Defendant
MAILED TO COUNSEL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RODNEY S. SHEHYN,
RODNEY D. MARR,
DONALD L. MARR, and
KAREN S. LEIGH,

Defendants.

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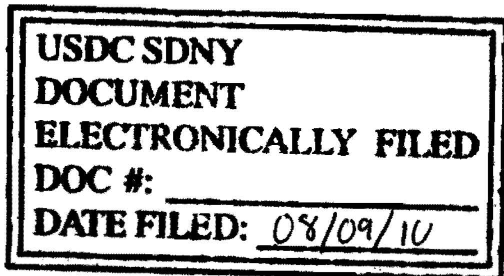
04 CV 2003 (LAP)

MEMORANDUM & ORDER



LORETTA A. PRESKA, Chief United States District Judge:

Plaintiff, the Securities and Exchange Commission ("Plaintiff" or the "SEC"), brings this motion seeking summary judgment against Defendant Rodney S. Shehyn ("Shehyn") with respect to Plaintiff's claim that Shehyn violated Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) (the "Exchange Act"), Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q (the "Securities Act"), Section 20(a) of the Exchange Act, 17 C.F.R. 240.12b-2, and Section 15(a) of the Exchange Act, 15 U.S.C. § 78(c)(a). The SEC requests that the Court permanently enjoin Shehyn from future violations of the above antifraud provisions under 21(d)(1) of the Exchange Act, determine

appropriate equitable remedies, and assess an appropriate civil penalty against Shehyn under Section 21(d)(3)(A) of the Exchange Act. For the reasons set forth herein, Plaintiff's motion is GRANTED.

I. BACKGROUND[1]

Beginning in approximately January 2000 and lasting though approximately June 2002, Shehyn acted as the owner and CEO of Millennium Financial Ltd ("Millenium"), which he claimed was an international investment advisor firm. (SEC 56.1 Stmt. ¶¶ 1–2.) Shehyn never registered himself or the company with the SEC. Millennium sought high-net worth, English speaking investors in at least twenty countries, primarily in Western Europe, and attempted to sell them stock. (Id. ¶ 4.) Millennium used brochures and newsletters to offer pre-IPO stocks issued by three U.S. companies: Key Card Communications, Inc. ("Key

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[1] The following facts are drawn from the SEC's Statement Pursuant to Local Civil Rule 56.1(a) ("SEC 56.1 Stmt."). By order dated July 1, 2010 [dkt. no. 110] the Court ordered Shehyn to file an opposition by July 9, 2010. Shehyn failed to respond to the motion for summary judgment and did not file a document containing "a correspondingly numbered paragraph responding to each numbered paragraph" in Plaintiff's Statement of Material Facts, as is required by Local Civil Rule 56.1(b). Therefore, the facts contained in Plaintiff's Statement of Material Facts are deemed admitted for purposes of this motion. See Giannullo v. City of New York, 322 F.3d 139, 140 (2d Cir. 2003) ("If the opposing party then fails to controvert a fact so set forth in the moving party's Rule 56.1 statement, that fact will be deemed admitted."); Holtz v. Rockefeller & Co., Inc., 258 F.3d 62, 72 (2d Cir. 2001); see also Galasso v. Eisman, Zucker, Klein & Ruttenberg, 310 F. Supp. 2d 569, 574 (S.D.N.Y. 2004).

Card"), kNutek Holdings, Inc. ("kNutek"), and Sonic Garden, Inc. ("Sonic Garden"). (Id. ¶ 5.) Through the brochures and newsletters, Millennium represented that it was based in Uruguay with offices in Brazil, Mexico, Singapore and Switzerland. (Id. ¶ 6.) Millennium did not operate offices in those countries but rather employed sales agents in Barcelona, Spain. (Id. ¶ 8.)

