

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

DEC 16 1997

SEP 11 1997 KD

MICHAEL N. MURRY, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Michael N. Milby, Clerk of Court

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ENSERCO, INC., D/B/A
ENERGY SERVICE COMPANY,
JOHN P. BRINK,
ANTHONY J. LEO and
FRANK BRAVO, JR.,

Defendants.

CIVIL ACTION NO.

H-97-0983

ORDER OF PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF
BY DEFAULT AS TO ANTHONY J. LEO

This matter came before this Court on the motion of plaintiff, Securities and Exchange Commission, seeking issuance of orders providing it with a portion of the relief requested in its Complaint against defendant Anthony J. Leo, by reason of his failure to answer the Commission's Complaint, or otherwise appear in or defend this civil action.

This Court having considered the pleadings and declarations on file herein, makes the following findings of fact and conclusions of law:

1. The Commission's Complaint commencing this civil action against the defendants was filed on March 27, 1997.

2. Mr. Leo was served with the Commission's Complaint and this Court's Summons and Order on May 28, 1997.

3. Mr. Leo has not filed an answer to the Commission's Complaint, has not responded to correspondence addressed to his

18

residence, and has not otherwise appeared before this Court to defend herein this cause.

4. Mr. Leo is neither an infant, nor incompetent. He is not eligible for relief under the Soldiers' and Sailors' Civil Relief Act of 1940 [50 U.S.C. Appendix, § 501 et seq.].

5. This Court has personal jurisdiction over Mr. Leo, and subject matter jurisdiction over this action. Venue is proper in this District.

6. The Commission is entitled to entry of an order that permanently restrains and enjoins Mr. Leo from engaging in transactions, acts, practices and courses of business which constitute and would constitute violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act"), as amended [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)], and Sections 10(b) and 15(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), as amended, [15 U.S.C. § 78j(b) and 78o(a)(1)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]..

7. The Commission is entitled to entry of an order that directs Mr. Leo to pay disgorgement in the amount of \$224,066.60, representing the amount paid or attributable to him from the proceeds of unlawful securities transactions as set out in the Commission's Complaint, and prejudgment interest in the amount of \$96,732.46, calculated at the rate permitted by law from the date the funds were received through the date of its motion. As established in the Declaration of Fred Sission, the appropriate

disgorgement amount is a readily calculable sum, taken from bank records and other financial information obtained by the Commission in its investigation. The disgorgement calculation provided by the Commission in its moving papers represents an appropriated computation of the proceeds paid to or attributable to Mr. Leo from the unlawful activities described in the Commission's Complaint.

8. The Commission is entitled to assessment of a civil penalty from Mr. Leo pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act, because his violations of the federal securities laws, as described in the Commission's Complaint, (a) involved fraud, deceit and a deliberate or reckless disregard of regulatory requirements, and (b) directly or indirectly resulted in substantial losses to investors or, at least, created a significant risk of substantial losses to investors. This court postpones, however, consideration of the amount of civil money penalty, to permit the Commission to adduce evidence as the costs and expenses it incurred in investigating and commencing civil prosecution of this matter, in order to avoid any possible application of the Double Jeopardy Clause of the 5th Amendment. See, U.S. v. Halper, 490 U.S. 435, 109 S.Ct. 1892 (1989); U.S. v. Furlett, 974 F.2d 839 (7th Cir. 1992); SEC v. Bilzarian, 814 F.Supp. 116 (D.D.C. 1993).

On the basis of the foregoing findings of fact and conclusions of law, it is therefore ORDERED:

I.

Mr. Leo, his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from, directly or indirectly, by making use of any means or instrumentality of interstate commerce or of the mails:

(a) to employ any device, scheme or artifice to defraud;

(b) to make any untrue statement of a material fact or omit 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

(c) to 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 securities, in the form of investment contracts, or any other security.

II.

Mr. Leo, his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined in the offer or sale of securities, in the form of investment contracts, or any other type of security, from making use of any means or instruments of

transportation or communication in interstate commerce, or 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 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
- (c) to engage in any transactions, practices or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

III.

