

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

Case No: 8:20-cv-325-MSS-AEP

**BRIAN DAVISON, BARRY M.
RYBICKI, EQUIALT LLC,
EQUIALT FUND, LLC, EQUIALT
FUND II, LLC, EQUIALT FUND III,
LLC, EA SIP, LLC, 128 E. DAVIS
BLVD, LLC, 310 78TH AVE, LLC,
551 3D AVE S, LLC, 604 WEST
AZELEE, LLC, 2101 W. CYPRESS,
LLC, 2112 W. KENNEDY BLVD,
LLC, 5123 E. BROADWAY AVE,
LLC, BLUE WATERS TI, LLC,
BNAZ, LLC, BR SUPPORT
SERVICES, LLC, BUNGALOWS TI,
LLC, CAPRI HAVEN, LLC, EA NY,
LLC, EQUIALT 519 3RD AVE S.,
LLC, MCDONALD REVOCABLE
LIVING TRUST, SILVER SANDS TI,
LLC and TB OLDEST HOUSE EST.
1842, LLC,**

Defendants.

ORDER

THIS CAUSE comes before the Court for consideration of Plaintiff's Unopposed Motion for Entry of Final Judgment Against Defendant Barry Rybicki. (Dkt. 526) Plaintiff Securities and Exchange Commission advises that entry of the proposed Final Judgment would resolve Plaintiff's claims against Defendant Barry Rybicki. (Id.) Plaintiff therefore requests that the Court enter its proposed Final Judgment against Defendant Barry Rybicki. (Id.) Defendant Barry Rybicki consents to the entry of the proposed Final Judgment against him without admitting or denying the allegations of the Amended Complaint unless otherwise stated in his Consent. (Dkt. 526-2)

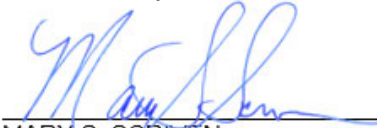
Upon consideration and review, the Court approves Plaintiff's proposed Final Judgment Against Defendant Barry Rybicki. Notwithstanding any language contained in the proposed Final Judgment, this Order is entered on the consent of Defendant Barry Rybicki, not based on any independent review or findings by the Court other than as to venue and jurisdiction. More specifically and pursuant to Federal Rule of Civil Procedure 65(d)(1)(A) and Defendant Barry Rybicki's Consent, this Order is entered to fully resolve the issues raised by this case as between Plaintiff and Defendant Barry Rybicki only.

Accordingly, it is hereby **ORDERED** as follows:

1. Plaintiff's Unopposed Motion for Entry of Final Judgment Against Defendant Barry Rybicki, (Dkt. 526), is **APPROVED**. The Final

Judgment Against Defendant Barry Rybicki, (Dkt. 526-1), attached as an Exhibit hereto and incorporated by reference herein, is **ENTERED** by the Court.

DONE and **ORDERED** in Tampa, Florida, this 4th day of March 2022.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Person

EXHIBIT A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CIVIL ACTION NO. 20-cv-00325-MSS-AEP

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRIAN DAVISON, BARRY RYBICKI,
EQUIALT et al.,

Defendants.

FINAL JUDGMENT AGAINST DEFENDANT BARRY RYBICKI

The Securities and Exchange Commission having filed an Amended Complaint and Defendant Barry Rybicki ("Rybicki") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Amended Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VI); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment.

I.

PERMANENT INJUNCTIVE RELIEF

A. Section 5 of the Securities Act of 1933 ("Securities Act")

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Rybicki is

permanently restrained and enjoined from violating Section 5 of the Securities Act ([15 U.S.C. § 77e](#)) 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](#)).

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in

Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Rybicki's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Rybicki or with anyone described in (a).

B. Section 17(a)(2) of the Securities Act

IT IS FURTHER ORDERED AND ADJUDGED that Rybicki is permanently restrained and enjoined from violating Section 17(a)(2) of the Securities Act (15 U.S.C. § 77q(a)(2)) 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 to obtain money or property by means of any untrue statement of material fact or any omission of a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading with respect to the offer or sale of unregistered securities.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Rybicki's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Rybicki or with anyone

described in (a).