Millennium's agents used the telephone to solicit investors and based their pitches on sales scripts and pitch sheets. (Id. ¶ 7.) Millennium made several false statements with the purpose of misleading investors so they would purchase the pre-IPO stock. (Id. ¶ 9.) In particular:

a.) Millennium agents misrepresented the sales price of the pre-IPO securities in Key Card, kNutek and Sonic Garden by stating they purchased the stock at $5 per share, when they actually purchased the stock at $1 per share;

b.) Millennium agents told potential investors that the price of the pre-IPO stock would rise to $50 per share, despite there being no basis for this belief;

c.) Millennium agents did not disclose commissions received from their sales of the pre-IPO stock;

d.) Millennium maintained its offices were based in Uruguay, when they were actually based in Spain. (Id. ¶ 9.)

As the owner and CEO of Millennium, Shehyn participated in and facilitated Millennium's fraud. First, he edited the sales

materials, newsletters and brochures. (Id. ¶ 10.) In addition, Shehyn was involved in the negotiations for the purchase of the U.S. companies' stock. (Id. ¶ 11). The stock did not trade above $5 per share, was not registered stock, and did not have their prices or volumes recorded on any national securities exchange. (Id.) In an effort to conceal the unlawful activities, Shehyn directed Millennium to transfer investor money to offshore locations, including the Caribbean. (Id. ¶ 12.) Shehyn continuously used various aliases to avoid recognition. (Id. ¶ 13.)

Shehyn admits that at minimum 700 investors paid Millennium at least $6.9 million for stocks and that the losses to these investors are the result of his misrepresentations regarding the information distributed by Millennium. (Id. ¶ 14.) Further, Shehyn admits he acted with the intent to defraud Millennium's customers. (Id. ¶ 15.) While managing Millennium, Shehyn used the telephone, email and other interstate devices. (Id. ¶ 16.) He solicited and hired within the United States, worked on the "Millennium Report" and emailed many people regarding the fraud while in the United States. (Id.)

II. DISCUSSION

A. Summary Judgment Standard

The SEC will prevail on its motion only "'if the pleadings, depositions, answers to interrogatories, and admissions on file,

together with the affidavits, if any, show that there is no genuine issue as to any material fact and that [the SEC is] entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56(c)). "An issue of fact is 'genuine' if 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.' A fact is 'material' for these purposes if it 'might affect the outcome of the suit under the governing law.'" Overton v. New York State Div. of Military and Naval Affairs, 373 F.3d 83, 89 (2d Cir. 2004) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). In assessing whether a genuine issue of material fact exists, a court must examine the evidence in the light most favorable to the nonmoving party. Lucente v. IBM Corp., 310 F.3d 243, 253 (2d Cir. 2002).

When a nonmoving party fails to respond to a motion for summary judgment, "the district court is not relieved of its duty to decide whether the movant is entitled to judgment as a matter of law." Vermont Teddy Bear Co., Inc. v. 1-800 Beargram Co., 373 F.3d 241, 242 (2d Cir. 2004). "'If the evidence submitted in support of the summary judgment motion does not meet the movant's burden of production, then summary judgment must be denied even if no opposing evidentiary matter is presented.'" D.H. Blair & Co., Inc. v. Gottdiener, 462 F.3d 95,

110 (2d Cir. 2006) (quoting Vermont Teddy Bear Co., 373 F.3d at 244)).

B. Collateral Estoppel

Once an issue of law or fact necessary to a judgment has been previously decided, the doctrine of collateral estoppel precludes the "relitigation of [that same issue] in a suit on a different cause of action involving a party to the first case." Burgos v. Hopkins, 14 F.3d 787, 789 (2d Cir. 1994) (citation omitted). Collateral estoppel precludes relitigation when "(1) the issues in both proceedings are identical, (2) the issue in the prior proceeding was actually litigated and actually decided, (3) there was full and fair opportunity to litigate in the prior proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits." NLRB v. Thalbo Corp., 171 F.3d 102, 109 (2d Cir. 1999); see also Fuchsberg & Fuchsberg v. Galizia, 300 F.3d 105, 109 (2d Cir. 2002).

