

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO.: 6:11-cv-1440-Orl-18GJK

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
JAMES DAVIS RISHER and)
DANIEL JOSEPH SEBASTIAN,)
)
Defendants.)
_____)

**ORDER GRANTING PLAINTIFF'S SECOND MOTION FOR DEFAULT JUDGMENT
AGAINST DEFENDANT JAMES DAVIS RISHER AND
ENTERING JUDGMENT OF PERMANENT INJUNCTION**

THIS MATTER is before the Court on Plaintiff Securities and Exchange Commission's Second Motion for Entry of a Default Judgment of Permanent Injunction against Defendant James Davis Risher, having considered the motion and the entire record, the Court enters the following order granting the Plaintiff's motion, and imposing a Default Judgment of Permanent Injunction against Risher:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has personal jurisdiction over Risher and the subject matter of this action. Venue is proper in the Middle District of Florida.
2. Risher was properly served with a summons and a copy of the Complaint pursuant to Rule 4 of the Federal Rules of Civil Procedure. Thus, he has proper notice of this action.

3. As of the date of this Order, Risher has failed to answer or otherwise file a responsive pleading to the Complaint as required by the Federal Rules of Civil Procedure.

4. The Clerk of the Court entered a default against Risher on December 8, 2011. By virtue of the default and the failure to respond to the Complaint, Risher is deemed to have admitted the allegations of the Complaint, and the Commission has established liability against Risher. *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987). Thus, the Court finds Risher committed the violations alleged in the Complaint. Accordingly, it is:

ORDERED AND ADJUDGED that Plaintiff's Motion for Entry of a Default Judgment of Permanent Injunction and Against Defendant James Davis Risher is **GRANTED**. Default Judgment is entered against Risher as follows:

I.

SECTIONS 5(A) AND 5(C) OF THE SECURITIES ACT OF 1933

IT IS ORDERED AND ADJUDGED that Risher and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77e(a) and 77e(c), by, directly or indirectly, in the absence of any applicable exemption:

(a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;

(b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation,

any such security for the purpose of sale or for delivery after sale; or

(c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

II.

SECTION 17(a) OF THE SECURITIES ACT OF 1933

IT IS FURTHER ORDERED AND ADJUDGED that Risher and Risher's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of 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

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or

in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

- (A) any investment strategy or investment in securities,
- (B) the prospects for success of any product or company,
- (C) the use of investor funds,
- (D) compensation to any person,
- (E) Risher's qualifications to advise investors; or
- (F) the misappropriation of investor funds or investment proceeds.

III.

**SECTION 10(b) OF THE SECURITIES
EXCHANGE ACT OF 1934 AND EXCHANGE ACT RULE 10b-5**

IT IS FURTHER ORDERED AND ADJUDGED that Risher and Risher's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this 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 Exchange Act Rule 10b-5, 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

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

- (A) any investment strategy or investment in securities,
- (B) the prospects for success of any product or company,
- (C) the use of investor funds,
- (D) compensation to any person.
- (E) Risher's qualifications to advise investors; or
- (F) the misappropriation of investor funds or investment proceeds.

IV.

AIDING AND ABETTING VIOLATIONS OF SECTION 10(b) AND RULE 10b-5 OF THE SECURITIES EXCHANGE ACT OF 1934

IT IS FURTHER ORDERED AND ADJUDGED that Risher and Risher's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5, by knowingly providing substantial assistance to an individual or entity who uses 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

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

- (A) any investment strategy or investment in securities,
- (B) the prospects for success of any product or company,
- (C) the use of investor funds,
- (D) compensation to any person,
- (E) Risher's qualifications to advise investors; or
- (F) the misappropriation of investor funds or investment proceeds.

V.

**SECTIONS 206(1) AND 206(2) OF
THE INVESTMENT ADVISERS ACT OF 1940**

IT IS FURTHER ORDERED AND ADJUDGED that Risher, his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Sections 206(1) and 206(2) of the Investment Advisers Act of

1940, 15 U.S.C. §§ 80b-6(1) and 80b-6(2), by, while acting as an investment adviser, by the use of any means or instrumentality of interstate commerce, or of the mails:

(a) employing any device, scheme, or artifice to defraud any client or prospective client; or

(b) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any client or prospective client

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any client or prospective client, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any client or prospective client, about:

- (A) any investment strategy or investment in securities,
- (B) the prospects for success of any product or company,
- (C) the use of client funds,
- (D) compensation to any person,
- (E) Defendant Risher's qualifications to advise clients; or
- (F) the misappropriation of investor funds or investment proceeds.

VI.

**SECTION 206(4) AND RULE 206(4)-8
OF THE INVESTMENT ADVISERS ACT OF 1940**

IT IS FURTHER ORDERED AND ADJUDGED that Risher, his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 206(4) and Rule 206(4)-8 of the Investment Advisers

Act of 1940, 15 U.S.C. § 80b-6(4) and 17 C.F.R. 275.206(4)-8, by, while acting as an investment adviser, making untrue statements of material facts or omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to investors and prospective investors in a pooled investment vehicle.

VII.

RETENTION OF JURISDICTION

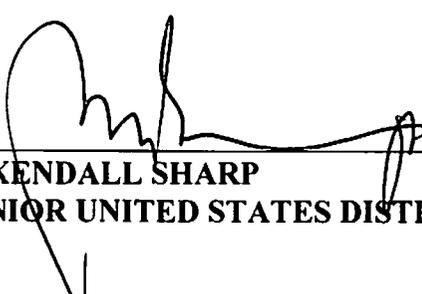
IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

VIII.

FINAL JUDGMENT

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: 5/8/13, 2013



G. KENDALL SHARP
SENIOR UNITED STATES DISTRICT JUDGE