not and will not oppose the validity of the attached Judgment on any jurisdictional ground;

8. Waives service upon him of the Judgment, agrees that the Judgment may be presented by the Commission to the Court for signature and entry without further notice, and agrees that the entry of the Judgment by the Court and filing with the Clerk in the United States District Court for the Northern District of Illinois, will constitute notice to him of the terms and conditions of such Judgment;

9. 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, 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 Zhigun waives any claim

of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein.

10. Agrees that the Court shall retain jurisdiction of this matter for all purposes;

11. 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 allegations in the complaint or order for proceedings" (17 C.F.R. §202.5(e)). In compliance with this policy, Defendant Zhigun 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 Zhigun hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If Defendant Zhigun breaches this agreement, the Commission may petition the Court to vacate the Judgment and restore this case to its active docket. Nothing in this provision affects Defendant Zhigun's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation in which the Commission is not a party; and

12. 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 pursue reimbursement of attorneys' fees or other fees, expenses or costs expended by Defendant Zhigun to defend against

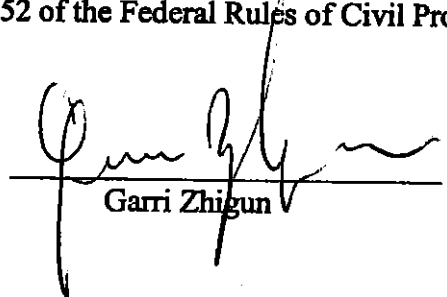
this action. For these purposes, Defendant Zhigun agrees that he is not the prevailing party in this action since the parties have reached a good faith settlement.

B. Defendant Zhigun acknowledges that the Court is not imposing a civil penalty or requiring payment of any of the \$26,792.22 in disgorgement and pre-judgment interest thereon based on Defendant's sworn representations in his statement of Financial Condition dated July 24, 2002, and other documents submitted to the Commission. Defendant Zhigun further consents that if at any time following the entry of the Judgment the Commission obtains information indicating that Defendant's representations to the Commission concerning his 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, petition the Court for an order requiring Defendant Zhigun to pay the unpaid portion of the disgorgement, 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 Zhigun 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 the Court to consider all available remedies, including, but not limited to, ordering Defendant Zhigun to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of the Judgment. The Commission may also request additional discovery. Defendant may not, by way of a defense to such petition: (1) challenge the validity of this Consent or the 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 and 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.

C. Plaintiff and Defendant Zhigun agree that this Consent shall be incorporated by reference into the Judgment with the same force and effect as if fully set forth therein.

D. Plaintiff and Defendant Zhigun waive entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.



Garri Zhigun

Dated: 8/6/02

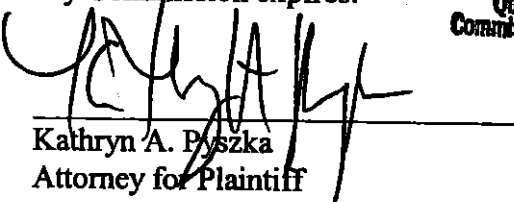
Sworn before me this 6th
day of August 2002



NOTARY PUBLIC

SHELDON H. GOPSTEIN
Notary Public, State of New York
No. 31-4786015
Qualified in New York County
Commission Expires October 31, 2005

My Commission expires:



Kathryn A. Pyszka
Attorney for Plaintiff

United States Securities and Exchange Commission
500 West Madison Street, Suite 1400
Chicago, IL 60661-2511
(312) 353-7390

Dated: 8/30/02

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

KFIR BARZILAY, *et al.*

Defendants.

