UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
ENTERED

APR 04 2003

Michael N. Milby, Clerk of Court

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	Civil Action H-02-3119
v.	:	
G. CHRISTOPHER SCOGGIN,	:	
Defendant.	:	

[redacted] FINDINGS, ORDER AND FINAL JUDGMENT OF DEFAULT AGAINST DEFENDANT G. CHRISTOPHER SCOGGIN

It appearing to this Court that Plaintiff Securities and Exchange Commission ("Commission"), having duly commenced this action by filing its Complaint, for Permanent Injunction and Other Equitable Relief (the "Complaint"), against Defendant G. Christopher Scoggin ("Scoggin") and for such other and further relief as to this Court may deem just and proper;

It further appearing to the Court that the Defendant Scoggin has been properly served with the Summons by publication, that Defendant Scoggin has not filed his answer to the Complaint or otherwise pled; the Commission having moved this Court for an Order granting a application for Default Judgment; the Court having jurisdiction over the parties and the subject matter of this action, the Court being fully advised in the premises, and there being no just reason for delay;

19

THE COURT HEREBY FINDS AS FOLLOWS:

A. FACTS ESTABLISHING LIABILITY

1. On August 20, 2002, the Commission filed a complaint against Defendant Scoggin for his activities in connection with the touting of publicly-traded stocks alleging that he knowingly or recklessly engaged in fraudulent conduct that violated the antifraud provisions of the federal securities laws, specifically, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Section 17(b) of the Securities Act [15 U.S.C. § 77q(b)] when he touted stocks in his newsletter and on his websites without fully disclosing he had received or expected to receive compensation for doing so, the amount of such compensation, and that he had sold stocks he was touting contrary to the recommendation he made to investors.

2. Defendant Scoggin is a former registered stockbroker, having taken and passed his NASD Series 7 examination and his Series 64 Texas state test for licensing of registered representatives in 1997. Scoggin worked as a stockbroker for a firm in Houston, Texas until late 1997. Thereafter, Scoggin held senior shareholder relations positions at two NASDAQ-listed public companies until leaving to start his own investor relations consulting business. (Complaint ¶ 7).

3. In conjunction with his consulting firm, Scoggin started an investment newsletter called "Stock Talk" in September 1998. Scoggin published the newsletter on approximately a weekly basis, and distributed it via fax and posted it to Scoggin's company website: Stocktalknews.com. There was no subscription charged for Stock Talk. The newsletter was also distributed to potential investors based upon facsimile machine "mailing lists" Scoggin purchased from third party vendors. Likewise,

Stocktalk.com was accessible via the internet, without the need for a password or membership. (Complaint ¶ 8).

Scoggin's Fraudulent Scheme

4. Scoggin was the sole author and editor of all the content in all editions of the newsletter. The newsletters in question all followed the same general format: the newsletter contained several stock recommendations followed by a disclaimer stating Scoggin's research and analysis was independent. While Scoggin did in some cases disclose his ownership interest in, or relationship with, the companies featured in his newsletters, Scoggin failed to disclose his relationship with and/or compensation from four of the companies featured in a number of his newsletters. (Complaint ¶ 9).

Aqua Vie Beverage

5. Scoggin sent out his first newsletter on September 28, 1998. In that newsletter, Scoggin recommended three stocks. Two of the companies were large, established technology companies: Gateway and Infoseek. The third was Aqua Vie Beverage, a small Canadian water beverage company. One critical fact was omitted from the newsletter: Aqua Vie Beverage paid Scoggin $20,000 to write and distribute the newsletter. While the newsletter did say that Scoggin's firm received a fee to "reprint and distribute this newsletter," Scoggin failed to disclose that Aqua Vie was the source of the payment and that the payment was in exchange for including Aqua Vie in the newsletter in the first place. Further, despite the fact that Aqua Vie paid the entire cost of producing the newsletter and received a glowing recommendation from Scoggin, the newsletter's disclaimer represented that the report was based on Scoggin's "independent and diligent analysis." (Complaint ¶ 10).