C. Section 10(b) and Rule 10b-5(b) of the Securities Exchange Act of 1934 (“Exchange Act”)

IT IS FURTHER ORDERED AND ADJUDGED that Rybicki is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act ([15 U.S.C. § 78j\(b\)](#)) and Rule 10b-5(b) 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 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, with respect to the offer or sale of unregistered securities.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in [Federal Rule of Civil Procedure 65\(d\)\(2\)](#), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Rybicki’s officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Rybicki or with anyone described in (a).

D. Section 15(a) of the Exchange Act

IT IS FURTHER ORDERED AND ADJUDGED that Rybicki is

permanently restrained and enjoined from violating, directly or indirectly, Section 15(a) of the Exchange Act, [[15 U.S.C. § 78o\(a\)](#)], by using the mails or other means or instrumentalities of interstate commerce, to effect transactions in, or to induce or attempt to induce the purchase or sale of securities, without being associated with a broker or dealer that was registered with the Commission in accordance with Section 15(b) of the Exchange Act ([15 U.S.C. § 78o\(b\)](#)).

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in [Federal Rule of Civil Procedure 65\(d\)\(2\)](#), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Rybicki's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Rybicki or with anyone described in (a).

II.

DISGORGEMENT, PREJUDGMENT INTEREST, AND CIVIL PENALTY

IT IS FURTHER ORDERED AND ADJUDGED that Rybicki is liable to the Commission for disgorgement of \$10,843,540, representing net profits gained as a result of the conduct alleged in the Amended Complaint, together with prejudgment interest on disgorgement of \$581,980, for a total of \$11,425,520 (the "Disgorgement Obligation").

IT IS FURTHER ORDERED AND ADJUDGED that Rybicki is liable to the

Commission for a civil penalty of \$1,000,000 pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

IT IS FURTHER ORDERED AND ADJUDGED that any obligation of Rybicki to satisfy the disgorgement, prejudgment interest, and civil penalty payments, due to the Commission as set forth above, shall be satisfied by Rybicki if he, within 30 days of entry of this Final Judgment, disgorges the following assets to the Court-appointed Receiver (and in the case of the real property set out below, execute any necessary legal documents of transfer as appropriate):

(i) Bank Accounts

Chase Bank Rosenbarry Holdings Inc. account ending 5807
Chase Bank BR Support Services account ending 9906
Chase Bank Barry Rybicki account ending 8993
Chase Bank Rosenbarry Holdings account ending 5358
Comerica Rosenbarry Properties Account ending 7261
Comerica Barry or Rosemarie Rybicki account ending 7314
Comerica Barry or Rosemarie Rybicki account ending 7306

(ii) Real Property

3527 Lawrence Lane, Phoenix, AZ 85051
4303 W. Vista, Glendale, AZ 85301
7320 E. Solano, Scottsdale, AZ 85250
7407 E. Taylor St., Scottsdale, AZ 85257 (any remaining interest).

(iii) Corporate Entities

BR Support Services
Rosenbarry Properties, LLC
3527 Lawrence Lane, LLC
4303 W. Vista, Glendale, LLC
7320 E. Solano, LLC
7407 E. Taylor St., LLC

- (iv) Watches (and accompanying paperwork and accessories), Jewelry
 - Rolex Green GMT
 - Rolex Blue/Red GMT
 - Rolex Blue/Black GMT
 - Rolex mother of pearl
 - Rolex Tiger Eye
 - Rolex Daytona
 - Rolex Sea Dweller black cerachrome bezel
 - Rolex Datejust: chocolate Roman numeral and star with diamond dial
 - Rolex Datejust: white Roman numeral
 - Rolex Meteorite Daytona
 - Diamond bubble ring
 - Diamond cuff bracelet (white gold)
 - Round Diamond Necklace
 - Bezel Set Necklace
 - Diamond halo earrings
 - Mandarin Garnet & Diamond Ring
 - Diamond hoop earrings white gold
 - Diamond cuff bracelet (rose gold)
 - Mikimoto Pearl necklace, ring, earring set
- (v) Funds Held By The Receiver In Trust
 - Funds from sale of Ferrari (\$92,331)
 - Funds from sale of Targa (\$65,844)
- (vi) Cars
 - 2019 Porsche 911 Turbo S
 - 1981 Land Rover Defender ECD Conversion
- (vii) Investments
 - E Trade Barry Michael Rybicki account ending 6205
 - Comerica Brokerage Barry & Rosemarie Rybicki account ending 2102
 - Coinbase account
 - Orion Agency PIV LP
- (viii) Misc.
 - 140 ounces of silver
 - Michael Jordan Signed Jersey
 - Wayne Gretzsky Signed Jersey

