

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

**SECURITIES AND EXCHANGE)
COMMISSION,)**

Plaintiff,)

v.)

Case No. 09-CV-0061-CVE-FHM

**GEORGE DAVID GORDON,)
JOSHUA WAYNE LANKFORD, and)
DEAN JOSEPH SHEPTYCKI,)**

Defendants.)

**DEFAULT JUDGMENT AS TO DEFENDANT
JOSHUA WAYNE LANKFORD**

This matter comes on for consideration of plaintiff’s Second Motion for Entry of Default Judgment against Defendant Joshua Wayne Lankford (Dkt. # 88). On February 10, 2009, plaintiff Securities and Exchange Commission (the Commission) filed this case alleging, *inter alia*, that defendant Joshua Wayne Lankford and others violated sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a) (the Act), and section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b) (Exchange Act). Plaintiff alleges that Lankford and others engaged in a “pump and dump” scheme to inflate the price of target stocks and sells their shares at an inflated price. Plaintiff seeks injunctive relief, disgorgement, pre-judgment interest, and statutory civil penalties against defendant.

On February 11, 2009, Commission staff sent via Federal Express a copy of the complaint and a Notice of Lawsuit and Request For Waiver of Service of Summons (Request for Waiver) to Joshua Lankford at 511 Royal Lane, Dallas, Texas. Dkt. # 47, at 2. Federal Express notified the Commission staff via telephone that it was unable to deliver the package containing the complaint

and the Request for Waiver to Lankford at the address listed on the shipping label, and returned the package. Dkt. # 46-3, at 6. The same day the Commission filed its complaint, the United States Department of Justice and the United States Attorney's Office for the Northern District of Oklahoma announced the indictment of five individuals, including Lankford. In its press release dated February 10, 2009, the Department of Justice noted that four of the five individuals had been arrested, and that the "indictment also charges Dallas-area resident Joshua Wayne Lankford, 35. Lankford's current location is unknown, and law enforcement officials are seeking him as a fugitive." Id. at 8. On November 15, 2010, Commission staff sent via registered mail and certified mail an additional copy of the Request for Waiver to Lankford at the same address. The registered mail and certified mail envelopes containing the Request for Waiver were returned to Commission staff by the United States Postal Service marked with "Return to Sender" notices indicating attempted delivery and inability to forward. Id. at 17-31; Dkt. # 46-4, at 1-15; Dkt. # 49-5.

On April 29, 2011, the Commission filed a motion seeking to serve Lankford by publication pursuant to OKLA. STAT. tit. 12, § 2004(C)(3)(c). Dkt. # 74. On May 2, 2011, the Court granted the Commission's motion. Dkt. # 75. On May 10, May 17 and May 24, 2011, the Commission published a notice of service by publication in accordance with the requirements of § 2004(C)(3)(c) in the Tulsa Daily Commerce & Legal News, a daily newspaper of general circulation in Tulsa, Oklahoma. See Dkt. # 85. Lankford did not file a responsive pleading or otherwise enter an appearance in this case. On June 23, 2011, plaintiff filed a motion for entry of default by the Court Clerk (Dkt. # 87) as to Lankford, and the Court Clerk entered Lankford's default (Dkt. # 93) on July 26, 2011. Pursuant to Fed. R. Civ. P. 55(a), default judgment is appropriate when "a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided

by these rules and that fact is made to appear by affidavit or otherwise.” The Court finds that Lankford has failed to file a responsive pleading or otherwise defend against plaintiff’s claims, and default judgment should be entered in favor of plaintiff and against Lankford. On March 11, 2011, the Court held an evidentiary hearing concerning the amount of the default judgment as to disgorgement and civil penalty as to defendant Dean Joseph Sheptycki, and the Court finds that Lankford participated in the same scheme and is subject to the same penalties as Sheptycki. See Dkt. # 68.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that plaintiff’s Second Motion for Entry of Default Judgment against Defendant Joshua Wayne Lankford (Dkt. # 88) is **granted**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Joshua Wayne Lankford and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this default judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, section 10(b) of 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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Joshua Wayne Lankford and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this default judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, 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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Joshua Wayne Lankford and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this default judgment by personal service or otherwise are permanently restrained and enjoined from violating section 5 of the Securities Act (15 U.S.C. § 77e) by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) 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 or examination under Section 8 of the Securities Act (15 U.S.C. § 77h).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Joshua Wayne Lankford is permanently barred from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act (17 C.F.R. 240.3a51-1).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of plaintiff Securities and Exchange Commission and against defendant Joshua Wayne Lankford for disgorgement in the amount of \$40,072,806.97, representing profits as a result of the conduct alleged in the complaint, minus amounts recovered from co-defendants in criminal forfeiture orders in the parallel criminal case, together with pre-judgment interest thereon in the amount of \$10,307,489.92, for a total of \$50,380,296.89. Post-judgment interest shall accrue at a rate of .17 percent per annum. The Court orders that Lankford's liability for disgorgement will be joint and several with other defendants found liable in this case for the conduct alleged.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Joshua Wayne Lankford shall pay a civil penalty in the amount of \$43,927,809.95 pursuant to section 20(d) of the Securities Act (15 U.S.C. § 77t(d)) and pursuant to section 21(d)(3) of the Exchange Act (15 U.S.C. § 78u(d)(3)). Defendant shall make this payment within 14 days after entry of this default 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 Lankford 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 default judgment. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury. Post-judgment interest shall accrue at a rate of .17 percent per annum.

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 default judgment.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there being no just reason for delay, pursuant to Fed. R. Civ. Proc. 54(b), this default judgment should be entered before entry of final judgment as to all parties and claims. In particular, there are claims pending against defendant George David Gordon. Gordon has entered an appearance in this case and “denies all relief and entitlement to relief sought or claimed by plaintiff.” Dkt. # 37, at 4. However, this case has been pending for two years. The Court finds no just reason to delay entry of default judgment against Lankford, because he is a fugitive in a related criminal case and is unlikely to voluntarily enter an appearance in this case. Gordon will not be prejudiced by the entry of default judgment against Lankford. Thus, there is no just reason for delaying entry of default judgment against Lankford, and this default judgment constitutes a final judgment of plaintiff’s claims against Lankford.

DATED this 27th day of July, 2011.



CLAIRE V. EAGAN, CHIEF JUDGE
UNITED STATES DISTRICT COURT