

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,)
)
)
) **Plaintiff,**)
)
) **v.**)
)
) **EDWARD R. SHOWALTER,**)
)
) **Defendant.**)

FILED
 MAY 15 2001
 NANCY WAYER-WASHINGTON CLERK
 U.S. DISTRICT COURT
 Civil Action No. 98-1106 (RMU)

**FINAL JUDGMENT OF PERMANENT INJUNCTION AND
OTHER RELIEF AGAINST EDWARD R. SHOWALTER**

Whereas, on December 4, 2000, this Court orally ruled that defendant Edward R. Showalter (“Showalter”) was in default; in a Memorandum Opinion dated January 5, 2001, this Court set forth its reasons for finding that defendant Showalter was in default; and, on January 5, 2001, the Clerk of Court entered a default against defendant Showalter;

Whereas, on January 4, 2001, plaintiff Securities and Exchange Commission (“Commission”) moved for entry of default judgment against defendant Showalter, and on January 5, 2001, this Court referred this matter to U.S. Magistrate Judge Alan Kay, pursuant to Rule 72.3 of the Local Rules of the U.S. District Court for the District of Columbia, for a Report and Recommendation on the plaintiff’s motion;

Whereas Judge Kay held a hearing on the matter, which defendant Showalter failed to attend, and, on April 10, 2001, Judge Kay filed a Report and Recommendation, in which he recommended that the plaintiff’s motion for entry of default judgment be granted;

Whereas, on April 30, 2001, this Court issued an Order adopting the Report and Recommendation of Judge Kay in its entirety; and

Whereas, on May 4, 2001, the plaintiff filed an Application for Entry of Final Judgment Against Defendant Edward R. Showalter to effectuate this Court's April 30, 2001 Order.

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that SHOWALTER, his agents, servants, employees and attorneys, and all persons in active concert or participation with them who receive actual notice of this FINAL JUDGMENT by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Sections 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:

- 1) 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;
- 2) 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
- 3) 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 as to such security, or while the registration 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.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that SHOWALTER, his agents, servants, employees and attorneys, and all persons in active concert or participation with them who receive actual notice of this FINAL JUDGMENT by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] by, directly or indirectly, in the offer or sale of securities, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to:

- 1) employ any device, scheme or artifice to defraud;
- 2) obtain money or property by means of any untrue statement of a material fact or any omission 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
- 3) engage in any transaction, act, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

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

- 1) employ any device, scheme or artifice to defraud;
- 2) make any untrue statement of a material fact or 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
- 3) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that SHOWALTER, his agents, servants, employees and attorneys, and all persons in active concert or participation with them who receive actual notice of this FINAL JUDGMENT by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1, 13a-11, 13a-13, and 12b-20 thereunder [17 C.F.R. §§ 240.13a-1, 240.13a-11, 240.13a-13, and 240.12b-20] by filing or causing to be filed with the COMMISSION any annual or quarterly report, or any Form 8-K, pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the rules and regulations promulgated thereunder that (a) fails to contain information required to be contained therein; (b) fails to comply in any material respect with the requirements of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 13a-1, 13a-11, 13a-13, and 12b-20 [17 C.F.R. §§ 240.13a-1, 240.13a-11, 240.13a-13, and 240.12b-20]; or (c) contains any untrue statement of material fact or omits to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that SHOWALTER, his agents, servants, employees and attorneys, and all persons in active concert or participation with them who receive actual notice of this FINAL JUDGMENT by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 13(b)(2)(B)] by causing an issuer which has a class of securities registered pursuant to Section 12 of the Securities Act [15 U.S.C. § 78l] and an issuer which is required to file reports pursuant to Section 15(d) of the Securities Act [15 U.S.C. § 78o(d)] to fail to (a) make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary (1) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (2) to maintain accountability for assets.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that SHOWALTER, his agents, servants, employees and attorneys, and all persons in active concert or participation with them who receive actual notice of this FINAL JUDGMENT by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1], by knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account described in Section

13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)], or by directly or indirectly, falsifying or causing to be falsified, any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that SHOWALTER, as an officer or director of an issuer, be and hereby is permanently restrained and enjoined from violating Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b-2] by, directly or indirectly, making or causing to be made a materially false or misleading statement, or omitting to state, or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with (1) any audit or examination of the financial statement of the issuer required to be made pursuant to Exchange Act Regulation 13A, or (2) the preparation or filing of any document or report required to be filed with the COMMISSION pursuant to Exchange Act Regulation 13A or otherwise.

XIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], SHOWALTER is prohibited permanently 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)].

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that SHOWALTER pay disgorgement in the amount of \$538,400, representing his gains derived from the conduct alleged in the COMPLAINT, plus prejudgment interest in the amount of \$213,560.43. On or before May 31, 2001, SHOWALTER shall satisfy this obligation by paying this disgorgement and prejudgment interest to the Clerk of this Court, together with a letter specifying that payment is being made pursuant to this FINAL JUDGMENT. SHOWALTER shall simultaneously transmit photocopies of such payment and letter to the COMMISSION'S counsel in this action. The Clerk shall hold these funds in the Registry, in an interest bearing account, pending further order. By making this payment, SHOWALTER relinquishes all legal and equitable right, title and interest in such funds, and no part of the funds shall be returned to SHOWALTER.

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that SHOWALTER pay a civil penalty in the amount of \$150,000 pursuant to Section 20(d)(2) of the Securities Act [15 U.S.C. § 77t(d)(2)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. SHOWALTER shall pay this civil penalty by cashier's check, certified check or postal money order on or before May 31, 2001. This civil penalty shall be made payable to the United States Securities and Exchange Commission, and shall be transmitted to the Comptroller, Securities and Exchange Commission, 6432 General Green Way, Suite B, Mail Stop 0-3, Alexandria, Virginia 22312, under cover of a letter that identifies the defendant, the name and case number of this litigation, and the court. A copy of the cover letter shall be simultaneously transmitted to counsel for the COMMISSION in this action. The COMMISSION shall forward such funds to the U.S. Treasury.

XI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over this action for all purposes, including the implementation and enforcement of this FINAL JUDGMENT.

There being no just reason for delay, the Clerk of Court is hereby directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this FINAL JUDGMENT forthwith.

SO ORDERED, this 13 day of May, 2001.


Ricardo M. Urbina
United States District Judge