

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

IBIZ TECHNOLOGY CORP.,
KENNETH W. SCHILLING,
H. MARK PERKINS,
JEFFREY S. FIRESTONE,
D. SCOTT ELLIOTT, AND
JERROLD B. MCROBERTS,

Defendants.

No. CV 06-0502-PHX-JAT

Judgment

Final Judgment Against Defendant H. Mark Perkins

The Court finds that Plaintiff Securities and Exchange Commission (“Commission”) has filed a Complaint; and Defendant H. Mark Perkins has entered a general appearance, consented to the Court’s jurisdiction over him and the subject matter of this action, consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction), waived findings of fact and conclusions of law, and waived any right of appeal from this Final Judgment (Doc. #145). Accordingly,

I.

IT IS ORDERED, ADJUDGED, AND DECREED that Defendant H. Mark Perkins 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

1 service or otherwise, and each of them, are permanently restrained and enjoined from
2 violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934
3 (the “Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder,
4 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce,
5 or of the mails, or of any facility of any national securities exchange, in connection with
6 the purchase or sale of any security:

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

8 (b) to make any untrue statement of a material fact or to omit to state a
9 material fact necessary in order to make the statements made, in the light of the
10 circumstances under which they were made, not misleading; or

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

13 II.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant H.
15 Mark Perkins and his agents, servants, employees, attorneys, and all persons in active
16 concert or participation with any of them, who receive actual notice of this Final
17 Judgment, by personal service or otherwise, and each of them, are permanently enjoined
18 and restrained from aiding and abetting any violation of Section 13(a) of the Exchange
19 Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1, and 13a-13 promulgated thereunder,
20 17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13, by knowingly providing
21 substantial assistance to an issuer that has a class of securities registered pursuant to
22 Section 12 of the Exchange Act, 15 U.S.C. § 78l, or Section 15(d) of the Exchange Act,
23 15 U.S.C. § 78o, in failing to file with the Commission such accurate and complete
24 information, reports, and documents as are required to be filed with the Commission
25 pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and the
26 Commission’s rules thereunder, including but not limited to, quarterly reports on Form
27 10-Q, 17 C.F.R. § 249.308a, as prescribed by Commission Rule 13a-13, 17 C.F.R. §
28 240.13a-13, or annual reports on Form 10-K , 17 C.F.R. § 249.308, as prescribed by

1 Commission Rule 13a-1, 17 C.F.R. § 240.13a-1, with such information, reports and
2 documents to contain, in addition to such information as is expressly required to be
3 included in a statement or report to the Commission, such further material information,
4 if any, as may be necessary to make the required statements, in the light of the
5 circumstances under which they are made, not misleading, as prescribed by
6 Commission Rule 12b-20, 17 C.F.R. § 240.12b-20.

7 III.

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant H.
9 Mark Perkins and his agents, servants, employees, attorneys, and all persons in active
10 concert or participation with them who receive actual notice of this Final Judgment by
11 personal service or otherwise, and each of them, are permanently restrained and
12 enjoined from violating Section 5 of the Securities Act of 1933 (“Securities Act”), 15
13 U.S.C. § 77e, by, directly or indirectly, in the absence of any applicable exemption:

- 14 (a) Unless a registration statement is in effect as to a security, making use of any
15 means or instruments of transportation or communication in interstate
16 commerce or of the mails to sell such security through the use or medium of
17 any prospectus or otherwise;
- 18 (b) Unless a registration statement is in effect as to a security, carrying or causing
19 to be carried through the mails or in interstate commerce, by any means or
20 instruments of transportation, any such security for the purpose of sale or for
21 delivery after sale; or
- 22 (c) Making use of any means or instruments of transportation or communication
23 in interstate commerce or of the mails to offer to sell or offer to buy through
24 the use or medium of any prospectus or otherwise any security, unless a
25 registration statement has been filed with the Commission as to such security,
26 or while the registration statement is the subject of a refusal order or stop
27 order or (prior to the effective date of the registration statement) any public
28 proceeding of examination under Section 8 of the Securities Act, 15 U.S.C. §

1 77h.