"It is well-settled that a criminal conviction, whether by a jury verdict or guilty plea, constitutes estoppel in favor of the United States in a subsequent civil proceeding as to those matters determined by judgment in the criminal case." United States v. Podell, 572 F.2d 31, 35 (2d Cir. 1978); see also United States v. U.S. Currency in the Amount of $119,984, 304

F.3d 165, 172 (2d Cir. 2002) (same). The Court of Appeals has explained the reasoning behind this rule as follows:

> The Government bears a higher burden of proof in the criminal than in the civil context and consequently may rely on the collateral estoppel effect of a criminal conviction in a subsequent civil case. Because mutuality of estoppel is no longer an absolute requirement under federal law, a party other than the Government may assert collateral estoppel based on a criminal conviction. The criminal defendant is barred from relitigating any issue determined adversely to him in the criminal proceeding, provided that he had a full and fair opportunity to litigate the issue.

Gelb v. Royal Globe Ins. Co., 798 F.2d 38, 43 (2d Cir. 1986) (citations omitted). Here, the fact that Shehyn pleaded guilty to wire fraud, as opposed to securities fraud, does not preclude the application of collateral estoppel. In SEC v. Dimensional Entm't Corp. et al., the district court correctly observed that while the statutory violations of wire fraud and securities fraud differ, "the factual allegations underlying the wire fraud convictions are sufficient to establish that [the defendant] also violated the securities laws provisions at issue here." 493 F. Supp. 1270, 1277 (S.D.N.Y. 1980). Accordingly, so long as Shehyn's admissions by guilty plea to other mail and wire fraud charges establish the requisite elements of securities fraud, Shehyn is estopped from challenging those admissions and his liability under Section 10(b) and Rule 10b-5 of the Exchange Act and Section 17(a) of the Securities Act.

C. Violations of Section 10(b) and Rule 10b-5 of the Exchange Act

The elements of a Section 10(b) and Rule 10b-5, violation are well established. Plaintiff must show: (1) there was an untrue statement of fact or an omission of fact, SEC v. Monarch Funding Corp., 192 F.3d 295, 308 (2d Cir. 1999); SEC v. Credit Bancorp, Ltd., 195 F.Supp.2d 475, 490 (S.D.N.Y 2002); (2) the exclusion or misrepresentation is material, TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976); (3) the exclusion or misrepresentation is made with scienter, SEC v. First Jersey Secs., Inc., 101 F.3d 1450, 1466 (2d Cir. 1996); (4) the exclusion or misrepresentation is made with relation to interstate commerce or the mail system, SEC v. Texas Gulf Sulphur, Co., 401 F.2d 833, 862 (2d Cir. 1968); and (5) the exclusion or misrepresentation is made in relation to the purchase or sale of securities. First Jersey, 101 F.3d at 1466. See also SEC v. Opulentica, LLC, 479 F. Supp. 2d 319, 327 (S.D.N.Y. 2007) (citing Basic, Inc. v. Levinson, 485 U.S. 224 (1988)).

Here, Shehyn's plea to separate wire fraud charges establishes each of the elements set forth above.[2] First, Shehyn made numerous and egregious misrepresentations and

[2] Shehyn pleaded guilty to counts 24–35 and count 55 of the indictment involving mail fraud and wire fraud. (See Memorandum in Support of Motion for Summary Judgment Against Rodney S. Shehyn ("SEC Mem."), Ex. A.)

omitted significant facts to Millennium investors. (SEC 56.1 Stmt. ¶ 8-10.) Shehyn admitted these misrepresentations in his plea agreement. (SEC Mem., Ex. A at 9-11.) Among the various misrepresentations, Shehyn claimed Millennium was based in Uruguay when it was based in Spain, that the securities had been purchased at $5 per share, and that the securities would rise to $50 per share, without any basis for that belief. (Id. at 9.) Additionally, Shehyn's admissions that he ran the company and actively participated in the fraud, through routing investments off shore and editing the fraudulent company materials, prove that he was responsible for misrepresentations and omissions. (Id. at 9, 11.)

