

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**FONECASH, INC. and DANIEL E.  
CHARBONEAU,**

**Defendants.**

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**Civil Action No. 02-0651 (RMC)**

**REVISED ORDER**

This Court issued its Memorandum Opinion in this case on November 15, 2004, finding that Daniel E. Charboneau had violated Section 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77a(a), Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, and Section 16(a) of the Exchange Act, 15 U.S.C. § 78p(a), and Rules 16a-2 and 16a-3 thereunder. The Court enjoined the Defendant from committing certain acts in violation of these laws but, despite the request of the Securities and Exchange Commission (“SEC”), the Court did not order disgorgement.

The SEC has now filed a Motion to Amend Final Order As To Defendant Daniel E. Charboneau. It seeks inclusion of an injunctive provision prohibiting violations of Section 16(a) of the Exchange Act, and Rules 16a-2 and 16a-3 thereunder, which were discussed in the Memorandum Opinion but omitted from the accompanying Order. The SEC also renews its request for a disgorgement remedy.

Mr. Charboneau, who is proceeding *pro se*, opposes the SEC's motion. He is a prisoner at the Federal Correction Institution in Otisville, where he is serving a sentence for securities fraud.

The Court will grant the SEC's motion for injunctive relief, as it was inadvertently omitted from the initial Order. The Court will deny the SEC's motion for a disgorgement remedy. Recognizing that the SEC has now expanded the basis for its request for disgorgement, the Court finds that it has already ordered Mr. Charboneau to pay a fine in an amount equal to that which would be disgorged and that, in his penurious circumstances, ordering the equitable remedy of disgorgement on top of the fine and injunctions is not necessary or appropriate.

For the reasons stated in the Memorandum Opinion separately issued November 15, 2004, and as clarified above, it is

**ORDERED** that Mr. Charboneau, his agents, servants, attorneys, partners, assigns, and those persons in active concert or participation with him, in connection with the purchase or sale or in the offer or sale of securities, by use of any means or instrumentalities of interstate commerce or any means or instruments of transportation or communication in interstate commerce, or by the mails or any facility of any national securities exchange, are **PERMANENTLY ENJOINED** from, directly or indirectly:

- 1) employing any device, scheme, or artifice to defraud;
- 2) engaging in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;
- 3) obtaining money or property by means of any untrue statement of a material fact, or omitting to state a material fact necessary to make the statements

made, in light of the circumstances under which they were made, not misleading; and otherwise

- 4) making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. 240.10b-5.

It is **FURTHER ORDERED** that Mr. Charboneau, his agents, servants, attorneys, partners, assigns, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise are **PERMANENTLY ENJOINED** from, directly or indirectly, failing to file accurate and timely reports as required by Section 16(a) of the Exchange Act, 15 U.S.C. § 78p(a), and Rules 16a-2 and 16a-3 thereunder, 17 C.F.R. 240.16a-2 and 240.16a-3, in connection with ownership of, or transactions in, any security registered under Section 12 of the Exchange Act.

It is **FURTHER ORDERED** that Mr. Charboneau, his agents, servants, attorneys, partners, assigns, and those persons in active concert or participation with him, are hereby **PERMANENTLY ENJOINED** from, directly or indirectly, filing or causing to be filed, any annual, periodic, or other reports with the Securities and Exchange Commission containing untrue statements of material facts or omitting to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, or to omit information required to be stated therein, and from failing to file or causing the failure to file said reports on a timely and current basis.

It is **FURTHER ORDERED** that, as authorized by 15 U.S.C. § 77t(d) and 15 U.S.C. § 78u(d)(3), a civil monetary penalty of \$10,470.30 be imposed on Mr. Charboneau for multiple violations of the Securities Act and the Exchange Act. Such amount shall be: 1) made by United States postal money order, certified check, bank cashier's check, or bank money order within 45 days from the date of this judgment; 2) made payable to the Securities and Exchange Commission; 3) delivered to the Comptroller, Securities and Exchange Commission, 6432 General Green Way, Alexandria, VA 22312; and 4) submitted with a cover letter that identifies Mr. Charboneau as a defendant in these proceedings, and the civil action number of these proceedings, a copy of which cover letter and money order or check shall be sent to William P. Hicks, District Trial Counsel, Securities and Exchange Commission, 3475 Lenox Road, N.E., Suite 1000, Atlanta, Georgia 30326-1232.

It is **FURTHER ORDERED** that this Court will retain jurisdiction over this matter and defendants Charboneau and FoneCash for all purposes and will order other and further relief that this Court deems appropriate.

**SO ORDERED.**

DATE: December 20, 2004.

/s/  
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ROSEMARY M. COLLYER  
United States District Judge