2 IV.

3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant H.
4 Mark Perkins is liable for disgorgement of \$871,653 representing profits gained as a
5 result of the conduct alleged in the Complaint, together with prejudgment interest
6 thereon in the amount of \$308,823, for a total of \$1,180,476. Based upon Defendant's
7 sworn representations in his Statement of Financial Condition dated December 1, 2008,
8 and other documents and information submitted to the Commission, however, the Court
9 is not ordering Defendant to pay a civil penalty, and payment of all of the disgorgement
10 and pre-judgment interest thereon is waived. Defendant shall also pay post-judgment
11 interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The determination
12 not to impose a civil penalty and to waive payment of disgorgement and prejudgment
13 interest is contingent upon the accuracy and completeness of Defendant's Statement of
14 Financial Condition. If at any time following the entry of this Final Judgment the
15 Commission obtains information indicating that Defendant's representations to the
16 Commission concerning his assets, income, liabilities, or net worth were fraudulent,
17 misleading, inaccurate, or incomplete in any material respect as of the time such
18 representations were made, the Commission may, at its sole discretion and without prior
19 notice to Defendant, petition the Court for an order requiring Defendant to pay the
20 unpaid portion of the disgorgement, pre-judgment and post-judgment interest thereon,
21 and the maximum civil penalty allowable under the law. In connection with any such
22 petition, the only issue shall be whether the financial information provided by
23 Defendant was fraudulent, misleading, inaccurate, or incomplete in any material respect
24 as of the time such representations were made. In its petition, the Commission may
25 move this Court to consider all available remedies, including, but not limited to,
26 ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or
27 sanctions for contempt of this Final Judgment. The Commission may also request
28 additional discovery. Defendant may not, by way of defense to such petition: (1)

1 challenge the validity of the Consent or this Final Judgment; (2) contest the allegations
2 in the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-
3 judgment and post judgment interest or a civil penalty should not be ordered; (4) contest
4 the amount of disgorgement and pre-judgment and post judgment interest; (5) contest
5 the imposition of the maximum civil penalty allowable under the law; or (6) assert any
6 defense to liability or remedy, including, but not limited to, any statute of limitations
7 defense.

8 V.

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to
10 Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e), and Section 21(d)(2) of the
11 Exchange Act, 15 U.S.C. § 78u(d)(2), Defendant H. Mark Perkins is prohibited for ten
12 years following the date of the entry of this Final Judgment from acting as an officer or
13 director of any issuer that has a class of securities registered pursuant to Section 12 of
14 the Exchange Act, 15 U.S.C. § 78l₂ or that is required to file reports pursuant to Section
15 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

16 VI.

17 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to
18 Section 20(g) of the Securities Act, 15 U.S.C. § 77u(g), and Section 21(d)(6) of the
19 Exchange Act, 15 U.S.C. § 78u(d)(6), Defendant H. Mark Perkins is permanently barred
20 from participating in an offering of penny stock, including engaging in activities with a
21 broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to
22 induce the purchase or sale of any penny stock. A penny stock is any equity security
23 that has a price of less than five dollars, except as provided in Rule 3a51-1 promulgated
24 under the Exchange Act, 17 C.F.R. § 240.3a51-1.

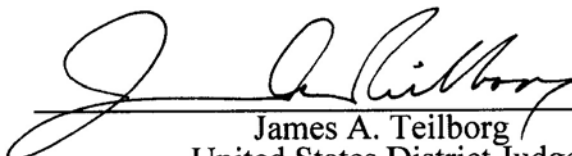
25 VII.

26 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this
27 matter for purposes of enforcing the terms of this Final Judgment.
28

VIII.

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.

Dated this 20th day of February, 2009.


James A. Teilborg
United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28