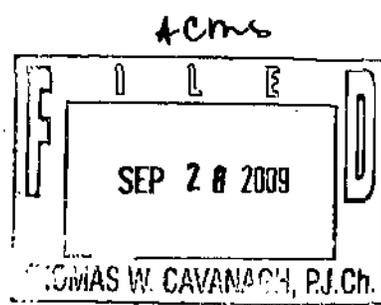


ANNE MILGRAM
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Division of Law
124 Halsey Street
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DISPOSITIVE ORDER

By: Christopher W. Gerold
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(973) 648-2893

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION – COUNTY OF
MONMOUTH
Docket No. C-316-06

ANNE MILGRAM,
Attorney General of New Jersey, on behalf of
MARC B. MINOR, Chief of the New Jersey
Bureau of Securities¹,

Plaintiff,

v.

DIGITAL GAS INC.,
a Michigan Corporation;
BRIAN SMITH, individually;
LYNN SMITH, individually; and
WILLIAM BROWN, individually,

Defendants.

Civil Action

**ORDER AND FINAL JUDGMENT
AS TO DEFENDANTS BRIAN SMITH,
LYNN SMITH, AND DIGITAL GAS INC.**

¹ This action was commenced on behalf of a former Chief of the New Jersey Bureau of Securities. In accordance with R. 4:34-4, the caption has been revised to reflect the current Chief of the New Jersey Bureau of Securities.

This matter was presented to the Court by Plaintiff, Anne Milgram, Attorney General of New Jersey, on behalf of Marc B. Minor, Chief of the New Jersey Bureau of Securities, (Deputy Attorneys General Christopher W. Gerold and Toral M. Joshi, appearing) for entry of: final judgment against Defendant Brian Smith (Timothy Neumann, Esq., appearing) and final judgment by default against Digital Gas Inc. for alleged violations of the New Jersey Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq. (the "Securities Law"), including violations of the following provisions: N.J.S.A. 49:3-52(a) (employing a device, scheme, or artifice to defraud); N.J.S.A. 49:3-52(b) (making false statements of or omitting material facts); N.J.S.A. 49:3-52(c) (engaging in an act, practice, or course of business that operates as a fraud or deceit); N.J.S.A. 49:3-60 (selling unregistered securities); N.J.S.A. 49:3-56(a) (acting as an agent without registration); and N.J.S.A. 49:3-56(h) (employing unregistered agents); and for final judgment against Lynn Smith (Robert Stevens, Esq. appearing). On January 29, 2009, a trial commenced against Defendants Brian Smith and Lynn Smith, and pursuant to R. 4:43-2, a simultaneous proof hearing against defaulting Defendant Digital Gas Inc., and continued on February 3, 2009, February 17-18, 2009, February 25, 2009, March 25-26, 2009, May 13, 2009, and June 2-3, 2009. Based on the Court's consideration of the documentary evidence and testimony, the Court finds good and sufficient cause to grant the relief sought by Plaintiff, makes the following findings of fact and conclusions of law and enters final judgment:

FINDINGS

The Court finds that:

1. During the period of 1999 to 2006, from 409 St. Clair Avenue, Spring Lake, New Jersey, Defendants Brian Smith and Digital Gas Inc. sold ~~XXXXXX~~ of -
 See Tsept. of 9/1/09

unregistered Digital Gas Inc. securities in the form of stock and subscription agreements to at least 200 investors;

2. At all relevant times, Defendant Brian Smith was not registered with the Bureau as an "agent," as defined by N.J.S.A. 49:3-49(b), to offer or sell the securities to, from, or within New Jersey;

3. The Digital Gas Inc. securities were neither registered with the Bureau pursuant to N.J.S.A. 49:3-61 (registration of securities by qualification), N.J.S.A. 49:3-61.1 (registration of securities by coordination), N.J.S.A. 49:3-61.2 (registration of securities by notification), exempt from registration pursuant to N.J.S.A. 49:3-50, nor federally covered securities pursuant to N.J.S.A. 49:3-60.1;

4. Defendant Smith violated N.J.S.A. 49:3-56(a) (acting as an agent without registration) and N.J.S.A. 49:3-60 (selling unregistered securities) by offering and selling the unregistered securities issued by Digital Gas Inc. to, from, or within New Jersey without being registered as an "agent" of Digital Gas Inc.;

5. Digital Gas Inc. violated N.J.S.A. 49:3-56(h) (employing unregistered agents) and N.J.S.A. 49:3-60 (selling unregistered securities) by selling unregistered securities through Defendant Brian Smith, who was not registered as its "agent" as required by N.J.S.A. 49:3-56(a);

6. In connection with the offer and sale of unregistered securities, Digital Gas Inc. and Defendant Brian Smith, individually and in concert with others, violated N.J.S.A. 49:3-52(a) and N.J.S.A. 49:3-52(c) by employing a scheme to defraud and engaging in a course of business that operated as a fraud and deceit upon investors by:

- a. causing Interwest Transfer Company to issue or transfer shares of Digital Gas Inc. through fraudulent corporate resolutions to individuals, including Defendant Lynn Smith and their two daughters;
- b. concealing Defendant Brian Smith's position as an officer and director of Digital Gas Inc. and failing to disclose it on Michigan Corporate filings;
- c. placing Mr. Lang's name on Michigan Corporate filings without his knowledge;
- d. using Mr. Lang's signature on Digital Gas Inc. corporate resolutions without his knowledge;
- e. using Mr. Brown's signature on Digital Gas Inc. opinion letters without his knowledge;
- f. causing press releases to be published that make misrepresentations as to the future which are beyond reasonable expectation or are unwarranted by existing circumstances;
- g. manipulating the price and demand of Digital Gas Inc. stock by issuing false press releases;
- h. failing to disclose to investors the manner in which investor proceeds would be used; and
- i. using investor funds for Defendants Brian Smith's and Lynn Smith's personal benefit.

7. In connection with the offer and sale of the unregistered securities, Digital Gas Inc. and Defendant Brian Smith, individually and in concert with others, violated N.J.S.A. 49:3-52(b) by making untrue statements of a material fact and failing to disclose material facts

necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading by:

- a. failing to disclose that Smith was not registered to sell Digital Gas Inc. stock, nor was he exempt;
- b. failing to disclose that Digital Gas Inc. was not registered with the Bureau, or exempt from registration;
- c. failing to disclose that the Digital Gas Inc. securities were not registered with the Bureau;
- d. failing to disclose to investors that Brian Smith was convicted of securities fraud and wire fraud;
- c. failing to disclose that Brian Smith was permanently enjoined from selling securities;
- f. failing to disclose that Digital Gas Inc. had no bank accounts in its name;
- g. failing to disclose that Digital Gas Inc. had no mechanism of accounting;
- h. failing to retract Digital Gas Inc.'s press releases when none of the purported business activities came to fruition; and
- i. failing to disclose that investor funds were being diverted for the personal benefit and use of Defendants Brian Smith and Lynn Smith.

8. Defendant Lynn Smith was unjustly enriched and benefited \$ _____ from the fraudulent conduct of Defendants Brian Smith and Digital Gas Inc.

by:

- a. Defendant Brian Smith causing funds of Digital Gas Inc. to be transferred to Defendant Lynn Smith's bank accounts;

- b. Defendant Lynn Smith receiving and selling Digital Gas Inc. shares that Defendant Brian Smith issued to Defendant Lynn Smith at no cost for a 100% profit; and
- c. Defendant Lynn Smith received the benefit of Digital Gas Inc. paying for expenses relating to the home, including improvements and the mortgage.

NOW, BASED ON THE ABOVE FINDINGS, IT IS on this 28th day of

Sept 2009 ORDERED that:

1. Digital Gas Inc. and Defendant Brian Smith, individually and by or through any person, corporation, partnership, company, limited liability company, association, business formation of any type, partner, officer, attorney, stockholder, employee, agent, successor, or any person or entity directly or indirectly under their control or working in concert with them or on their behalf, are HEREBY PERMANENTLY ENJOINED AND RESTRAINED from:

- a. applying for registration with the New Jersey Bureau of Securities to act as an agent, as defined by N.J.S.A. 49:3-49(b), broker-dealer, as defined by N.J.S.A. 49:3-49(c), or any other securities professional within the regulatory authority of the New Jersey Bureau of Securities;
- b. acting as an unregistered agent, as defined by N.J.S.A. 49:3-49(b), or unregistered broker-dealer, as defined by N.J.S.A. 49:3-49(c), in violation of the Securities Law;
- c. offering for sale or selling, distributing, providing advice regarding, advertising, soliciting, negotiating the sale of, advancing the sale of, and/or promoting securities in any manner to, from, or within New Jersey;

- d. employing unregistered agents in violation of N.J.S.A. 49:3-56(h);
- e. issuing securities or engaging in any securities related activity;
- f. directly or indirectly violating the Securities Law; and
- g. engaging in the conduct described in the Verified Complaint.

2. Defendants Digital Gas Inc. and Defendant Brian Smith are hereby denied: all exemptions contained in N.J.S.A. 49:3-50 (a)(9); N.J.S.A. 49:3-50 (a)(10); N.J.S.A. 49:3-50 (a)(11); N.J.S.A. 49:3-50(b); N.J.S.A. 49:3-56(b); N.J.S.A. 49:3-56(c); and N.J.S.A. 49:3-56(g).

RESTITUTION

3. Defendants Digital Gas Inc. and Brian Smith are HEREBY ORDERED, jointly and severally, to pay \$ 4,693,280 as restitution for investors pursuant to N.J.S.A. 49:3-69(a)(2).

UNJUST ENRICHMENT

4. Defendant Lynn Smith was unjustly enriched by Defendants Brian Smith and Digital Gas Inc.'s fraudulent conduct and is HEREBY ORDERED to pay \$ 809,237 as disgorgement, pursuant to N.J.S.A. 49:3-69(a)(2).