Second, the misrepresentations were undoubtedly material. Materiality is determined by whether there is a "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available." TSC Indus., 426 U.S. at 449 (internal citations omitted.) Millennium agents represented to investors that they purchased the stock for $5 per share and that it would rise to $50 per share. (SEC Mem., Ex. A at 11.) These statements were blatant misrepresentations considering Millennium actually purchased the stock at $1 per share and had absolutely no basis for believing the stock would trade at $50 per share. (Id.) Investors were

fraudulently led to believe that the product they were purchasing was five times more valuable than it actually was. The disclosure of the omitted fact—the actual price of the stock—would have altered the "total mix of the information" available to the reasonable investor. TSC Indus., 426 U.S. at 449. Thus, the misrepresentations were material.

Third, the scienter requirement is met where a defendant has an intent to "deceive, manipulate or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976). Shehyn stated in his plea agreement that he "acted with reckless disregard for the truth of the information disseminated by Millennium . . . and that he acted with intent to defraud." (SEC Mem., Ex. A at 11.) Shehyn's admission meets the required mental state for the scienter element. Hochfelder, 425 U.S. 193 n.12.

Fourth, Shehyn, in furtherance of his fraud, must have used or caused to be used means of transportation or communication in interstate commerce or the mail system. 17 C.F.R. § 240.10b-5. Instrumentalities of interstate commerce include telephone and email communications. SEC v. Solucorp Indus. Inc., 274 F. Supp. 2d 379, 419 (S.D.N.Y. 2003). Shehyn frequently communicated using means of interstate commerce, including the telephone and email. (SEC Mem., Ex. C at 53:7-25; 63:9-64:21; 110:20-24; 111:7-20; 130:3-24.) Shehyn's frequent interstate communication

via telephone and email in furtherance of his illegal scheme satisfies the connection to interstate communication requirement. See 17 C.F.R. § 240.10b-5; see also Solucorp, 274 F. Supp. 2d at 419.

Fifth, to constitute a violation under 10(b) and 10b-5 the misrepresentation must be in relation to the purchase or sale of securities. 15 U.S.C. § 78j(b). Here, Shehyn and Millennium made blatant misrepresentations to investors and potential investors in the sale of securities.

Accordingly, because the Court finds that the SEC has demonstrated that Shehyn's conduct satisfies the five elements necessary for the commission of securities fraud, the SEC's motion for summary judgment on as to Shehyn's liability under Section 10(b) and Rule 10b-5 of the Exchange Act is GRANTED.

D. Violation of Section 17(a) of the Securities Act

"Section 17(a) of the Securities Act is a general prohibition against fraud in the offer or sale of securities, using the mails or the instruments of interstate commerce." SEC v. McCaskey, No. 98 Civ. 6153, 2001 WL 1029053, at *4 (S.D.N.Y. Sept. 6, 2001); see 15 U.S.C. § 77q(a). The Court of Appeals has held that "[e]ssentially the same elements are required under Section 17(a)(1)-(3) [as under Section 10b and Rule 10b-5] in connection with the offer or sale of a security, though no showing of scienter is required for the SEC to obtain an

injunction under subsections (a)(2) or (a)(3)." SEC v. Monarch Funding Corp., 192 F.3d 295, 308 (2d Cir. 1999). As set forth more fully above, Shehyn's activity as owner of Millennium established his violation of Section 10(b) and Rule 10b-5, and, since the elements of Section 10(b) and Rule 10b-5 of the Exchange Act are "essentially the same" as the elements of Section 17(a) of the Securities Act, Shehyn's admissions during his guilty plea detailing his activity as owner of Millennium establishes his liability under Section 17(a). See also SEC v. Gallard, No. 95 Civ. 3099, 1997 WL 767570, at *3 (S.D.N.Y. Dec. 10, 1997) (finding that since the record established that the [prime bank instruments] that defendants purported to sell did not exist, it is but a simple step to conclude that their activities violated the antifraud [provisions of the securities laws]."). Accordingly, the SEC's motion for summary judgment as to Shehyn's liability under Section 17(a) of the Securities Act is GRANTED.

