

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

UNITED STATES)
SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.) Case No. 8:04-CV-2477-
) T-17-MAP
PAUL SIMMONS, et al.,)
)
Defendants.)
)

**FINAL JUDGMENT AS TO DEFAULTING DEFENDANTS
PAUL SIMMONS AND RODNEY GILBERT**

This matter came before this Court on the Motion for Default Judgment and Monetary and Other Relief Against Defaulting Defendants Paul Simmons and Rodney Gilbert made by Plaintiff United States Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Rule 55 of the Federal Rules of Civil Procedure, for a Final Judgment permanently enjoining Defendant Rodney Gilbert (“Gilbert”) from violations of Sections 5(a) and 5(c) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a) and 77e(c)], Section 10(b) of the Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 of the Exchange Act [17 C.F.R. § 240.10b-5], and requiring Defendants Gilbert and Paul Simmons (collectively “Defendants”) to pay disgorgement, prejudgment interest, and civil money penalties, barring Defendants from participating in any offering of penny stock, and barring Defendants from serving as an officer or director of a public issuer for their violations of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 of the Exchange Act [17 C.F.R. § 240.10b-5]. Earlier,

this Court granted an Interlocutory Judgment By Default and Injunctive and Other Equitable Relief as to Defaulting Defendants Paul Simmons, John Zankowski and Stanley Siciliano [Docket No. 42] (“the June 23 Order”). The June 23 Order gave Plaintiff SEC leave to request further relief, which Plaintiff has done with the instant Motion.

This Court hereby incorporates by reference the findings of fact and conclusions of law of that June 23 Order (“¶ 1-4), as well as the Injunctive Relief contained therein (“¶ 5). In addition, this Court having considered the pleadings and declarations on file herein makes the following findings of fact and conclusions of law:

1. The Commission filed its Complaint [Docket No. 1] commencing this civil action against Defendants on November 15, 2004, charging violations of the Federal securities laws in connection with the sale of unregistered securities of an entity known as Nutraceutical Clinical Laboratories International Inc., as part of a fraudulent “pump and dump” scheme. The Complaint and Summons were served on Defendants in accordance with the Federal Rules of Civil Procedure.

2. A meeting of the parties pursuant to Rule 26(f) of the Federal Rules of Civil Procedure was held on November 29, 2006. *See* Case Management Report [Docket #95].

3. The parties were obligated to produce their Initial Disclosures, pursuant to Rule 26(a)(1), within fourteen (14) days of this meeting – December 13, 2006.

4. Defendant Gilbert failed to participate in the Rule 26(f) meeting, has failed to produce the disclosures required by Rule 26(a)(1), and has failed to communicate with Plaintiff at all over at least the eighteen months. *See* Joint Status Report [Docket #94] and Case Management Report [Docket #95].

5. Pursuant to an Order dated January 4, 2007, the Court directed Defendant Rodney Gilbert to provide current contact information, including residence address, telephone number, and e-mail address, by filing a response to the Court's Order within eleven days. The Court indicated that failure to respond may result in the entry of sanctions against Gilbert, including the entry of a default judgment [Docket #97].

7. Eleven days from the January 4, 2007, Order was January 15, 2007.

8. To date, Defendant Gilbert has not filed with the Court the contact information required by the January 4, 2007, Order.

9. On July 27, 2007, the Court entered an Order striking Gilbert's Answer to the complaint [Docket #38] and entered a default against him. The Order directed Plaintiff to "proceed without delay to apply for a default judgment pursuant to Rule 55(b) of the Federal Rules of Civil Procedure."

10. Gilbert is neither an infant, nor an incompetent person, nor is he eligible for relief under the Soldiers' and Sailors' Civil Relief Act of 1940 [50 U.S.C. Appendix, § 501 *et seq.*].

11. The allegations in the Commission's Complaint as to Defendants Paul Simmons and Rodney Gilbert are deemed admitted.

12. The Commission is entitled to a Final Judgment permanently enjoining Defendants from violating Sections 5(a) and (c) of the Securities Act [15 U.S.C. §§ 77e (a) and (c)], and from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j (b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

On the basis of the foregoing findings of fact and conclusions of law, and the Court having considered the pleadings and declarations on file herein,

IT IS ORDERED:

I.

