

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MITCHELL C. KAHN and  
PAUL VAN EYL,

Defendants.

No. 99 C 6343

Judge John A. Nordberg

**CONSENT OF DEFENDANT MITCHELL C. KAHN**

1. Defendant Mitchell C. Kahn ("Defendant" or "Kahn") acknowledges having been served with the Complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.
2. The Court having granted summary judgment in favor of the Commission on its claims that Kahn violated Section 10(b) of the Securities and Exchange Act of 1934 ("Exchange Act") and Rules 10b-5 and 13b2-1 thereunder and that, as a controlling person of First Merchants Acceptance Corp., Kahn was liable for First Merchants Acceptance Corp.'s violations of Sections 13(a) and 13(b)(2) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-11 thereunder on May 30, 2002; the Court having entered a Judgment of Permanent Injunction and Other Relief against Defendant on December 8, 2003; Kahn hereby consents to the entry of the Final Judgment As To Defendant Mitchell C. Kahn in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

(a) permanently restrains and enjoins Kahn from violations of Sections 10(b) [15 U.S.C. § 78j(b)], 13(a) [15 U.S.C. § 78m(a)] and 13(b)(2) [15 U.S.C. § 78m(b)(2)] of the Securities and Exchange Act of 1934 (“Exchange Act”) and Rules 10b-5 [17 C.F.R. §240.10b-5], 12b-20 [17 C.F.R. § 240.12b-20], 13a-1 [17 C.F.R. § 240.13a-1], 13a-11 [17 C.F.R. § 240.13a-11], and 13b2-1 [17 C.F.R. § 13b2-1] thereunder; and

(b) prohibits Kahn from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

3. Kahn waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

4. Kahn waives the right to appeal from the entry of the Final Judgment.

5. Kahn enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Van Eyl to enter into this Consent.

6. Kahn agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

7. Kahn will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

8. Kahn waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice

to Kahn of its terms and conditions. Kahn further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Kahn has received and read a copy of the Final Judgment.

9. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Kahn in this civil proceeding. Kahn acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Kahn waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Kahn further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Kahn understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

10. Kahn 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

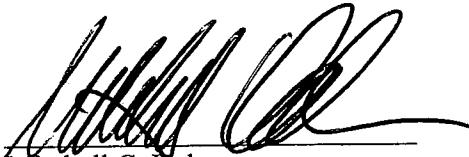
sanction while denying the allegation in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Kahn agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Kahn hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Kahn breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Kahn's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

11. Kahn 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 seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Kahn to defend against this action. For these purposes, Kahn agrees that Kahn is not the prevailing party in this action since the parties have reached a good faith settlement.

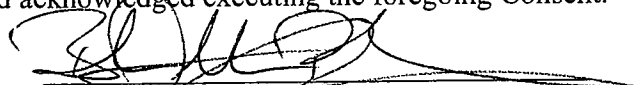
12. Kahn agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

13. Kahn agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 10/7/08

By:   
Mitchell C. Kahn

On October 7, 2008, Mitchell C. Kahn, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

  
Notary Public  
Commission expires: 12/18/10

Approved as to form:

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