

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CASE NO.: 8:09-CV-01046-JSM-TGW

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.)
)
WALL STREET COMMUNICATIONS, INC.,)
HOWARD A. SCALA, ROSS E. BARALL, and)
DONALD R. McKELVEY,)
)
Defendants.)
)

**PARTIAL FINAL JUDGMENT OF PERMANENT INJUNCTION AND
OTHER RELIEF AS TO DEFENDANT DONALD R. McKELVEY**

Plaintiff Securities and Exchange Commission commenced this action by filing its Complaint against Defendant Donald R. McKelvey and others. In its Complaint, the Commission sought, among other relief, a permanent injunction to prohibit violations by McKelvey of Sections 5(a) and 5(c) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a) and 77e(c)]; and Section 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]; entry of an order of disgorgement and prejudgment interest; the imposition of a civil money penalty; and the imposition of a penny stock bar.

McKelvey, by virtue of the attached Consent of Defendant Donald R. McKelvey to Entry of Judgment and Other Relief (“Consent”), has entered a general appearance; consented to the Court’s jurisdiction over him and the subject matter of this action; consented to entry of this Partial Final Judgment of Permanent Injunction and Other Relief as to Defendant Donald R. McKelvey (“Partial

Final Judgment”) without admitting or denying the allegations of the Complaint (except as to subject matter and personal jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Partial Final Judgment. This Court having accepted such Consent and this Court having jurisdiction over McKelvey and the subject matter of this action, and the Court being fully advised in the premises, orders as follows:

I.

PERMANENT INJUNCTION

A. SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT OF 1933

IT IS ORDERED AND ADJUDGED that McKelvey, his agents, servants, employees, attorneys, representatives, and all persons in active concert or participation with them who receive actual notice of this Partial Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 5 of the Securities Act of 1933 (“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].

B. SECTIONS 17(a)(2) AND 17(a)(3) OF THE SECURITIES ACT OF 1933

IT IS FURTHER ORDERED AND ADJUDGED that McKelvey, his officers, agents, servants, representatives, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Partial Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)] 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 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

(b) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

II.

PENNY STOCK BAR

IT IS FURTHER ORDERED AND ADJUDGED that, pursuant to Section 20(g) of the Securities Act [15 U.S.C. § 77t(g)] McKelvey is 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].

III.

CIVIL PENALTY, DISGORGEMENT AND PREJUDGMENT INTEREST

IT IS FURTHER ORDERED AND ADJUDGED that McKelvey shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)]. The Court shall determine the amounts of the disgorgement and civil penalty upon motion of the Commission. Prejudgment interest shall be calculated from July 22, 2004, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) McKelvey will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) McKelvey may not challenge the validity of the Consent or this Partial Final Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative

testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

IV.

INCORPORATION OF CONSENT

IT IS FURTHER ORDERED AND ADJUDGED that the Consent is incorporated into this Partial Final Judgment with the same force and effect as if fully set forth herein, and that McKelvey shall comply with all of the undertakings and agreements set forth in the Consent.

V.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that this Court will retain jurisdiction over this matter and McKelvey for one year from the date of this Partial Final Judgment in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.


VI.

RULE 54(b) CERTIFICATION

IT IS FURTHER ORDERED AND ADJUDGED that 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 Partial Final Judgment forthwith and without further notice.

DONE AND ORDERED in Chambers in Tampa, Florida, this 6 day of

Jan., 2011.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Service on all parties and counsel of record