



appearing), pursuant to N.J.S.A. 49:3-69(a), R. 4:52-1 and R. 4:67 for violations of the New Jersey Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq., ("Securities Law"). Defendant Michael R. Scian, Jr. ("Scian"), represented by Justin P. Brake, Esq., and Plaintiff have agreed to resolve any and all issues in controversy in this action, on the terms set forth in this Final Judgment and Consent Order, which terms have, with the consent of Marc B. Minor, Bureau Chief, and Scian, been reviewed and approved by the Honorable Michael J. Hogan, P.J. Ch., as confirmed by the entering of this Final Judgment and Consent Order, as the voluntary acts of the parties.

**BUREAU CHIEF'S FACTUAL AND LEGAL FINDINGS**

Marc B. Minor, the Bureau Chief, makes the following findings of fact and conclusions of law, which Scian neither admits nor denies except to admit to the factual findings and conclusions of law to the extent they are consistent with his March 9, 2009 admissions:

1. On March 9, 2009, before the Honorable James J. Morley, Jr., in the Superior Court of New Jersey, Law Division, Criminal Part, Burlington County, Scian pled guilty to an Accusation charging one count of third degree theft by deception and one count of passing a bad check. Scian was

admitted into the Pretrial Intervention Program ("PTI"), conditioned upon his making restitution to his investors. Scian has not been sentenced on or convicted of the charges. As part of his guilty plea to the Accusation of criminal charges, Scian admitted that:

- a. From June 13, 2005 through February 2, 2006, Scian was in Evesham Township, Burlington County.
  - b. During that period of time, Scian obtained money in excess of \$500.00 from investors Patricia Sage, Timothy Sage, David Williams, Holly Williams and Stephen Baselice.
  - c. Scian obtained money from these individuals by representing to them that he would make investments on their behalf.
  - d. Scian deceived the investors by using a portion of the funds for his own purpose.
  - e. Scian also issued a check for \$63,000.00 to investors, knowing that he did not have sufficient funds in his bank account.
2. During the relevant period, Scian resided in Marlton a/k/a Evesham Township, New Jersey.
  3. From approximately June 13, 2005 through February 2, 2006,

Scian raised at least \$220,000.00 from five (5) investors located in New Jersey, through the offer and sale of securities in the form of promissory notes from and within New Jersey. Scian falsely represented to the investors that he was a successful day trader who could guarantee returns on their principal investment and return of their principal at the end of twelve (12) months or any time thereafter that an investor wished. To date, Scian has returned \$135,476.07 of the \$220,000.00 received from investors, and continues to make payments through the PTI program to satisfy the outstanding restitution amounts owed to the investors. Scian currently owes \$84,523.93 in restitution to the investors.

4. Scian misrepresented how he would use investor funds and, instead, used investor funds to:
  - a. make payments to existing investors;
  - b. make payments to his other creditors; and
  - c. pay his personal expenses.
5. Scian made untrue statements to investors in connection with the purchase and sale of the securities, and omitted material information, including:
  - a. their money was safe as he did not carry trades

overnight;

- b. in the event of Scian's death, his estate would repay the investors' monies; and
- c. he was a successful day trader earning over 100% return on his day trading.

6. Scian employed a device, scheme or artifice to defraud investors including, but not limited to:

- a. misrepresenting the nature and success of his day trading activity;
- b. guaranteeing the performance and risk of the purported investments;
- c. failing to return investor funds in full and on time; and
- d. misappropriating investor funds for personal benefit and use, all in violation of N.J.S.A. 49:3-52(a).

7. Scian made materially false and misleading statements and/or omitted facts to investors in connection with the offer and sale of the securities. Among the false and misleading statements were:

- a. Scian was a successful day trader who made over \$250,000 one year from day trading;
- b. Scian was earning over 100% return from his day

trading activities;

- c. the investors' funds would be used to trade daily in the securities markets;
- d. the investors' funds were safe and Scian guaranteed their principal was not at risk because Scian would get out of the market each day, and therefore investors' funds would be safe at the end of each day; and
- e. in the event of Scian's death, the investors' principals would be repaid by his estate from the payout of a \$500,000.00 life insurance policy with Lincoln Benefit Life Insurance Company.

8. Among the omitted facts to investors were:

- a. that Scian's day trading resulted in losses and not profits;
- b. that their investment monies would be used for payment of Scian's personal expenses;
- c. that new investor monies would be used to pay existing investors and to pay his other creditors;
- d. that Scian's estate was not a named beneficiary of the Lincoln Benefit Life Insurance policy, which would have enabled the estate to repay investors' monies in

the event of Scian's death;

- e. that the securities offered for sale by Scian were not registered with the Bureau; and
  - f. that Scian was not registered with the Bureau to sell securities.
9. Each omission or materially false or misleading statement violated N.J.S.A. 49:3-52(b).
10. Defendant Scian's course of business, including, among other things, misrepresenting the nature and solvency of his trading activities, and failing to return investor funds while misappropriating investor funds for his personal benefit and use, operated as a fraud and/or deceit upon the investors and others, in violation of N.J.S.A. 49:3-52(c).
11. The securities offered for sale by Scian were not registered with the Bureau, exempt from registration or federally covered securities, and were sold by Scian in violation of N.J.S.A. 49:3-60.
12. Scian was not registered to sell securities or registered with the Bureau in any capacity.

