

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

CHARLES H. MERCHANT, SR. and
SOUTHERN USA RESOURCES, INC.,

Defendants.

Civil Action No.
1:13-CV-3879-SCJ

**ORDER ENTERING FINAL JUDGMENT AND ORDERING CIVIL
PENALTIES AGAINST DEFENDANTS MERCHANT AND
SOUTHERN USA**

**A. Previous Orders of the Court And Appropriateness of Civil
Penalties Against Both Defendants**

Plaintiff Securities and Exchange Commission (“Commission”) has filed its complaint herein. Defendant Merchant has previously entered his general appearance, and has admitted the in personam jurisdiction of this Court over him and the jurisdiction of this Court over the subject matter of the action. Mr. Merchant was permanently enjoined by *Order of Permanent Injunction And Other Ancillary Relief As To Defendant Charles H.*

Merchant, Sr. on November 25, 2013.¹ In December 2014, the Commission filed a motion for summary judgment against Defendant Merchant regarding all monetary relief, and filed a separate motion seeking default judgment against Defendant Southern USA including monetary relief against that defendant. In an *Order* entered April 20, 2015, the Court granted both of those motions. By separate *Order of Permanent Injunction And Other Ancillary Relief As To Defendant Southern USA Resources, Inc.* also dated April 20, 2015, the corporate defendant has also been permanently enjoined from further violations of the federal securities laws.²

In the April 20, 2015 *Order* which granted the SEC's motions for summary judgment against Merchant and for default judgment against Southern USA, the court also concluded that no disgorgement or prejudgment interest would be ordered against the defendants. However, regarding civil penalties the Court held that:

“at the very least, Defendant Merchant’s violations of the Securities Exchange Act place him in the third tier for civil

¹ In the order, Defendant Merchant was permanently enjoined from violations of Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 and Rules 10b-5, 13a-14 and 13b2-1 thereunder; from aiding and abetting, and being liable as a control person under Section 20(a) of the Exchange Act for, Southern USA's violations of Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 10b-5, 13a-1, 13a-11, 13a-13, and 13a-15 thereunder. In addition to finding disgorgement with prejudgment interest and civil penalties were appropriate, the Court also imposed an officer and director bar, and a penny stock bar against Mr. Merchant.

² In the order, Defendant Southern USA was permanently enjoined from Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 13a-1, 13a-11, 13a-13 and 13a-15 thereunder. In addition the court found disgorgement, prejudgment interest and civil penalties were appropriate.

penalties. Through his consent, he admits that his violations involved fraud and deceit. Because he committed his violations on the open market, he created a significant risk of substantial losses to other persons.”

See Order entered April 20, 2015, p. 7.

Based upon all of the information before this Court, the Court concludes that civil penalties against defendants Merchant and Southern USA are appropriate. Section 21(d)(3) of the Securities Exchange Act of 1934 (“Exchange Act”) provides that the Commission may seek to have a court impose civil penalties for any violations of those acts. Civil monetary penalties pursuant to the Exchange Act are required to be adjusted for inflation. The defendants’ conduct herein occurred in 2012 through 2013, a period after the time that the adjustment became effective in early 2001. See 17 C.F.R. § 201.1001, Adjustment of Civil Monetary Penalties - 1996. LEXSEE 66 FR 8761 at 8762. Also See Table IV to Subpart E of Part 201-Civil Monetary Penalty Inflation Adjustments. The amount of civil monetary penalty applicable herein is, therefore, the amount for the relevant time of the violations at the third tier level for each defendant.

The SEC contends that because Mr. Merchant controlled the corporate defendant which itself could act only through the individual who controlled it, that the scienter of Mr. Merchant should be imputed to the corporation. The scienter of a control person can be imputed to

a corporation. *See, SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1089 n.3 (2d Cir. 1972) (holding that an individual's "knowledge is imputed to the corporations which he controlled"). As Mr. Merchant served as corporate director, CEO, CFO, president, secretary and treasurer during the relevant period of the fraud (SMF ¶ 13)³ the Court concludes that the scienter of Defendant Merchant is imputed to Defendant Southern USA, and the latter therefore also engaged in securities violations involving fraud and deceit on the open market and also created a significant risk of substantial losses to other persons, placing its conduct within the third tier of civil penalties.

When a defendant's violative conduct involved fraud and resulted in substantial losses to others, or significant risk of losses, a district court may impose a civil penalty in an amount not to exceed the greater of (a) \$150,000 for a natural person and \$725,000 for any other person, or (b) the gross amount of pecuniary gain for the defendant. *Id.* Table IV to Subpart E of Part 201-Civil Monetary Penalty Inflation Adjustments. This Court has concluded that it should impose a third tier civil penalty against Merchant for only two of his multiple statutory and rule violations, specifically the two that involved scienter/knowning violations [§§ 10(b) and 13(b)(5) of the

³ "SMF" refers to the corresponding Statement of Material Facts submitted with the SEC's motion for summary judgment in December 2014.

Exchange Act], and against Southern USA for the one violation it committed which involved scienter [§ 10(b) of the Exchange Act] . For the numerous other non-scienter rule and other violations for which the defendants were enjoined, the Court will not impose an additional civil penalty.

B. The Defendants' Conduct Which Gives Rise To Third Tier Penalties

Merchant signed all Forms 10-Q and 8-K and related certifications that Southern USA filed with the Commission between May 1, 2012 and March 6, 2013. (SMF ¶ 20). Merchant had no accounting training, yet he agreed to become the CEO, CFO, officer and director of a publicly-traded company because he wanted funding for his gold mining project and was told by the investors who supplied the initial financing that they would invest in that project only through a public company so that they could eventually sell shares of the company in the open market. (SMF ¶ 21). Thereafter Merchant knowingly released materially false information into the public marketplace, where he knew people relied on such information in making investment decisions.