Mr. Leo and his agents, servants, employees, attorneys-in-fact, and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly:

- (a) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell any securities, in the form of investment contracts, or any other security, through the use or medium of any prospectus or otherwise, unless and until a registration statement is in effect with the Commission as to such securities;
- (b) carrying securities, in the form of investment contracts, or any other security, or causing them to be

carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale, unless and until a registration statement is in effect with the Commission as to such securities; 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, securities in the form of investment contracts, or any other security, unless a registration statement has been filed with the Commission as to such securities, or while a registration statement filed with the Commission as to such securities is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding of examination under Section 8 of the Securities Act of 1933, as amended [15 U.S.C. § 77h];

provided, however, that nothing in this Part III shall apply to any security or transaction in any security that is exempt from the provisions of Section 5 of the Securities Act [15 U.S.C. § 77e].

IV.

Mr. Leo, his agents, servants, employees, attorneys-in-fact, and all persons in active concert or participation with him who receive actual notice of this Order by personal service or

otherwise, directly and indirectly, are permanently restrained and enjoined, while engaging in the business of effecting transactions in securities, in the form of investment contracts, or any other security, for their own account or for the account of others, from making use of the mails or any means or instrumentality of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of securities (other than exempted securities, commercial paper, bankers' acceptances or commercial bills), unless registered as a broker or dealer in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)], or otherwise exempt from registration pursuant to Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)].

V.

Mr. Leo shall pay disgorgement in the amount of \$224,066.60, representing the proceeds paid or attributable to him from the conduct and transactions described in the Commission's Complaint, plus prejudgment interest thereon in the amount of \$96,732.46. Within 30 days from, or service upon Mr. Leo of this Order, he shall pay to the Registry of this Court, by cashier's check or certified check payable to "Clerk, United States District Court," the full amount of disgorgement and prejudgment interest specified above, and post-judgment interest calculated pursuant to 28 U.S.C. § 1961. Upon such payment, the Court shall by further order direct payment of such funds to a trustee who shall

distribute funds in appropriate amounts to investors harmed by Mr. Leo's actions as described in the Commission's Complaint.

VI.

The Commission shall, as soon as readily possible, and with notice to Mr. Leo at his last known address or such other place as he may be found, submit to this Court an application setting out an appropriate civil money penalty calculation.

VII.

This Court shall retain jurisdiction over this action for all purposes, including for purposes of entertaining any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court, including but not limited to the relief requested by the Commission in its Complaint.

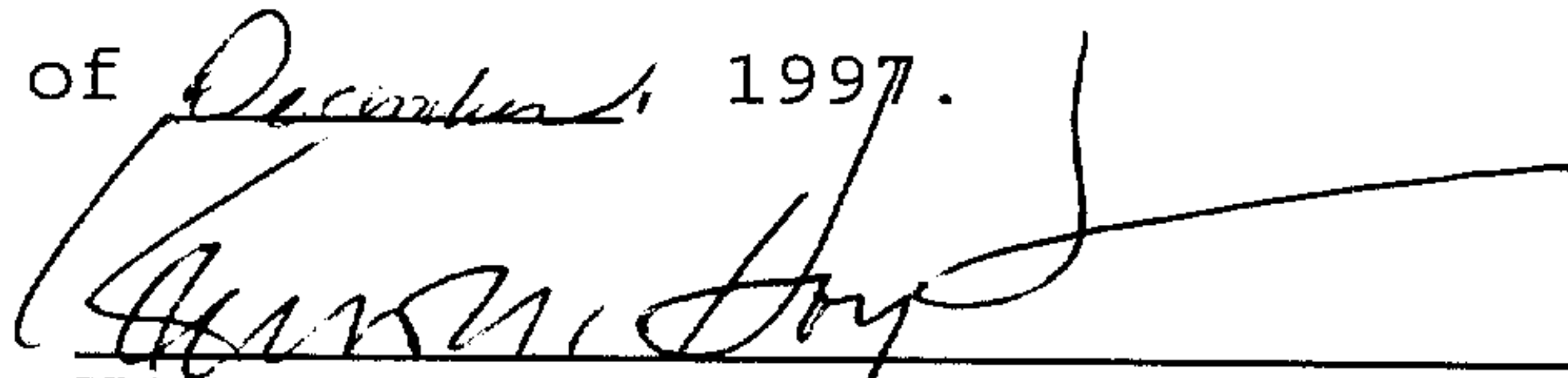
VIII.

This Order may be served upon Mr. Leo in person or by mail, either by the United States Marshal, the Clerk of the Court, or any member of the staff of the Securities and Exchange Commission.

IX.

There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Order pursuant to rules 58 and 79, Fed. Rules Civ. Proc., 28 U.S.C.A.

SIGNED this 15th day of December, 1997.


UNITED STATES DISTRICT JUDGE