Defendants, their agents, servants, employees, 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, are restrained and enjoined from:

1. Violating Sections 5(a) and (c) of the Securities Act [15 U.S.C. §§ 77e (a) and (c)] by directly or indirectly, (i) making use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise; and/or (ii) making use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy securities through the use or medium of any prospectus or otherwise, without a registration statement having been filed or being in effect with the SEC as to such securities.

2. Violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] by directly or indirectly, in the use of any means or instruments of interstate commerce, of the mails or of any facility of any national securities exchange, using or employing in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered any manipulative or deceptive device or contrivance in contravention of a rule or regulation prescribed by the Securities and Exchange Commission.

2. Violating Rule 10b-5 of the Exchange Act, [17 C.F.R. § 240.10b-5], by directly or indirectly, in the use of any means or instruments of interstate commerce, of the mails or of any facility of any national securities exchange: (i) employing any device, scheme or artifice to defraud; (ii) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement(s) made, in the light of the circumstances under which were made, not misleading; or (iii) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

II.

Defendants Gilbert and Simmons are liable, jointly and severally, for disgorgement of \$692,048, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$123,324.55. In addition, Defendant Gilbert is liable for a civil money penalty in the amount of \$220,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Defendant Simmons is liable for a civil money penalty in the amount of \$220,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Thus, each of Defendants Gilbert and Simmons are liable for a total of \$1,035,372.50.

Each of Defendants Gilbert and Simmons shall satisfy their respective obligations by paying the total amounts due within ten business days to the Clerk of this Court, together with a cover letter: identifying their name as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Each Defendant shall

simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making their respective payments, each Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendants. Defendants shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

The Clerk shall deposit the funds into an interest bearing account with the Court Registry. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States.

The Commission may by motion propose a plan to distribute the Fund 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. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money 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 money penalty, no Defendants shall, after offset or reduction of any award of compensatory damages in any Related Investor Action based on his 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 his

payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset for any Defendant, such Defendant 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 money penalty and shall not be deemed to change the amount of the civil money penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against one or more Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

III.

Defendants Gilbert and Simmons, and each of their agents, servants, employees, attorneys, and all other persons in active concert or participation with him who receive actual notice of this final judgment, by personal service or otherwise, and each of them are permanently and unconditionally barred from participating in an offering of penny stock, as defined in Section 20(g)(B) of the Securities Act [15 U.S.C. § 77t(g)] and Section 21(d)(6)(B) of the Exchange Act [15 U.S.C. § 78u(d)(6)], including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R. § 240.3a51-1].

IV.

Defendants Gilbert and Simmons, and each of their agents, servants, employees, attorneys, and all other persons in active concert or participation with him who receive actual notice of this final judgment, by personal service or otherwise, and each of them are permanently and unconditionally barred 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)].

V.

The Commission may enforce the Court's judgment for disgorgement, prejudgment interest, penalties and other relief ordered herein by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after ten days following entry of this Final Judgment. In response to any such civil contempt motion by the Commission, the defendant may assert any legally permissible defense.

VI

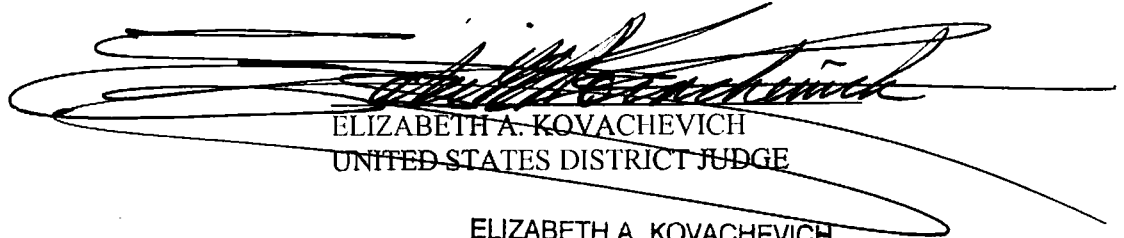
There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

CASE NO. 8:04-cv-2477-T-M MAP

VII

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

SIGNED FEBRUARY 28th, 2008.

A large, stylized handwritten signature in black ink, appearing to read 'Elizabeth A. Kovachevich', is written over the printed name and title.

ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE