
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

Securities and Exchange Commission, §
§
Plaintiff §
§
v. §
§
Carl R. Rose, Harris D. Ballow, et al. §
§
Defendants §

Civil Action No. H-04-CV-2799

**AMENDED DEFAULT JUDGMENT
AGAINST DEFENDANT HARRIS D. BALLOW**

The Securities and Exchange Commission having filed a Complaint on July 9, 2004, Motion for Default March 10, 2005 and a Motion for Default Judgment; and Defendant Harris D. Ballow having appeared and filed a Motion for More Definite Statement and no answer; the Court hereby grants default judgment against Harris D. Ballow under Fed. R.Civ.P. 16(f) and 37(b)(2)(C). The Court finds that it has jurisdiction over Ballow and the subject matter of this action; and that the allegations of the Complaint are deemed true as to Defendant Ballow. Therefore:

I.

The Court FINDS that Defendant Harris D. Ballow violated Section 17(a) of the Securities Act of 1933, as amended ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934, as amended ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], Rule 102 of Regulation M [17 C.F.R. § 242.102], Sections 13(d)(1) and 16(a) of the Exchange Act [15 U.S.C. §§ 78m(d)(1) and 78p(a)] and Rules 13d-1, 13d-2, and 16a-3 thereunder [17

C.F.R. §§ 240.13d-1, 240.13d-2, and 240.16a-3] and Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

IT IS ORDERED, ADJUDGED, AND DECREED that Ballow and his 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 are permanently restrained and enjoined from violating Section 5 of the Securities Act of 1933 [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell a security through the use or medium of any prospectus or otherwise unless a registration statement is in effect as to the security or 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 with the Commission as to such security, or while the registration statement 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 [15 U.S.C. § 77h].

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Ballow and his 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 are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] in the offer or sale of any security by the

use of any means or instruments of transportation or communication in interstate commerce or by use of 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 of 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 transaction, 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 Ballow and his 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 are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to 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

- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Ballow and his agents, servants, employees, attorneys-in-fact and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Rule 102 of Regulation M promulgated under the Exchange Act [17 C.F.R. § 242.101] by directly or indirectly, through the use of the means or instrumentalities of interstate commerce, or of the mails, in connection with the distribution of securities, for which he is selling security holders, bid for, purchased, or attempted to induce another person to bid for or purchase, such securities during the restricted periods before they had completed their distributions.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Ballow and his agents, servants, employees, attorneys-in-fact and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 13(d)(1) of the Exchange Act [15 U.S.C. § 78m(d)(1)] and Rules 13d-1 and 13d-2 thereunder [17 C.F.R. §§ 240.13d-1 and 240.13d-2] by acquiring or becoming, directly or indirectly, beneficial owner of more than 5 per cent of the outstanding common stock of a security registered with the Commission pursuant to Section 12 of the Exchange Act, and acquiring or otherwise becoming, directly or indirectly, beneficial owner of more

than 5 per cent of the outstanding common stock of a security registered with the Commission pursuant to Section 12 of the Exchange Act; and failing to timely send to the issuer of the security and any exchange where the stock was traded and to file with the Commission a statement containing the information required by Schedule 13D or 13G concerning ownership of common stock, and failing to make amendments to the schedules when material changes occurred in the facts that required the initial filings.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Ballow and his agents, servants, employees, attorneys-in-fact and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rule 16a-3 thereunder [17 C.F.R. § 240.16a-3] by acquiring or becoming, directly or indirectly, beneficial owner of more than 10 per cent of the outstanding common stock of a security registered with the Commission pursuant to Section 12 of the Exchange Act, and acquiring or becoming, directly or indirectly, beneficial owner of more than 10 per cent of the outstanding common stock of a security registered with the Commission pursuant to Section 12 of the Exchange Act; and each of them failing to timely file with the Commission a statement of the amount of all equity securities of which he is the beneficial owner, and failing to timely file statements indicating changes in such beneficial ownership of common stock.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Ballow is liable for disgorgement of \$14,304,973 representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment and post-judgment interest thereon. Defendant shall satisfy this obligation by paying that amount within ten (10) business days to the Clerk of this Court, together with a cover letter identifying Ballow 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. Defendant shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS"). These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the CRIS 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 propose a plan to distribute the Fund subject to the Court's approval.

VIII.

ORDERED that Ballow pay a third tier civil money penalty in the amount of \$4,304,973.⁰⁰ pursuant to Section 21(d)(3) of the Exchange Act. Defendant shall make this payment within ten (10) business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Ballow 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. A copy of each payment and accompanying letter shall be sent to Polly Atkinson, Securities and Exchange Commission, 1801 California Street, Suite 1500, Denver, Colorado 80202.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: 22 February 2006


UNITED STATES DISTRICT JUDGE