

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>October 9, 2015</u>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

1:15-cv-01248-KPF

[rel.14-cv-7588]

PREMIERE POWER, LLC; JOHN JANKOVIC;
and JERRY JANKOVIC,

Defendants.

FINAL JUDGMENT AS TO DEFENDANT JERRY JANKOVIC

This matter came to be heard upon the application of Plaintiff Securities and Exchange Commission (the “SEC” or the “Commission”) for an Order to Show Cause (“OSC”) why a judgment by default should not be entered against defendant Jerry Jankovic. On September 8, 2015, the Court granted the OSC based on: the Affidavit of Ian D. Rupell submitted pursuant to Fed. R. Civ. P. 55(b)(2), Local Civil Rule 55.2(b), and this Court’s Individual Rules of Practice in Civil Cases, Rule 4.I. and Attachment A; the Clerk’s Certificate of Default (Docket No. 16); and the files and records of this action. The Court set a conference on the OSC for October 9, 2015 in Courtroom 618 of this Court.

The Court, having considered: (1) the Complaint; (2) the Affidavit of Ian D. Rupell pursuant to Local Civil Rule 55.2(b) and this Court’s Individual Rules of Practice in Civil Cases, Rule 4.I. and Attachment A; (3) the Clerk’s Certificate of Default (Docket No. 16); and (4) other files and records filed in support of the Commission’s application and all other evidence and arguments presented regarding the application, finds that:

- (1) This Court has jurisdiction over the parties to, and the subject matter of, this action;

- (2) The Commission has demonstrated that Jerry Jankovic properly waived service of the Summons and Complaint in this action, and that Jerry Jankovic failed to file answers to the Complaint or to otherwise defend the Commission's action; and
- (3) The Clerk of this Court noted Jerry Jankovic's default on July 1, 2015.

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is 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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is 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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant’s officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from directly or indirectly soliciting or accepting funds from any person or entity in an unregistered offering of securities.

IV.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Jerry Jankovic is liable, on a joint and several basis with defendant Premiere Power, LLC, for disgorgement of \$950,000, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$187,523.31. Jerry Jankovic also shall pay a civil penalty in the amount of \$300,000 pursuant to Securities Act Section 20(d) and Exchange Act Section 21(d). Jerry Jankovic shall satisfy these obligations by paying \$1,437,523.31 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Jerry Jankovic as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment,

Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty

Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Final 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 Final Judgment forthwith and without further notice.

IT IS SO ORDERED.

Dated: October 9, 2015



Hon. Katherine Polk Failla
UNITED STATES DISTRICT JUDGE

A copy of this Order was mailed by Chambers to:

Jerry Jankovic
7914 East 106th Street
Tulsa, OK 74133