
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

MICHAEL K. OPENSHAW,

Defendant.

**FINAL JUDGMENT AS
TO MICHAEL K. OPENSHAW**

Case No. 2:07cv977

Magistrate Judge Paul M. Warner

The Securities and Exchange Commission (the “Commission”) having filed a Complaint,¹ and Defendant Michael K. Openshaw (“Defendant”) having entered a general appearance; consented to the court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment² 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 to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant’s 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

¹ See docket no. 1.

² See docket no. 2.

otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), *see* 15 U.S.C. § 78j(b), and rule 10b-5 thereunder, *see* 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.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's 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 13(b)(5) of the Exchange Act, *see* 5 U.S.C. § 78m(b)(5), and rules 13a-14, 13b2-1 and 13b2-2 thereunder, *see* 17 C.F.R. §§ 240.13a-14, 240.12b2-1 and 240.13b2-2, by (i) knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account described in Section 13(b)(2) of the Exchange Act, *see* 15 U.S.C. § 78m(b)(2); (ii) filing false statements, reports or certifications with the

Commission; or (iii) making false or misleading statements to an accountant in connection with an audit, review, or examination of applicable financial statements or take any action to coerce, manipulate, mislead, or fraudulently influence such an accountant.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's 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 aiding and abetting any violation of Sections 13(a) and 13(b)(2)(A) and (B) of the Exchange Act, *see* 15 U.S.C. §§ 78m(a) and 78m(b)(2)(A) and(B), and rules 12b-20; 13a-1 and 13a-13 thereunder, *see* 17 C.F.R. § 240.12b-20, 240.13a-1, and 240.13a-13, by knowingly providing substantial assistance to an issuer:

- (a) that has failed to file with the Commission such information, documents, annual or quarterly statements or reports (and such copies thereof), as the Commission shall prescribe, including certifications if required by the rules and regulations of the Commission; or
- (b) that has failed to include in such information, documents, annual or quarterly statements or reports such further material information as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading; or

- (c) that has failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; or
- (d) that has failed to devise or maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to conform with Generally Accepted Accounting Principles or any other applicable criteria and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is take with respect to any differences.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act, *see* 15 U.S.C. § 78u(d)(2), Defendant is prohibited 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, *see* 15 U.S.C. § 78l, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, *see* 15 U.S.C. § 78o(d).

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that based on Defendant's sworn representations in his Statement of Financial Condition dated July 31, 2007, and other documents and information submitted to the Commission, the court is not ordering Defendant to pay a civil penalty. However, the determination not to impose a civil penalty is contingent upon the accuracy and completeness of Defendant's sworn Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Defendant's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant, petition the court for an order requiring Defendant to pay the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of the Consent or this Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of a civil penalty should not be ordered; (4) contest the imposition of the maximum civil penalty allowable under

the law; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

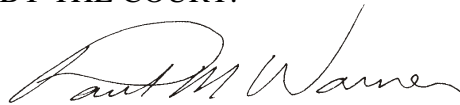
VII.

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.

IT IS SO ORDERED.

DATED this 22nd day of January, 2008.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Paul M. Warner", is written over a horizontal line.

PAUL M. WARNER
United States Magistrate Judge