For example, in 2012, Southern USA, a company purportedly focused on the exploitation of mineral mining rights, and Merchant, as its CEO, CFO, president, secretary, treasurer and director, filed materially false

reports with the Commission that misrepresented the value of the company's land. During 2012, Merchant also filed with the Commission certifications that contained false statements about the company's internal controls and his own understanding of those controls. (SMF ¶ 3). When Southern USA ultimately became delinquent with respect to its 2012 Form 10-K and its two most recent Forms 10-Q, Mr. Merchant thereafter resigned his CEO and CFO positions with no successors named, and the company's outside auditor also has resigned. Despite these significant occurrences, none were disclosed by Southern USA in a Form 8-K. (SMF ¶ 4). As a result, the investing public was deprived of information relating to these material events within the publicly held company, and the investing public was therefore deprived of the information it needed to make an informed investment decision.

Perhaps more egregious was that between December 31, 2012 and February 5, 2013, at the behest of and funded by the investors who had financed Southern USA, Defendant Southern USA (controlled by Merchant) issued a series of press releases touting the company's purported gold mining activities in Alabama, including descriptions of the company's preparations for gold production and its mining of purportedly gold-bearing

ore. Merchant directly participated in the drafting of the company's press releases. (SMF ¶ 40).

All of this conduct describes an apparent pump-and-dump scheme, which was halted early due to the trading suspension in Southern USA stock brought by the Commission in March 2013. But for the trading suspension and this enforcement action which followed closely thereafter, there would have likely been significant damage to the investing public, particularly to those who bought stock in the company based upon the false information the defendants put out into the marketplace. Merchant and Southern USA should be called upon to pay a significant third tier civil penalty.

I.

CIVIL PENALTY AGAINST DEFENDANT MERCHANT

IT IS ORDERED, ADJUDGED AND DECREED that defendant Merchant pay a civil penalty pursuant to Section 21(d)(3) of the Exchange Act for each of two scienter/knowing violations for which he has been previously enjoined. A maximum third tier each for violations of Sections 10(b) and 13(b)(5) is appropriate. Merchant is ordered to pay the civil penalty in the amount of \$300,000 to the Securities and Exchange Commission within 30 days of the entry of this order, which shall thereafter

be transmitted to the United States Treasury. Payment must be made in one of the following ways:

(1) Merchant may make direct payment from a bank account via

Pay.gov through the SEC website at

<http://www.sec.gov/about/offices/ofm.htm>; or

(2) Merchant may pay by certified check, bank cashier's check, or

United States postal money orders, made payable to the Securities and

Exchange Commission and hand-deliver or mail to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payment by check or money order for the civil penalty must be accompanied by a cover letter identifying Charles H. Merchant, Sr. as a Defendant in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Edward G. Sullivan, Senior Trial Counsel, Securities and Exchange Commission, Division of Enforcement, 950 East Paces Ferry Road, N.E., Suite 900, Atlanta, Georgia 30326.

II.

CIVIL PENALTY AGAINST DEFENDANT SOUTHERN USA

IT IS ORDERED, ADJUDGED AND DECREED that defendant Southern USA pay a civil penalty pursuant to Section 21(d)(3) of the Exchange Act for the one scienter based violation for which it has been previously enjoined. A maximum third tier for the company's violation of Section 10b of the Exchange Act is appropriate. Southern USA is ordered to pay the civil penalty in the amount of \$725,000 to the Securities and Exchange Commission within 30 days of the entry of this order, which shall thereafter be transmitted to the United States Treasury. Payment must be made in one of the following ways:

- (1) Southern USA may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (2) Southern USA may pay by certified check, bank cashier's check, or United States postal money orders, made payable to the Securities and Exchange Commission and hand-deliver or mail to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payment by check or money order for the civil penalty must be accompanied by a cover letter identifying Southern USA Resources, Inc. as a Defendant in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Edward G. Sullivan, Senior Trial Counsel, Securities and Exchange Commission, Division of Enforcement, 950 East Paces Ferry Road, N.E., Suite 900, Atlanta, Georgia 30326.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over this matter for all purposes, including implementing and enforcing the terms of this Final Judgment, and may order other and further relief that this Court deems appropriate under the circumstances.

IV.

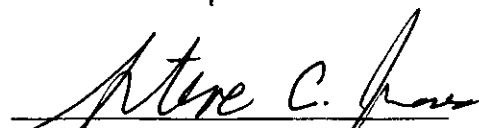
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there is no just reason for delay, and the Clerk is directed to enter a Final Judgment against defendant Merchant pursuant to the terms of this Order, pursuant to the terms of the Order of Permanent Injunction previously entered in this Court against him on November 25, 2013, and pursuant to the

terms of the Court's Order granting the Commission's motion for summary judgment against him on April 20, 2015.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there is no just reason for delay, and the Clerk is directed to enter a Final Judgment against defendant Southern USA pursuant to the terms of this Order, pursuant to the terms of the Order of Permanent Injunction previously entered in this Court against it on April 20, 2015, and pursuant to the terms of the Court's separate Order granting the Commission's motion for default judgment against it on April 20, 2015.

SO ORDERED, this 5th day of May, 2015.


STEVE C. JONES, JUDGE
U.S. DISTRICT COURT