

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**FEDERAL TRADE COMMISSION,**

**Plaintiff,**

vs.

**MARK NUTRITIONALS, INC.,**

**HARRY SISKIND, and**

**EDWARD G. D’ALESSANDRO, JR.,**

**Defendants.**

**CIVIL NO. SA02CA1151 XR**

**STIPULATED ORDER  
TO REINSTATE SUSPENDED JUDGMENT FOR  
\$155 MILLION AGAINST DEFENDANT HARRY SISKIND**

On December 12, 2003, this Court entered the *Stipulated Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief Between Harry Siskind and Federal Trade Commission* (“2003 Final Order”). On May 21, 2004, Plaintiff, Federal Trade Commission (“plaintiff” or “Commission”), filed *Plaintiff’s Motion to Enforce the Stipulated Final Order Against Siskind and Reinstate the Suspended Judgment and Memorandum and Attached Appendix in Support Thereof* (“Motion to Enforce”). The Motion to Enforce requested that the Court enforce the specific terms of Paragraph VII(B) of the 2003 Final Order between the Commission and defendant Harry Siskind (“defendant Siskind”). Specifically, plaintiff requested the Court to reinstate the \$155,000,000.00 suspended judgment against defendant Siskind in favor of the Commission.

The parties now request entry of this *Stipulated Order to Reinstate Suspended Judgment for \$155 Million Against Defendant Harry Siskind* (“Order to Reinstate Judgment”). The Court being advised in the premises, finds:

## **FINDINGS**

1. This Court has continuing jurisdiction over the subject matter of this case pursuant to Paragraph XIV of the 2003 Final Order. Venue in the Western District of Texas is proper.

2. Defendant Siskind provided to the Commission a written financial statement dated January 14, 2003. Defendant Siskind supplemented this financial statement through documents submitted in letters dated January 6, 2003, March 28, 2003, May 29, 2003, and through a sworn oral statement made on June 23, 2003.

3. The plaintiff's agreement to and the Court's approval of the stipulated 2003 Final Order were premised upon the truthfulness, accuracy, and completeness of defendant Siskind's written financial statement and supplements.

4. Paragraph VII(B) of the 2003 Final Order provides that if the Court finds that defendant Siskind failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in his financial statement and/or supplements, the Court shall reinstate the suspended judgment against defendant Siskind, in favor of the Commission, in the amount of \$155,000,000.00.

5. Defendant Siskind's written financial statement, dated January 14, 2003, and supplemented thereafter through documents submitted in letters dated January 6, 2003, March 28, 2003, May 29, 2003, and through a sworn oral statement made on June 23, 2003, failed to disclose material assets, materially misrepresented the value of assets, and contained other material misrepresentations or omissions.

6. The suspended judgment against defendant Siskind, in favor of the Commission, should be reinstated in the full amount of \$155,000,000.00.

7. Defendant Siskind waives all rights to seek judicial review or otherwise challenge or contest the Court's findings or the validity of this Order to Reinstate Judgment. Defendant Siskind also waives any claim that he may have held under the Equal Access to Justice Act, 28

U.S.C. § 2412, concerning the prosecution of this action to the date of this Order to Reinstate Judgment.

8. Each settling party shall bear their own costs and attorneys' fees.
9. Entry of this Order to Reinstate Judgment is in the public interest.

## **ORDER**

### **I. REINSTATEMENT OF MONETARY JUDGMENT**

**IT IS THEREFORE ORDERED** that the Monetary Judgment entered in favor of the Commission and against defendant Siskind in the amount of ONE HUNDRED AND FIFTY-FIVE MILLION DOLLARS (\$155,000,000.00) and suspended in the 2003 Final Order is hereby reinstated. Judgment is, therefore, entered in favor of the Commission and against defendant Siskind in the amount of ONE HUNDRED AND FIFTY-FIVE MILLION DOLLARS (\$155,000,000.00) ("Reinstated Judgment"), which shall be immediately due and payable. Provided, however, that Siskind shall be entitled to offset this amount by any sums previously paid to the Commission under terms of the 2003 Final Order and to the States of Texas, Illinois, and Pennsylvania under the terms of their orders obtained against Siskind for his role in operating Mark Nutritionals, Inc.

### **II. THE 2003 FINAL ORDER**

**IT IS FURTHER ORDERED** that in all other respects the 2003 Final Order shall remain in full force and effect unless otherwise ordered by the Court.

### **III. COLLECTING THE REINSTATED JUDGMENT**

**IT IS FURTHER ORDERED** that:

- A. Defendant Siskind shall cooperate fully with the Commission and its agents in all attempts to collect the amounts due pursuant this Order to Reinstate Judgment, including

cooperating with attempts to locate, liquidate, and/or transfer assets.

B. If the Defendant fails to fully satisfy the Reinstated Judgment within thirty (30) days of the date of entry of this Order to Reinstate Judgment, Defendant shall, within ten (10) days of the receipt of a written notice from a representative of the Commission, provide the Commission or its agents with his federal and state tax returns, for the preceding three (3) years and with fully updated financial disclosures. Thereafter, until such time as the Reinstated Judgment is fully satisfied and for as long as the Reinstated Judgment remains in effect, Defendant shall, within ten (10) days of the receipt of a written notice from a representative of the Commission, provide to the Commission or its agents such tax returns and updated financial disclosures as may be requested. Defendant further authorizes the Commission or its agents to verify all information provided on these tax returns and disclosure forms with all appropriate third parties, including, but not limited to, financial institutions.

C. Defendant agrees that, if he fails to fully satisfy the Reinstated Judgment, the facts as alleged in the Complaint filed in this matter and the Court's Findings set out in this Order to Reinstate Judgment shall be taken as true in any subsequent litigation filed by the Commission or its agent to enforce its rights pursuant to this Order to Reinstate Judgment, including, but not limited to, a non-dischargeability complaint in any subsequent bankruptcy proceeding.

#### **IV. AUTHORIZATION TO OBTAIN DISCOVERY**

**IT IS FURTHER ORDERED** that the Commission or its agents are authorized to obtain discovery, relating in any way to this Order to Reinstate Judgment, from any person, without further leave of court, using the procedures prescribed by Fed.R.Civ.P. 30, 31, 33, 34, 36, and 45.

#### **V. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that defendant Siskind, within five (5) business days of receipt of this Order to Reinstate Judgment as entered by the Court, must submit to the

Commission a truthful sworn statement acknowledging receipt of this Order to Reinstate Judgment.

**VI. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order to Reinstate Judgment and the 2003 Final Order.

**JUDGMENT IS THEREFORE ENTERED** in favor of plaintiff and against defendant pursuant to all the terms and conditions above.

**SO ORDERED:**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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**XAVIER RODRIGUEZ**  
**United States District Judge**

**SO STIPULATED:**

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**Harry Siskind**, Individually

**APPROVED AS TO FORM:**

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**ATTORNEY FOR DEFENDANT**  
**HARRY SISKIND**

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**ATTORNEY FOR PLAINTIFF**  
**FEDERAL TRADE COMMISSION**

STATE OF TEXAS

COUNTY OF BEXAR

Before me, \_\_\_\_\_, a notary public, on this day personally appeared \_\_\_\_\_ who is personally known to me or has presented (state identification) \_\_\_\_\_ as identification, to be the person who executed before me the foregoing *Stipulated Order to Reinstate Suspended Judgment for \$155 Million Against Defendant Harry Siskind* and who has acknowledged before me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Print Name

NOTARY PUBLIC,  
STATE OF \_\_\_\_\_

Commission Number  
Affix Seal