CIVIL MONETARY PENALTIES

5. For each violation of the Securities Law, Defendants Digital Gas Inc. and Brian Smith could be assessed a penalty of \$10,000 for the first violation and \$20,000 for each subsequent violation pursuant to N.J.S.A. 49:3-70.1. Based on the findings above and facts established at the trial and proof hearing, the Court HEREBY ASSESSES the following civil monetary penalties:

- a. \$ 500,000 against Defendant Brian Smith based on his violations of N.J.S.A. 49:3-56(a) (acting as an agent without registration), N.J.S.A. 49:3-60 (selling unregistered securities), and N.J.S.A. 49:3-52 in connection with 244 securities transactions, which equals 732 violations;
- b. \$ 500,000 against Defendant Digital Gas Inc. based on its violations of N.J.S.A. 49:3-56(h) (employing unregistered agents), N.J.S.A. 49:3-60 (selling unregistered securities), and N.J.S.A. 49:3-52 in connection with 244 securities transactions, which equals 732 violations;

FINAL JUDGMENT

6. Final Judgment is hereby entered against Defendant Brian Smith in the amount of \$ 5,193,280, representing \$ 4,693,280 in restitution for investors, pursuant to N.J.S.A. 49:3-69(a)(2), and a \$ 500,000 civil monetary penalty, pursuant to N.J.S.A. 49:3-70.1.

7. Final Judgment by Default is hereby entered against Defendant Digital Gas Inc. in the amount of \$ 5,193,280, representing \$ 4,693,280 in restitution for investors, pursuant to N.J.S.A. 49:3-69(a)(2), and a \$ 500,000 civil monetary penalty, pursuant to N.J.S.A. 49:3-70.

8. Final Judgment is hereby entered against Defendant Lynn Smith in the amount of \$ 809,237 for disgorgement pursuant to N.J.S.A. 49:3-69(a)(2).

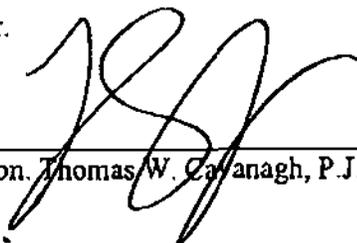
GENERAL PROVISIONS

9. This final judgment is immediately enforceable.

10. Payments made to satisfy this final judgment shall be made by certified check or bank check payable to the "State of New Jersey, Bureau of Securities" and delivered to Bureau Chief, 153 Halsey Street, 6th Floor, Newark, New Jersey 07101.

11. This Court shall retain jurisdiction to enforce this Order.

12. The Final judgment shall be served on all parties within 7 days of Plaintiff's counsel's receipt of the signed Order.


Hon. Thomas W. Caananagh, P.J.Ch.

See PRIOR DISCOVERY orders:
3/2/07, 3/20/07, 4/3/07, 6/8/07, 9/20/07, 11/11/07, 3/28/08, 4/16/08
7/3/08, 8/27/08, 10/08/08, 1/9/09. PARTIAL HISTORY on Record, 5/7/08
PLAINTIFF'S PRETRIAL SUBMISSION - ADMISSIONS of DEFENDANTS - 120 PAGES
TRIAL DATES - 1/29/09, 2/3/09, 2/17/09, 2/18/09, 2/25/09
3/25/09, 3/26/09, 5/13/09, 6/2/09, 6/13/09.

TRIAL EXHIBITS
ALSO ADMISSIONS of AS Brian and Lynn Smith.
P1-P115 - D11D2+D3 - J-1
D7-D20

INITIAL PORTION of Decision on Trial Schedule later - June 4 ON RECORD
Tel. Conf. on Record - 7/8/09 - PAST TRIAL SUBMISSIONS
ORAL Arguments / Procedural History - 8/26/09

ADDITIONAL Findings of Fact and Conclusions of law - on record - 8/27/09 -
AS to Counts 4, 5, 6 - 9/1/09 -
AS to Counts 1, 2, 3 - 9/23/09

RIDER: A copy of a tape and/or written transcript can be obtained by contacting the Central Transcript Unit at 732-677-4356.

AS to Penalties, etc. - 9/23/09
AS to LYNN SMITH - 9/23/09 and 9/28/09

Motion to Re-open the record filed by Dept. Brian Smith - phase - 10 denied.

SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION

CHAMBERS OF
THOMAS W. CAVANAGH, JR.,
PRESIDING JUDGE



MONMOUTH COUNTY COURT HOUSE
1 EAST MAIN STREET
HALL OF RECORDS
FREEHOLD, NEW JERSEY 07728-1206
TELEPHONE (732) 431-7135

FACSIMILE COVER SHEET

Please deliver the following pages to:

Name: C. Gradd, DAG 973-648-3956

Location: J. Neumann 732-223-2416

Fax Number: R. Stevens 609-430-2822

Re: Milgram v Digital Gas
C-316-06

From: Valerie Shannon,
Secretary to the Honorable Thomas W. Cavanagh, Jr., P.J.Ch.

Date: 9-29-09

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