Alliance Consumer International

6. In the October 26, 1998 edition of the newsletter, Scoggin again profiled three companies, and he again chose two large, well-known companies (Wal-Mart and K-Mart) and one small, obscure company -- Alliance Consumer International ("Alliance"). In his write-up, Scoggin provided a three-month target price for Alliance of $7.50 to $10.00, and asserted that the $7.50 target price seemed "a safe bet." Scoggin also told his readers that a few months earlier he "flew out to L.A. and toured the factory" and was so impressed that he invested in Alliance's private placement "on the spot." (Complaint ¶ 11).

7. Scoggin failed to disclose, however, one critical point: Alliance hired Scoggin to handle its investor relations, promote the company and eventually set up an in-house investor relations program. In exchange for his services, Alliance gave Scoggin the opportunity to purchase 100,000 shares of Alliance stock at a "special price" of $0.03 per share in a private placement before the company went public. (Complaint ¶ 12).

8. Further compounding the disclosure problems with the October 28th newsletter, Scoggin affirmatively and falsely wrote in the disclaimer he attached to the newsletter that his company had "not received a fee to reprint and distribute this newsletter." Scoggin further falsely represented that the report was based on his independent and diligent analysis. (Complaint ¶ 13).

9. Contrary to the representation in the newsletter, Scoggin's investment in Alliance was not a disinterested, objective investment decision based on the merits of the company. Rather, Scoggin received a sweet deal in lieu of cash compensation. While Scoggin did not sell his Alliance position at the time he featured Alliance in Stock Talk, Scoggin's position in Alliance was worth over $90,000 while he was promoting the

company in Stock Talk (compared to the $3,000 he paid for the stock). Scoggin ultimately sold his position in Alliance in May and June of 1999, netting a profit of $45,112. (Complaint ¶ 14).

Carnegie International

10. Scoggin engaged in a similar deception regarding his promotion of Carnegie International. Scoggin first recommended Carnegie to his readers in the October 6, 1998 newsletter. In that newsletter, Scoggin began with recommendations of two well-established telecommunications companies, AT&T and Lucent, and concluded with a glowing recommendation of Carnegie. Therein, Scoggin set a 6-9 month target price of $8 per share, despite the fact the stock had recently traded around $0.50 per share. Scoggin also assured his audience that his report was based on his "independent and diligent analysis" and represented that his firm did "not receive a fee to reprint or distribute this newsletter." (Complaint ¶ 15).

11. Omitted from the newsletter was any mention that Scoggin's firm had entered into a shareholder relations consulting contract with Carnegie. In exchange for his services, Scoggin was to receive 2,000,000 shares of restricted Carnegie Stock, approximately 4.99% of the company's outstanding shares. While Scoggin did state his firm held 2,000,000 shares of restricted Carnegie stock and that Scoggin had personally purchased 10,000 shares of Carnegie stock, nowhere did he tell his readers that Scoggin's firm received the overwhelming majority of its position in return for Scoggin's promotional efforts. (Complaint ¶ 16).

12. Throughout the rest of 1998 and into 1999, Scoggin repeatedly promoted Carnegie in his newsletters without disclosing that he was Carnegie's paid promoter.

Scoggin featured Carnegie in his two November 1998 newsletters. Neither of his November 1998 newsletters disclosed Scoggin's contractual relationship with Carnegie or the compensation he was to receive. In fact, in the November 10, 1998 newsletter, Scoggin stated that he had added 5,000 shares to his position, but failed to disclose that his position included nearly 5% of the company's outstanding shares. Both of the November 1998 newsletters continued to represent falsely, however, that they were the product of "independent and diligent analysis." (Complaint ¶ 17).