E. Violation of Section 20(a) of the Exchange Act

Under Exchange Act Section 20(a) a controlling person is liable "jointly and severally with and to the same extent as such controlled person . . . unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation." 15 U.S.C. § 79t(a). To establish control person liability under Section 20(a) a

plaintiff must show: "(1) a primary violation by a controlled person; (2) control of the primary violator by the defendant; and (3) that the controlling person was in some meaningful sense a culpable participant in the primary violation." Boguslavsky v. Kaplan, 159 F.3d 715, 720 (2d Cir. 1998)(internal quotations and citations omitted); see also SEC v. First Jersey Secs. Inc., 101 F.3d 1450, 1472 (2d Cir. 1996).

Here, Millennium agents disseminated brochures and newsletters with misrepresentations to potential investors. (SEC Mem., Ex. A at 10.) The agents also contacted potential investors by telephone and solicited them via scripts and pitch sheets containing falsified information. (Id.) This constitutes "a primary violation by a controlled person." Boguslavsky, 159 F.3d at 1472. Next, Shehyn admitted that, as the CEO of Millennium, he exercised dominion and control over the company and its employees. (SEC Mem., Ex A at 11.) Finally, Shehyn admitted his intent to defraud investors, (id.) establishing that he was "in some meaningful sense a culpable participant in the primary violation." Boguslavsky, 159 F.3d 720. Accordingly, because Shehyn's admission satisfies the three elements of control person liability, the SEC's motion for summary judgment as to Shehyn's liability under Section 20(a) of the Exchange Act is GRANTED.

F. Violation of Section 15(a) of the Exchange Act

Shehyn acted as an unregistered broker and thus violated Section 15(a) of the Exchange Act. 15 U.S.C. § 78o(a). Section 15(a) requires that any person acting as a broker[3] must register with the SEC. (Id. (a), (b).) Shehyn acted as an unregistered broker in conducting the sales of stock while operating Millennium. At no time between January 2000 and June 2002, when Shehyn was the owner and CEO of Millennium, did he ever register himself or the company with the SEC. (SEC Mem., Ex. B.) Thus, the SEC's motion for summary judgment as to Shehyn's liability under Section 15(a) of the Exchange Act is GRANTED.

III. REMEDIES

The SEC seeks the following remedies: (1) a permanent injunction enjoining Shehyn from future violations of the antifraud provisions of the securities laws; (2) disgorgement of ill gotten gains; (3) prejudgment interest; and (4) civil penalties. "Once the district court has found federal securities law violations, it has broad equitable power to fashion appropriate remedies . . . ." SEC v. First Jersey Secs., Inc., 101 F.3d 1450, 1474 (2d Cir. 1996).

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[3] 15 U.S.C. § 78c(a) describes a broker as a person who engages "in the business of effecting transactions in securities for the account of others."

A. Permanent Injunction

Both the Exchange Act and the Securities Act "provide for the issuance of permanent injunctive relief in the face of a violation of any of their provisions." McCaskey, 2001 WL 1029053, at *5; see 15 U.S.C. § 77t(b); 15 U.S.C. §§ 78u(d)(e), 78u-1. A permanent injunction is appropriate upon a showing that a defendant has violated the securities laws and that there is a reasonable likelihood of future violations. See SEC v. Commonwealth Chem. Sec., Inc., 574 F.2d 90, 99 (2d Cir. 1978). Because the Court has already granted summary judgment in favor of the SEC finding that Shehyn violated the securities laws, the only remaining inquiry is whether there is a reasonable likelihood of future securities violations. In making this determination, a district court may consider: (1) "the fact that the defendant has been found liable for illegal conduct"; (2) "the degree of scienter involved"; (3) "whether the infraction is an 'isolated occurrence'"; (4) "whether defendant continues to maintain that his past conduct was blameless"; and (5) "whether, because of his professional occupation, the defendant might be in a position where future violations could be anticipated." SEC v. Cavanagh, 155 F.3d 129, 135 (2d Cir. 1998) (quoting Commonwealth Chem. Sec., Inc., 574 F.2d at 100).