IT IS on this 15<sup>th</sup> day of March, 2010,

ORDERED AND AGREED:

PERMANENT INJUNCTIVE RELIEF

1. Defendant Scian, individually and by or through any corporation, business entity, agent, employee, broker, partner, officer, director, attorney, stockholder and/or any other person who is directly or indirectly under his control or direction, is permanently restrained and enjoined from directly or indirectly violating the Securities Law and, specifically, from:
  - a. engaging in the securities business in New Jersey in any capacity, including, but not limited to, acting as a broker-dealer, agent, investment adviser, investment adviser representative or otherwise;
  - b. issuing, offering the sale or selling, offering to purchase or purchasing, distributing, promoting, advertising, soliciting, negotiating, advancing the sale of and/or promoting securities, in any manner to, from, or within the State of New Jersey; and
  - c. engaging in the conduct described in Plaintiff's Amended Verified Complaint filed in this matter.

2. Defendant Scian agrees not to apply with the Bureau as a broker-dealer, an agent of a broker-dealer, investment adviser, or investment adviser representative as defined by the Securities Law.
3. Defendant Scian is denied all exemptions contained in N.J.S.A. 49:3-50 subsection (a) paragraphs 9, 10 and 11 and subsection b.
4. Defendant Scian is denied all exemptions to the registration requirements provided by N.J.S.A. 49:3-56(b) and N.J.S.A. 49:3-56(c).

#### RESTITUTION

5. Defendant Scian shall pay restitution pursuant to N.J.S.A. 49:3-69(a)(2) in the amount of \$84,523.93.
6. Specifically, restitution is owed in the amounts of \$37,868.07 to Timothy and Patricia Sage, \$20,056.27 to Stephen Baselice and \$26,599.59 to David and Holly Williams.

#### CIVIL MONETARY PENALTY

7. Defendant Scian is assessed a civil monetary penalty, pursuant to N.J.S.A. 49:3-70.1, in the amount of \$50,000.00 for violations of N.J.S.A. 49:3-52(a), N.J.S.A. 49:3-52(b), N.J.S.A. 49:3-52(c) and N.J.S.A. 49:3-60.

FINAL JUDGMENT

8. As such, final judgment in the amount of \$134,523.93 is entered against defendant Scian, representing \$84,523.93 in restitution pursuant to N.J.S.A. 49:3-69(a)(2) and \$50,000.00 as a civil monetary penalty pursuant to N.J.S.A. 49:3-70.1.

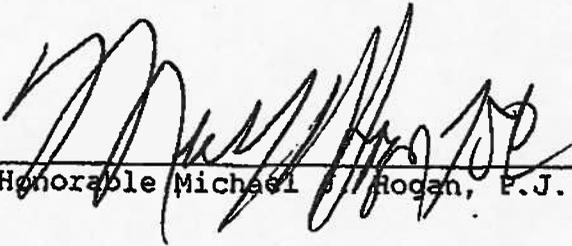
GENERAL PROVISIONS

9. Payment of the restitution and the civil monetary penalty is immediately due and payable and shall be made by attorney trust fund account check, certified check or other guaranteed funds, made payable to the "State of New Jersey, Bureau of Securities" and delivered to the attention of the Bureau Chief, at the following address: Bureau of Securities, 153 Halsey Street, 6<sup>th</sup> Floor, Newark, New Jersey 07102.
10. The Final Judgment and Consent Order is immediately enforceable as to defendant Scian.
11. The parties represent that an authorized representative of each has signed this Final Judgment and Consent Order with full knowledge, understanding and acceptance of its terms and that this person has done so with authority to legally bind the respective party.

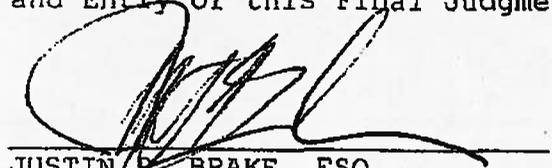
12. To the extent that restitution is paid, in whole or in part to the investors through other channels, defendant Scian shall be entitled to a credit towards his restitution obligation set forth in this Final Judgment and Consent Order, provided proper proof of payment is provided to Plaintiff.
13. Nothing in this Final Judgment and Consent Order shall in any manner be construed to limit or affect the rights of any persons who may have a claim for restitution against defendant Scian. The amount of any such claim shall be reduced by any amounts paid to such persons from other sources, including any restitution paid pursuant to this Final Judgment and Consent Order.
14. As used in this Final Judgment and Consent Order, the plural shall include the singular and the singular shall include the plural. In addition, "or" and "and" shall be interpreted conjunctively.
15. Nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.
16. Unless otherwise prohibited by law, any signatures by the parties required for entry of this Final Judgment and

Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Final Judgment and Consent Order.

*Consent attached*

  
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Honorable Michael S. Rogan, F.J. Ch.

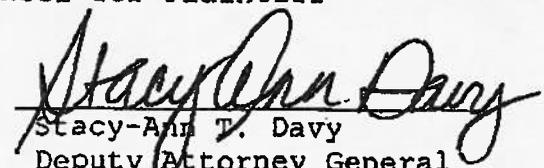
Consent to the Form, Content  
and Entry of this Final Judgment and Consent Order:



JUSTIN D. BRAKE, ESQ.  
Counsel for Defendant  
Michael R. Scian, Jr.  
530 Lippincott Drive, Building E  
Marlton, NJ 08053  
(856) 596-9770

Dated: 3/8/2010

PAULA T. DOW  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Counsel for Plaintiff

By:   
Stacy-Ann T. Davy  
Deputy Attorney General

Dated: 3/12/10