13. Scoggin's December 11, 1998 newsletter further misrepresented his financial relationship with Carnegie. In that newsletter, Scoggin again promoted Carnegie, saying that "[o]ur number one pick for 1998, is also number one for 1999, CAGI [Carnegie]." Scoggin again failed to disclose that he held over 2,000,000 restricted shares of Carnegie or that Carnegie was the source for those shares. Rather, Scoggin disclosed only that he personally had purchased 111,000 shares and his partner had purchased 23,000 shares of Carnegie stock on the open market. With each disclosed transaction, Scoggin emphasized that the purchases were made with personal funds. (Complaint ¶ 18).

14. In the January 12, 1999 and January 27, 1999 editions of the Stock Talk newsletter, Scoggin continued to recommend Carnegie, along with the stocks of larger, more established companies such as Amazon, America Online, and Infoseek. Scoggin disclosed that he had purchased 133,000 shares of Carnegie on the open market with his own funds, and this time stated that his firm held two million shares of restricted stock. He failed again, however, to disclose that the two million shares were compensation from Carnegie for his promotional efforts. Coupled with his failure to disclose the source of

the firm's two million share block of Carnegie stock, Scoggin falsely represented that the newsletters were based upon his "independent and diligent analysis" and his firm did not receive "a fee to reprint or distribute" the newsletters. (Complaint ¶ 19).

15. Finally, in his February 25, 1999 newsletter -- more than four months after his first newsletter promoting Carnegie shares -- Scoggin in his disclaimer first admitted that he was a promoter and consultant for Carnegie and that he had received two million shares in payment for his services, stating: "Scoggin, Alexander & Associates was paid a consulting fee by [Carnegie] of $900,000 in restricted stock in July of 1998." (Complaint ¶ 20).

Entertainment Internet, Inc.

16. Scoggin also misled the readers of his newsletter with respect to his objectivity concerning Stock Talk's coverage of Entertainment Internet, Inc. ("EINI"). EINI was a Los Angeles-based company that purportedly used the internet to match actors with producers searching to cast their productions. Scoggin first featured EINI in the February 16, 1999 edition of the Stock Talk. Prior to February 1999, stock of EINI traded at approximately $0.90 per share. (Complaint ¶ 21).

17. In the February 16th edition of Stock Talk, Scoggin wrote that he was "BULLISH" on this stock. Scoggin noted that the stock had a "tiny" float of 3 million shares and that in the prior weeks he had bought 3% of the float on the market and the price "more than doubled." Scoggin then targeted the stock to reach $26 per share in one year. (Complaint ¶ 22).

18. Scoggin disclosed that he, his business partner and his employees held 103,300 shares of EINI. Scoggin falsely stated, however, that he did "not have any relation with the company." (Complaint ¶ 23).

19. On February 25, 1999, Scoggin again featured EINI in his newsletter. Scoggin stated that his company was beginning a series of acquisitions of EINI stock and disclosed his purchases from the last newsletter. Scoggin then projected that the stock price would reach $10 per share in the next three months with a price range in the "mid-20's" within the year. Shortly after the February 25th newsletter, EINI stock reached over $4.90 per share. Scoggin also featured EINI in the April 28, 1999 edition of his newsletter. In both the February 25th and April editions of his newsletter, Scoggin stated only that "he currently holds a large position in EINI purchased on the open market." (Complaint ¶ 24).

20. The assertions concerning EINI in the February and April editions of Stock Talk that Scoggin's analysis was independent and he had no relationship with EINI were materially false and misleading. First, Scoggin's assertion that there was no relationship between him and EINI was patently false. In January 1999, Scoggin and EINI entered into an oral agreement whereby EINI would compensate Scoggin for his promotional services and reimburse Scoggin's expenses. Second, Scoggin's assertion that he received no compensation from EINI to publish and distribute the Stock Talk newsletters was also false and misleading. In producing the February and April 1999 newsletters, EINI incurred significant debt to Scoggin, for which Scoggin expected payment under his oral agreement with EINI. For example, between January and June

1999, EINI had incurred a debt to Scoggin of $286,000 for Scoggin's promotional services. (Complaint ¶ 25).