DOCKETED
SEP 23 2002

99 C 5023

Judge Ronald A. Guzman

FINAL JUDGMENT AGAINST DEFENDANT GARRI ZHIGUN

Plaintiff Securities and Exchange Commission ("Commission") has filed a Complaint for Permanent Injunction and Other Equitable Relief ("Complaint") in this matter, and Defendant Garri Zhigun ("Defendant Zhigun") has, in his Consent and Stipulation attached hereto and incorporated herein, acknowledged receipt of the Complaint, admitted the jurisdiction of this Court over him and over the subject matter thereof, and without admitting or denying the allegations of the Complaint, except as to jurisdiction, and without trial, argument or adjudication of any facts or law herein, consented to the entry of this Final Judgment Against Defendant Garri Zhigun ("Judgment"). The Commission and Defendant Zhigun have waived the entry of findings of fact and conclusions of law, as provided by Rule 52 of the Federal Rules of Civil Procedure. The Court having jurisdiction over the parties and the subject matter hereof, and being fully advised in the premises:

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I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Zhigun pay disgorgement in the amount of \$26,792.22, representing \$18,349.75 as a result of the conduct alleged in the Complaint, together with pre-judgment interest in the amount of \$8,442.47. Based upon Defendant's sworn representations in his Statement of Financial Condition dated July 24, 2002 and other documents submitted to the Commission, payment of the disgorgement and pre-judgment interest thereon is waived, contingent upon the accuracy and completeness of his Statement of Financial Condition and other documents submitted to the Commission.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that based upon Defendant's sworn representations in his Statement of Financial Condition dated July 24, 2002, and other documents submitted to the Commission, the Court is not ordering him to pay a civil penalty. The determination not to impose a civil penalty and to waive payment of the disgorgement and pre-judgment interest thereon is contingent upon the accuracy and completeness of Defendant Zhigun's Statement of Financial Condition and other documents submitted to the Commission. If at any time following the entry of this Judgment, the Commission obtains information indicating that Defendant Zhigun's representations to the Commission concerning his 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, petition the Court for an order requiring Defendant

Zhigun to pay the unpaid portion of the disgorgement, 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 Zhigun 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 the Court to consider all available remedies, including, but not limited to, ordering Defendant Zhigun to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Judgment. The Commission may also request additional discovery. Defendant may not, by way of a defense to such petition: (1) challenge the validity of the Consent or this 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 and 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.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attached Consent and Stipulation of Defendant Garri Zhigun be, and is hereby, incorporated herein with the same force and effect as if fully set out herein.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court grants leave to Defendant Zhigun to withdraw his answer to the Complaint and all other pleadings and papers filed by him in this case, which are hereby withdrawn.


V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for all purposes, including, but not limited to entertaining any applications for additional relief, and implementing and enforcing this Order.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there being no just reason for delay, the Clerk of the Court is hereby directed to enter this Final Judgment Against Defendant Garri Zhigun.

IT IS SO ORDERED.


RONALD A. GUZMAN, JUDGE
United States District Court
Northern District of Illinois

Dated: 9/17/02

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

_____)
UNITED STATES SECURITIES)
AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.)
)
KFIR BARZILAY, <i>et al.</i>)
)
Defendants.)
_____)

No. 99 C 5023

Judge Ronald Guzman

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SEP 23 2002

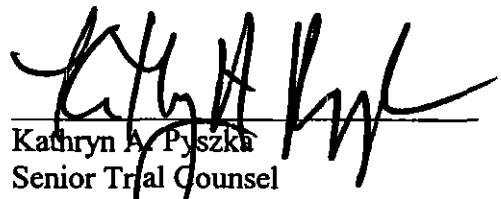
STIPULATION AND ORDER OF DISMISSAL AS TO DEFENDANT ERNEST SALGAN

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, IT IS HEREBY
STIPULATED AND AGREED by and between the parties, through their undersigned counsel,
that:

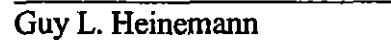
1. All claims against Defendant Ernest Salgan in the above-captioned matter shall be dismissed with prejudice, and accordingly may not be reasserted by the Commission against him in any action or administrative proceeding.

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2. Ernest Salgan waives any claim against the Securities and Exchange Commission for his costs, expenses or attorneys' fees incurred in defense of the claims alleged in the above-captioned matter.


Kathryn A. Pyszka
Senior Trial Counsel
Securities and Exchange Commission
175 West Jackson Blvd., Ste. 900
Chicago, Illinois 60604

Dated: September 13 2002


Guy L. Heinemann
Guy L. Heinemann, P.C.
400 Park Avenue
New York, New York 10022
Counsel for Ernest Salgan

Dated: September __, 2002

IT IS SO ORDERED.

Dated: 9/17/02


Honorable Ronald A. Guzman