The Court finds these factors weigh decidedly in favor of issuing the injunction. First, Shehyn's fraudulent scheme

caused $6.9 million in losses for his 700 victims. (SEC Mem., Ex. A at 11.) Shehyn acted willingly and knowingly, and the scheme was not the result of one isolated incident but instead lasted more than two years. (Id. at 10-11.) Finally, as the SEC points out in its Memorandum of Law in Support of its Motion for Summary Judgment, Shehyn is a repeat offender. (Id. at 12.) Shehyn pleaded guilty to wire and mail fraud in an unrelated "boiler scheme," and thereafter admitted his liability for the instant fraud. (Id.) Accordingly, because there is a reasonable likelihood that, unless enjoined, Shehyn will commit future violations of the federal securities laws, the SEC's request for a permanent injunction is GRANTED.

B. Disgorgement

Disgorgement of ill-gotten gains is a congressionally[4] and judicially recognized remedy for a violation of securities law. The Court of Appeals has held that when the district court "has found federal securities law violations, it has broad equitable power to fashion appropriate remedies, including ordering that culpable defendants disgorge their profits." First Jersey Secs.

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[4] Congress has recognized the SEC's option to request disgorgement of ill-gotten gains. "Once the equity jurisdiction of a Court has been invoked on a showing of a securities violation, the Court possesses the necessary power to fashion an appropriate remedy. Thus, the Commission may request that the Court order certain equitable relief, such as the disgorgement (giving up) of illegal profits." H.R. Rep. 98-355, at 7 (1983) reprinted in 1984 U.S.C.C.A.N. 2274, 2280.

Inc., 101 F.3d at 1474. Disgorgement serves a deterrent purpose as a remedy for violations of the securities laws, and the district court is entitled to broad discretion in calculating the amount of ill-gotten gains to be returned. (Id. at 1474-75); see also SEC v. Wang, 944 F.2d 80, 85 (2d Cir. 1991) (holding that depriving violators of their ill-gotten gains effectuates the deterrent purpose of securities laws); SEC v. Manor Nursing Ctrs., Inc., 574 F.2d 1082, 1103-04 (2d Cir. 1972)(finding the SEC's effective enforcement of securities laws demands that violations not be profitable.)

Here, Shehyn was demonstrated to have made at least $2.38 million from his efforts in the Millennium fraud. (SEC Mem., Ex. D.) Once the SEC has made a prima facie showing that the calculated gains are "a reasonable approximation of profits causally connected to the wrongdoing" the burden shifts to the defendant to show the SEC's calculation was unreasonable. SEC v. Zwick, No. 03 Civ. 2742, 2007 WL 831812, at *22 (S.D.N.Y. Mar. 16, 2007). Shehyn has presented no evidence to rebut the SEC's calculation. Accordingly, the SEC's request that Shehyn's ill-gotten gains, in the form of $2.38 million, be disgorged is GRANTED.

C. Prejudgment Interest

The district court also has broad discretion in deciding whether to order prejudgment interest paid. First Jersey Secs.

