

JH

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff,

v.

STEFAN H. BENGER, ET AL.,

Defendants.

Case No. 09-CV-676

Magistrate Judge Cole

**CORRECTED FINAL JUDGMENT AS TO DEFENDANTS  
STEFAN H. BENGER AND SHB CAPITAL, INC.**

The Securities and Exchange Commission having filed a Second Amended Complaint ("Complaint") and Defendants Stefan H. Benger (now known as "Steve Benger") and SHB Capital, Inc. (collectively "Defendants") having entered general appearances; consented to the Court's jurisdiction over them and the subject matter of this action; consented to entry of this Corrected Final Judgment ("Final Judgment") without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants and their respective agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants and their respective agents, servants, employees, attorneys, and all

persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants and their respective agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)], by, while engaging in business as a broker or dealer, making use of the mails or any instrumentality of interstate commerce to effect any transactions

in, or to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless registered as a broker dealer in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)] or associated with a broker or dealer that is registered with the Commission in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)].

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that ~~Defendant is~~ Defendants are permanently barred from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R. 240.3a51-1].

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are jointly and severally liable for disgorgement of \$422,004.10, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$26,869.79, and a civil penalty in the amount of \$250,000.00 pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act [15 U.S.C. §§ 77t(d) and 78u(d)(3)]. Defendants shall satisfy this obligation paying \$698,873.89 to the Clerk of the Court

within 28 days after entry of this Final Judgment. The transfer of \$698,873.89 from the Frozen Bank Accounts (*see* Section VI, below) to the Clerk of the Court pursuant to the terms of this Final Judgment will satisfy this obligation. By making and allowing this payment, Defendants relinquish all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendants.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 28 days following entry of this Final Judgment. Defendants shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

The Commission may propose a plan to distribute the funds paid pursuant to this Final Judgment subject to the Court's approval. Such a plan may provide that some or all of the funds shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of such funds. If the Commission staff determines that the funds will not be distributed, the Commission may move to have the funds paid pursuant to this Final Judgment to the United States Treasury.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Final Judgment shall be treated as penalties paid to the government for all purposes, including all tax

purposes. To preserve the deterrent effect of the civil penalty, Defendants shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendants' payment of disgorgement in this action, argue that they are entitled to, nor shall they further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendants' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendants shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendants, or either of them, by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all money, securities or other assets held in the following accounts (the "Frozen Bank Accounts"), which have been frozen pursuant to previous Orders of this Court:

<b>Financial Institution</b>	<b>Account No./Description</b>
BMO Harris Bank, N.A.	XXXXXX6008
BMO Harris Bank, N.A.	All other money, securities, and other assets held in a separate account by BMO Harris Bank pursuant to the asset freeze order(s) previously entered by the Court in this case.
Fidelity Investments	XXX-XX9063
Fidelity Investments	XXX-XX0261
Fidelity Investments	XXX-XX1586
Fidelity Investments	XXX-XX8571
Citibank	XXXXXX8237
Bank of America, N.A.	XXXX XXXX 2527

shall be transferred to the Clerk of the Court in accordance with the terms of the "Agreed Order Directing the Transfer of Certain Assets," which has been entered contemporaneously with this Final Judgment. (The proceeds in the Frozen Bank Accounts are referred to herein and in the "Agreed Order Directing the Transfer of Certain Assets" as the "Frozen Assets".)

Upon receipt by the Clerk of the Court, \$698,873.89 of the Frozen Assets shall be used to satisfy Defendants' monetary obligations set forth in Section V above. The remainder of the Frozen Assets ("Surplus Assets") shall be used to pay

the United States Treasury in partial satisfaction of tax liabilities, liens or other debts owed by Defendants, or either of them, to the United States ("Tax Liabilities") as of December 31, 2012. However, if the Surplus Assets exceed Defendants' Tax Liabilities, any and all such excess funds shall be retained by and/or repaid to the Clerk of the Court for the benefit of the Commission and treated as additional disgorgement in accordance with Section V above. Except as expressly provided in this Section, Defendants agree that under no circumstances shall they be permitted to receive, accept or use for their collective or individual benefit, whether directly or indirectly, any of the Frozen Assets. Defendants relinquish all legal and equitable right, title, and interest in the Frozen Assets.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendants shall comply with all of the undertakings and agreements set forth therein.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, except as otherwise ordered and directed in this Final Judgment (including, without limitation, Sections V and VI above) and in the accompanying Agreed Order Directing the Transfer of Certain Assets, Defendants Bengier and SHB Capital, Inc. are no longer bound by the asset freeze orders and orders of temporary and preliminary injunctive relief previously entered by the Court; however, all such

orders, as amended from time to time, shall continue in full force and effect as to the remaining defendants in this case.

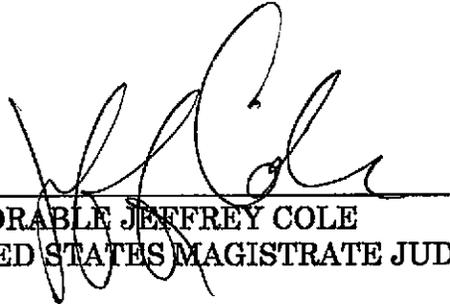
IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Final Judgment.

X.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: Jan 15, 2013

  
\_\_\_\_\_  
HONORABLE JEFFREY COLE  
UNITED STATES MAGISTRATE JUDGE