Carved Wood Fiesta Table

Notes Receivable, including, but not limited to, with Ernest Babbini

\$1,019,000 from the Mortgage of 3313 E. Daley Lane, Phoenix, 85052

Insurance refund check related to 2019 Range Rover - \$71,584.96

- (ix) The contents and assets located on the premises of all properties owned or controlled by the Receivership Entities or entities under the Receiver's control.

IT IS FURTHER ORDERD AND ADJUDGED that Rybicki shall execute a general assignment of assets to the Receiver warranting that he has disclosed all owned assets valued at more than \$5,000 to the Commission and assigned all owned assets to the Receiver except those excluded in the assignment. The Assignment shall be signed and notarized and contain a statement by Rybicki under oath that all of the information contained therein is true and correct. Rybicki shall comply with the terms of the general assignment of assets.

The Commission and the Court have based their decision on what Property Rybicki is turning over in satisfaction of his disgorgement, pre-judgment interest and civil penalty on Defendant's sworn representations in his assignment to the Receiver, as well as additional information provided to the Commission. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Defendant's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may petition the Court for an order

requiring Defendant to pay the unpaid portion of the disgorgement, pre-judgment and post-judgment interest thereon, and civil penalty. In connection with any such petition, the only issue shall be whether the financial information provided by Defendant was fraudulent, or knowingly and intentionally misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of the Consent or this Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) contest the amount of disgorgement and pre-judgment and post-judgment interest, or civil penalty; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

Rybicki shall in good faith and expeditiously execute all documents and take any other necessary steps to effectuate the turnover of the aforementioned real property and other assets. Rybicki agrees that once he turns over the aforementioned property and assets, he relinquishes all legal and equitable right, title and interest in the property and assets ("Funds"), and no part of the Funds

shall be returned to him. Should Rybicki discover or uncover assets that have not been disclosed or delivered to the Receiver he shall promptly advise the Receiver and forthwith deliver and or transfer such assets to the Receiver.

The Commission may enforce the Court's judgment for penalties by the use of all collection procedures authorized by law, including the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.*, and moving for civil contempt for the violation of any Court orders issued in this action. Defendant shall pay post judgment interest on any amounts due after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961.

The Commission along with the Receiver may propose a plan to distribute the Funds, subject to the Court's approval. Such a plan may provide that the Fund 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 the Funds and the Fund may only be disbursed pursuant to an Order of the Court.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this 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, Rybicki shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action

based on Rybicki's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Rybicki's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Rybicki 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 Rybicki by or on behalf of one or more investors based on substantially the same facts as alleged in the Amended Complaint in this action.

III.

INCORPORATION OF CONSENT

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

IV.

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 Final Judgment.

V.

ASSET FREEZE

IT IS FURTHER ORDERED AND ADJUDGED that, upon receipt of confirmation from the Commission and the Receiver that Rybicki has satisfied his obligations under Section II of this Final Judgment, the Asset Freeze this Court previously entered against Rybicki shall be lifted and extinguished in its entirety.

VI.

BANKRUPTCY NONDISCHARGEABILITY

IT IS FURTHER ORDERED AND ADJUDGED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, [11 U.S.C. § 523](#), the allegations in the Amended Complaint are true and admitted by Rybicki, and further, any debt for disgorgement, prejudgment interest, or civil penalty or other amounts due by Rybicki under this Final Judgment or any other judgment, order, consent order, decree, or settlement agreement entered in connection with this proceeding, is a debt for the violation by Rybicki of the federal securities laws or any regulation or order issued under such laws, as set forth in

Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

VII.

RULE 54(b) CERTIFICATION

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.

DONE AND ORDERED this ____ day of _____ 2022, at Tampa, Florida.

MARY SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies to all parties and counsel of record