21. Scoggin and EINI memorialized, in writing, their oral agreement on April 26, 1999. In that written agreement, the parties expressly acknowledged Scoggin began working for EINI on February 5, 1999 and that the agreement was effective as of that date. The agreement further obligated EINI to pay Scoggin one million EINI shares for his promotion of the company since that time in lieu of cash. (Complaint ¶ 26).

22. In the May 13, 1999 edition of Stock Talk, Scoggin finally disclosed the compensation from EINI, admitting his company was "paid a consulting fee by EINI of $750,000 in restricted stock." (Complaint ¶ 27).

Scoggin Scalped The Stocks He Touted To His Clients

23. Scoggin also engaged in a fraudulent scheme to turn a quick profit on the sale of the stock of some of his clients. Specifically, Scoggin engaged in a practice known as scalping, *i.e.,* recommending the purchase of a stock without disclosing the intent to sell the same stock that is currently being promoted. (Complaint ¶ 28).

24. Scoggin engaged in scalping with respect to the stock of two of his customers: Carnegie and EINI. Scoggin's fraudulent scheme had two effects. First, it provided Scoggin with an opportunity to profit at the expense of his readers. Second, it deceived the readers of Stock Talk as to the asserted independence of Scoggin's newsletters. Had Scoggin disclosed his intention to sell the stock of EINI and Carnegie contrary to his own advice, it would have undercut his claims of independence and objectivity. (Complaint ¶ 29).

25. With respect to Carnegie, Scoggin purchased 100,000 shares of Carnegie at prices between $0.81 and $2.22 per share. On January 12, 1999, Scoggin published another edition of Stock Talk telling his readers that he was giving Carnegie a recommendation of "STRONG BUY." (Complaint ¶ 30).

26. Shortly after issuing the January 12th edition of his newsletter, Scoggin sold all of the Carnegie stock he purchased on the market at between $5.25 and $5.68 per share, netting a profit of $381,708.59. Scoggin disclosed neither his intention to sell his Carnegie stock before the trades nor that he sold all of the Carnegie stock he had purchased on the open market. Thus, while Scoggin trumpeted his purchases of Carnegie stock as proof of its potential, he failed to disclose his sales of those very same shares. (Complaint ¶ 31).

27. Scoggin engaged in similar conduct with the sales of his holdings of EINI stock. Despite expounding the virtues of EINI stock in his February 25, 1999 newsletter and predicting that the stock price would reach $10 per share in the next three months with a price range in the "mid-20's" within the year, Scoggin began selling his EINI stock within days of distributing that newsletter. Scoggin sold 57,300 shares of EINI between $4.083 and $4.906 per share. (Complaint ¶ 32).

28. In the May 1999 edition of Stock Talk, Scoggin encouraged his investors to invest in EINI and declared that he and his company owned over 1,000,000 shares of EINI. Scoggin failed to disclose, however, his intention to continue selling EINI stock. Scoggin proceeded to sell nearly 30,000 shares of EINI common stock. (Complaint ¶ 33).

29. Scoggin's scalping of EINI stock in both February and May 1999 generated approximately $104,634.03 for Scoggin. During his selling, Scoggin continued to promote EINI stock and failed to disclose his sales to his readers. (Complaint ¶ 34).

30. Scoggin realized total gains of $531,454.62 on his sales of the stocks he was touting: (a) $45,112.00 on Alliance; (b) $104,634.03 on EINI; and (c) $381, 709.59 on his sales of Carnegie in January 1999, at the time he was telling his audience to buy. (Guido Decl. ¶ 6). [1]

B. <u>FACTS ESTABLISHING JURISDICTION</u>

31. The Commission commenced this action on August 20, 2002 by filing the Complaint against the Defendant Scoggin. (Guido Decl. ¶ 2).

