

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SECURITIES AND EXCHANGE COMMISSION, 100 F Street, N.E. Washington, D.C. 20549-4631,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No: H-07-1408
	:	
DEFENDANT INCORPORATED and ROY FEARNLEY,	:	
	:	
Defendants.	:	
	:	

ORDER GRANTING DEFAULT JUDGMENT AGAINST DEFENDANT ROY FEARNLEY

This matter came before this Court on the motion of Plaintiff Securities and Exchange Commission, seeking entry of a judgment by default, providing it with the relief requested in its Complaint against Defendant Roy Fearnley, for his failure to appear or otherwise defend in this cause.

This Court having considered the pleadings and declarations on file herein makes the following findings of fact and conclusions of law:

1. The SEC's Complaint commencing this civil action against Fearnley was filed on May 3, 2007.¹ [Docket No. 1].
2. On August 25, 2007, Plaintiff sought leave through the Court for alternative service. That application was granted on September 7, 2007. [Docket No. 12].

¹ One corporate Defendant, Defendant Incorporated, was also sued.

3. Pursuant to the Order, Fearnley was served on September 11, 2007 via email and by mailing to his last known address. [Docket No. 13].

4. To date, Defendant Roy Fearnley has not filed an answer to the Commission's Complaint, nor has he otherwise appeared before this Court to defend in this cause.

5. Fearnley is neither an infant nor incompetent. Fearnley is not eligible for relief under the Soldiers' and Sailors' Civil Relief Act of 1940 [50 U.S.C. Appendix, § 501 et seq.].

6. The Court has personal jurisdiction over Fearnley, and subject matter jurisdiction over this action. Venue is proper in this district.

7. The allegations in the Commission's Complaint as to the defendant are, as to it, deemed admitted.

8. The Commission seeks an order enjoining Fearnley from committing future violations of Sections 30A and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78dd-1 and 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. §240.13b2-1] and from aiding and abetting violations of Section 30A, 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78dd-1; 78m(b)(2)(A) and (B) and 78m(b)(5)].

9. The Commission also seeks the entry of an order that directs Fearnley to pay disgorgement, representing the amount paid or attributable to him during the periods that he caused the unlawful transactions set out in the Commission's *Complaint* and prejudgment interest accrued at the rate permitted by law, from the date the funds were received through the date of this motion. The Commission seeks disgorgement in the amount \$5,000, along with \$7,635.51 in prejudgment interest from Defendant Fearnley.

10. The Commission finally seeks to recover an appropriate civil penalty from Fearnley pursuant to Sections 21(d)(3) and 32(c) of the Exchange Act.

On the basis of the foregoing findings of fact and conclusions of law,

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant' 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 30A of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78dd-1], by use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to –

(1) any foreign official for purposes of –

(A)(i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of the official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of –

(A) (i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of –

(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage;

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant' 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 violations of

Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§78m(b)(2)(A) and 78m(b)(2)(B)] by failing, or causing the failure of any issuer having 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)], to:

(A) make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflected its transactions and dispositions of its assets; or

(B) devise and 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 permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for its 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 taken with respect to any differences.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant' 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, knowingly circumventing or knowingly failing to implement a system of internal accounting controls, or knowingly falsifying, or directly or indirectly falsifying or causing to be falsified, any book, record, or account described in

Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)], in violation of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$5,000, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$7,635.51. Defendant shall satisfy this obligation by paying \$12,635.51 within 14 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 Roy Fearnley 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 pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

V.

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 Judgment.

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 Judgment forthwith and without further notice.

Dated: January 26th, 2010.



Nancy F. Atlas
United States District Judge