

Christopher C. Ehrman (pro hac vice)
Jacob D. Krawitz (pro hac vice)
Brian T. Fitzsimons (pro hac vice)
Attorneys for Plaintiff
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Tel. 202-551-4590

Thomas M. Melton (4999)
Attorney for Plaintiff
U.S. Securities and Exchange Commission
15 West South Temple, Suite 1800
Salt Lake City, Utah 84101
Tel. 801-524-5796

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

v.

BRIAN J. SMART, and
SMART ASSETS, LLC, a California limited liability
company,

DEFENDANTS.

**ORDER REGARDING THE
COMMISSION'S MOTION
FOR SUMMARY
JUDGMENT AGAINST
DEFENDANTS BRIAN J.
SMART AND SMART
ASSETS, LLC**

Civil No. 2:09cv00224 (DAK)

Judge Dale A. Kimball

The matter before the Court is Plaintiff's Motion for Summary Judgment against Brian J. Smart and Smart Assets, LLC. The Court has considered Plaintiff's Memoranda in support of its Motions, as well as the Defendants' Opposition papers.

For all of the reasons stated in the Commission's Memoranda in Support of Motion for Summary Judgment against Defendants Brian J. Smart and Smart Assets, LLC,¹ the Court grants the motion.

I.

Accordingly, it is HEREBY ORDERED that Plaintiff's Motion for Summary Judgment against Brian J. Smart and Smart Assets, LLC [Docket # 37] is GRANTED.

II.

It is FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants and Defendants' 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 (the "Exchange Act") [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.

III.

¹ See Docket # 38, 80.

It is FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants and Defendants' 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 of 1933 (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.

IV.

It is FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are liable for disgorgement of \$2,059,077, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$597,426, for a total of \$2,656,503 and a civil penalty in the amount of \$2,059,077 pursuant to Section 20(d)(2) of the Securities Act and Section 21(d)(3) [15 U.S.C. § 77t(d)(2); 15 U.S.C. § 78u(d)(3)]. Defendants shall satisfy this obligation by paying \$4,715,580 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, 100 F Street, NE, Stop 6042, Washington DC 20549, and shall be accompanied by a letter identifying Brian J. Smart and Smart Assets, LLC as defendants 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. Defendants 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.

Dated this 6th day of June, 2011.

BY THE COURT:

A handwritten signature in black ink that reads "Dale A. Kimball". The signature is written in a cursive, slightly slanted style.

DALE A. KIMBALL
United States District Judge