Inc., 101 F.3d at 1476. Prejudgment interest serves the important purpose of deterrence, which is central to securities law. "Requiring the payment of interest prevents a defendant from obtaining the benefit of what amounts to an interest free loan procured as a result of illegal activity." SEC v. Moran, 944 F. Supp. 286, 295 (S.D.N.Y. 1996). The interest rate generally used to calculate disgorgement interest is the IRS's underpayment rate. First Jersey Secs. Inc., 101 F.3d at 1476. The SEC requests prejudgment interest calculated under the IRS' underpayment rate from the last date Shehyn received payments from Millennium to the present. According to the Declaration of Nicola Timmons, dated June 3, 2010, the last date Shehyn received payments for his personal use was May 28, 2002. (SEC Mem., Ex. D at 1.) With the purpose of deterrence in mind, the SEC's request is GRANTED. The SEC shall submit a proposed prejudgment interest report using the IRS' underpayment rate for the time period specified. The SEC shall submit this report no later than Monday July 19, 2010.

D. Civil Penalties

Civil penalties are "designed to punish the individual violator and deter future violations of the securities laws." SEC v. Haligiannis, 470 F. Supp. 2d 373, 386 (S.D.N.Y. 2007) (citing SEC v. Moran, 944 F. Supp. 286, 296 (S.D.N.Y. 1996)). Courts look to a number of factors to determine whether a fine

should be imposed, including "(1) the egregiousness of the defendant's conduct; (2) the degree of the defendant's scienter; (3) whether the defendant's conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant's conduct was isolated or recurrent; and (5) whether the penalty should be reduced due to the defendant's demonstrated current and future financial condition." Id. (citing SEC v. Coates, 137 F. Supp. 2d 413, 429 (S.D.N.Y. 2001)). Shehyn qualifies for third tier penalties under the Remedies Act[5] because his conduct involved "fraud, deceit, manipulations" that resulted in "substantial losses." Exchange Act § 21(d)(3)(B)(iii), 15 U.S.C. § 78u(d)(3)(B)(iii).

Here, the Court has already considered most of these factors in granting the SEC's request for a permanent injunction and finds that they weigh heavily in favor of civil penalties. Shehyn's scheme resulted in the loss of millions of dollars by a large number of victims through a fraudulent scheme perpetrated over two years. He knowingly and willfully defrauded his victims and used the proceeds for his own personal benefit. The SEC has requested the maximum penalty, the greater of $120,000[6]

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[5] The Remedies Act is codified at Section 21 (d)(3)(A) of the Exchange Act.
[6] The text of Section 21(d)(3)(B)(iii) provides for a maximum penalty of the greater of $100,000. 15 U.S.C. § 78u(d)(3)(B)(iii). Nevertheless, agencies are required to (continued on next page)

per violation or the gross amount of pecuniary gain received by the defendant. Here the Court finds Shehyn committed 5 violations. Based on the brazen and willful nature of Shehyn's fraud, this Court shall impose $600,000 in civil penalties. This amount reflects $120,000 for each violation: Section 10(b), Rule 10b-5, Section 17(a), Section 20(a) and Section 15(a).

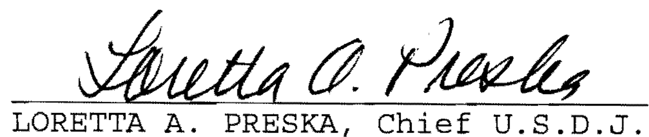
(continued) adjust penalties every four years based on changes in the Consumer Price Index under the Debt Collections and Improvements Act of 1996. The SEC asserts that, for violations occurring after February 2, 2001, the adjusted penalty amount is $120,000. SEC Release No.33-7946 (Feb. 2, 2001).

CONCLUSION

For the foregoing reasons, Plaintiff's motion for summary judgment [dkt no. 108] is GRANTED. Defendant is permanently enjoined from future violations of the federal securities laws and is ordered to disgorge the $2.38 million of his ill-gotten gains. Defendant shall also pay prejudgment interest in an amount to be determined based on the SEC's calculations, which shall be submitted to the Court no later than August 19, 2010. Finally, Defendant shall pay a civil penalty in the amount of $600,000 pursuant to Section 20(d) of the Securities Act and 21(d) of the Exchange Act.

SO ORDERED:

Dated: August 6 2010



LORETTA A. PRESKA, Chief U.S.D.J.