32. On January 2, 2003, an Order was entered authorizing service of process on Scoggin by publication and granting an extension of time within which to serve Scoggin. (Guido Decl. ¶ 3).

33. Pursuant to the directions of the Court in the January 2, 2003 Order, the Commission caused the Notice of Summons to be published in the San Antonio Express News, a daily newspaper published in Bexar County, TX, on January 23 and 30, 2003 and February 6 and 13, 2003, and in the Houston Chronicle, a daily newspaper published in Harris County, TX, on January 22 and 29, 2003 and February 5 and 12, 2003. Affidavits of Urai Chokedee, bookkeeper, San Antonio Express News, dated February 14, 2003, and Gail Feagins, supervisor-accounts receivable, Houston Chronicle, dated February 12, 2003, filed herewith. (Guido Decl. ¶ 4, and Exhibits 1 and 2 thereto).

---

[1] Cites to "Guido Decl." refer to the Declaration of Kenneth J. Guido, dated March 10, 2003.

34. The Defendant Scoggin has not filed an answer to the Complaint or otherwise pled, and the time has expired for him to have done so to avoid the entry of a default order. (Guido Decl. ¶ 5).

CONCLUSIONS OF LAW

BY REASON OF THE FOREGOING, this Court has subject matter jurisdiction of this action and personal jurisdiction of Defendant Scoggin;

BY REASON OF THE FOREGOING, Defendant Scoggin, directly or indirectly, in connection with the purchase or sale of the securities of an issuer, by the use of any means or instrumentality of interstate commerce, of the mails, and of any facility of any national securities exchange: (i) employed a device, scheme or artifice to defraud; (ii) made an untrue statements of a material fact and omitted 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; and (iii) engaged in an act, practice, or course of business which operated as a fraud or deceit upon other persons, in violation of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

BY REASON OF THE FOREGOING, Defendant Scoggin, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, published, gave publicity to, circulated a notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, described such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without

fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof, in violation of Section 17(b) of the Securities Act [15 U.S.C. § 77q(b)].

THEREFORE,

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT the Commission's Application for An Order of Default Judgment is hereby granted.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Scoggin, his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, Section 17(b) of the Securities Act [15 U.S.C. § 77q(b)], by publishing, giving publicity to, or circulating any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

III.

IT IS FURTHER ORDERED ADJUDGED AND DECREED THAT Defendant Scoggin and his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this Final

Judgment by personal service or otherwise, and each of them, are permanently enjoined and restrained from directly or indirectly, by the use of 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: (1) employing any device, scheme, or artifice to defraud; (2) making 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 (3) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

IV.

IT IS FURTHER ORDERED ADJUDGED AND DECREED THAT

Defendant Scoggin pay disgorgement of profits gained and retained from the conduct alleged in the Complaint in the amount of $531,454.62 plus pre-judgment interest of $174,553.34. (Guido Decl. ¶ 7, and Exhibit 3 thereto). The Commission shall submit for the Court's consideration a proposed order setting forth the proper disposition of such funds.

V.

IT IS FURTHER ORDERED ADJUDGED AND DECREED THAT

Defendant Scoggin shall pay the maximum third tier-civil money penalty authorized by Section 20(d)(2) of the Securities Act, 15 U.S.C. §77t(d)(2), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. §78u(d)(3); and 17 C.F.R. § 201.1002, setting inflation adjustment calculation. The Commission shall submit for the Court's consideration a

proposed order setting forth the proper amount of civil money penalties Defendant Scoggin shall pay and setting forth the proper disposition of such funds.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREE THAT Defendant Scoggin 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].

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT there being no just cause for delay, the Clerk of the Court is directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment against Defendant Scoggin forthwith and without further notice.

SO ORDERED.

Dated: APR. 4, 2003

UNITED STATES DISTRICT JUDGE