

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Eastern Division

SECURITIES AND EXCHANGE)
COMMISSION,)
Plaintiff,)
v.) Civil Action No. 99 C 609
Judge Conlon
FLOYD LELAND OGLE, *et al.*,)
Defendants.)

ORDER OF FINAL JUDGMENT BY
DEFAULT AGAINST DEFENDANT GARY COTTEN

DOCKETED
JUN 19 2000

This matter comes before the Court on Plaintiff's Motion for Final Judgment by Default Against Defendants Robin Opp and Gary Cotten. The Court, having reviewed Plaintiff's motion papers, the evidence presented therewith, and the record in this case, finds the following with respect to Defendant Cotten:

- (1) This Court has jurisdiction over Defendant Cotten, jurisdiction of the subject matter of this action, and jurisdiction to grant the relief requested by Plaintiff;
- (2) Defendant Cotten, in violation of the Court's February 10, 2000 order that all Defendants answer or otherwise plead to the Plaintiff's Second Amended Complaint by February 22, 2000, failed to answer or otherwise plead by that date;
- (3) On March 15, 2000 the Court entered an Order of Default against Cotten; and
- (4) Defendant Cotten received approximately \$181,301 in unlawful gains derived from his fraudulent conduct as alleged in the Commission's Second Amended Complaint.

IT IS THEREFORE HEREBY:

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I.

ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Final Judgment by Default Against Defendant Gary Cotten is GRANTED; and it is

II.

FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Cotten is permanently enjoined and restrained from, directly or indirectly, singly or in concert, in the offer or sale of any security, by the use of any means or instrument of transportation or communication in interstate commerce or by use of the mails:

- (1) employing any device, scheme, or artifice to defraud; or
- (2) obtaining money or property by means of any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (3) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser,

in violation of the provisions of Section 17(a) of the Securities Act of 1933, 15 U.S.C.

§77(q)(a); and it is

III.

FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Cotten is permanently enjoined and restrained from, directly or indirectly, singly or in concert, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- (1) employing any device, scheme, or artifice to defraud;
- (2) making any untrue statement of a material fact or omitting 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) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in violation of the provisions of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder; and it is

IV.

FURTHER ORDERED that Defendant Cotten shall file with this Court and serve upon Plaintiff within ten (10) business days from the date of entry of this Final Judgment, a verified written accounting, signed by him under penalty of perjury, of:

- (1) All assets, liabilities, and property currently held directly or indirectly by him, or for his direct or indirect benefit, including, but not limited to, bank accounts, brokerage accounts, investments, business interests, loans, lines of credit, and real and personal property wherever situated, describing each asset and liability, its current location and amount;
- (2) All money, property, assets, and other income received by Defendant Cotten, or for his direct or indirect benefit, in or at any time from November 11, 1993 to the date of the accounting, describing the source, amount, disposition, and current location of each of the items listed;

(3) The names and last known addresses and telephone numbers of all bailees, debtors, and other persons and entities which are currently holding the assets, funds, or property of Defendant Cotten; and

(4) All assets, funds, securities, real or personal property received by Defendant Cotten, or any other person controlled by him, from parties who provided money to him in connection with the offer, purchase, or sale of Exsorbet Industries, Inc. securities from November 11, 1993 to the date of the accounting, and the disposition of such assets, funds, securities, real or personal property; and it is

(5) FURTHER ORDERED that Defendant Cotten shall include all assets of ADA Property Management in the accounting; and it is

V.

FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Cotten shall pay disgorgement in the amount of \$137,188 representing his gains from the conduct alleged in the Second Amended Complaint together with prejudgment interest in the amount of \$44,113, for a total of \$181,301, provided that this disgorgement figure shall be reduced by the amount of any such gains which have been returned to defrauded Exsorbet Industries, Inc. investors by Cotten or others on his behalf, and Cotten shall provide the Court and Plaintiff with sufficient proof of such returned gains. In addition, Defendant Cotten shall pay disgorgement of any additional amounts identified in the accounting ordered above which represent gains to Cotten from the conduct alleged in the Second Amended Complaint, together with prejudgment interest to be calculated thereon at the Internal Revenue Service rate for the underpayment of taxes, in accordance with any subsequent Order of this Court; and it is

VI.

FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Cotten shall, within thirty (30) calendar days from the receipt of this Final Judgment by his counsel, pay the \$181,301 described in paragraph V., to be placed in an interest-bearing account, by United States postal money order, certified check, bank cashier's check, or bank money order drawn to the order of "Clerk, United States District Court, N.D. Ill." At the same time payment is remitted, Defendant Cotten shall send a photocopy of his United States postal money order, certified check, bank cashier's check, or bank money order to the Secretary of the Commission at the following address:

Office of the Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

The photocopy shall be accompanied by a letter that identifies Defendant Cotten, the civil action number assigned to the Second Amended Complaint, the District Court in which the Second Amended Complaint and this Final Judgment were filed, and the Commission's internal case number (HO-3138). A copy of such letter to the Secretary of the Commission shall be sent simultaneously to counsel of record for the Commission, Kenneth L. Miller, Esq., Assistant Chief Litigation Counsel, 450 Fifth Street, N.W., Washington, D.C. 20549-0808; and it is

VII.

FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Cotten pay a civil penalty of \$200,000, pursuant to the Section 20(d) of the Securities Act of

1933, 15 U.S.C. §77t(d), and Section 21 (d)(3) of the Securities Exchange Act of 1934, 15 U.S.C. §78u (d)(3); and it is

VIII.

FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Cotten shall pay the amount described in paragraph VII., representing a civil penalty, to the United States Treasury within thirty (30) days of the entry of this Judgment. Such payment shall be: (a) made by United States postal money order, certified check, bank cashier's check or bank money order; (b) made payable to the "Securities and Exchange Commission"; (c) hand-delivered or mailed to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312; and (d) submitted with a cover letter that identifies Garry Cotten as a defendant in this action, the caption and civil action number of this action, and the name of this Court. Copies of such check or money order and accompanying cover letter shall be simultaneously transmitted to counsel of record for the Commission, Kenneth L. Miller, Esq., Assistant Chief Litigation Counsel, 450 Fifth Street, N.W., Washington, D.C. 20549-0808. Payment shall be made with thirty (30) days from the date of entry of this Final Judgment, by cashier's check, certified check, or postal money order made payable to the order of the "United States Securities and Exchange Commission." The payment shall be transmitted to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, under cover of letter identifying the name and civil action number of this litigation, the name of the Defendant, and the Commission File No. HO-3138. A copy of the cover letter and payment shall be simultaneously transmitted to Plaintiff's counsel; and it is

IX.

FURTHER ORDERED that Defendant Cotten be, and hereby is, permanently and unconditionally prohibited from acting as an officer or director of any issuer of securities that has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 or that is required to file reports pursuant to Section 15(d) of such Act because Defendant Cotten's conduct demonstrates substantial unfitness to serve as an officer or director of any such issuer.

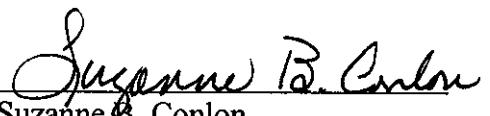
X.

The Court expressly determines that there is no just reason for delay in the entry of this Final Judgment. The Clerk of the Court is hereby directed pursuant to Fed. R. Civ. P. 54(b) to enter this Final Judgment forthwith; and it is

XI.

FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this action for all purposes.

Entered: JUNE 16, 2000
Chicago, Illinois


Suzanne B. Conlon
UNITED STATES DISTRICT JUDGE