

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 09-20957-CIV-GRAHAM/TORRES

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.)
)
OSVALDO PITTERS, TERRELL J. KUYKENDALL,)
and STEVEN M. IVESTER,)
)
Defendants.)

**ORDER GRANTING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT OF
PERMANENT INJUNCTION AND OTHER RELIEF AGAINST DEFENDANT
TERRELL KUYKENDALL AND ENTERING PERMANENT INJUNCTION**

THIS MATTER is before the Court on Plaintiff Securities and Exchange Commission's Motion for Entry of a Default Judgment of Permanent Injunction And Other Relief Against Defendant Terrell Kuykendall. Having considered the motion and the entire record, the Court enters the following order granting the Plaintiff's motion, and imposing a Default Judgment of Permanent Injunction and Other Relief against Kuykendall:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has personal jurisdiction over Kuykendall and the subject matter of this action. Venue is proper in the Southern District of Florida.
2. Kuykendall was properly served with a summons and a copy of the complaint, and was properly served with the amended complaint, pursuant to Rule 4 of the Federal Rules of Civil Procedure. Thus, Kuykendall has proper notice of this action.
3. As of the date of this Order, Kuykendall has failed to answer or otherwise file a

responsive pleading to the amended complaint as required by the Federal Rules of Civil Procedure.

4. The Clerk of the Court entered a default against Kuykendall on June 12, 2009. By virtue of the default and the failure to respond to the amended complaint, Kuykendall is deemed to have admitted the allegations of the amended complaint and liability is established against him. *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987). Accordingly, the Court finds Kuykendall committed the violations alleged in the amended complaint.

5. Kuykendall is not an infant or an incompetent person and has no guardian, committee, conservator or other such persons appearing on his behalf. Accordingly, it is:

ORDERED AND ADJUDGED that Plaintiff's Motion for Entry of a Default Judgment of Permanent Injunction and Other Relief Against Defendant Terrell Kuykendall is **GRANTED**.^{*} Default Judgment is entered against Kuykendall as follows:

PERMANENT INJUNCTION

A. Section 17(a) of the Securities Act of 1933

IT IS FURTHER ORDERED AND ADJUDGED that Kuykendall, his agents, servants, representatives, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of this Default Judgment by personal service or otherwise, are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 ("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;

* [D.E. 32]

- (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.

B. Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5

IT IS FURTHER ORDERED AND ADJUDGED that Kuykendall, his agents, servants, representatives, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of this Default Judgment by personal service or otherwise, are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 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.

C. Section 13(b)(5) of the Exchange Act and Rule 13b2-1

IT IS FURTHER ORDERED AND ADJUDGED that Kuykendall, his agents, servants, representatives, employees, and attorneys, and all persons in active concert or

participation with them who receive actual notice of this Default Judgment by personal service or otherwise, are permanently restrained and enjoined from violating, directly or indirectly, Section 13(b)(5) of the Exchange Act, 15 U.S.C. § 78m(b)(5), and Exchange Act Rule 13b2-1, 17 C.F.R. §240.13b2-1, by knowingly circumventing a system of internal accounting controls, knowingly failing to implement a system of internal accounting controls, or knowingly falsifying books, records, or accounts subject to Section 13(b)(2) of the Exchange Act, 15 U.S.C. § 78m(b)(2).

D. Aiding and Abetting Violations of Exchange Act Section 13(a) and Rules 12b-20, 13a-1, and 13a-13

IT IS FURTHER ORDERED AND ADJUDGED that Kuykendall, his agents, servants, representatives, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of this Default Judgment by personal service or otherwise, are permanently restrained and enjoined from aiding and abetting any violation of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Exchange Act Rules 12b-20, 13a-1 and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13, by knowingly providing substantial assistance to an issuer in filing reports with the Commission: that contain any untrue statement of material fact; that omit to state any material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; that fail to accurately and fairly reflect financial information; or that fail to include the information expressly required to be included in a statement or report.

E. Aiding and Abetting Violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B)

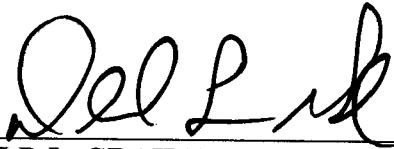
IT IS FURTHER ORDERED AND ADJUDGED that Kuykendall, his agents, servants, representatives, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of this Default Judgment by personal service or

otherwise, are permanently restrained and enjoined from aiding and abetting any violation of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B), by knowingly providing substantial assistance to an issuer in failing to make and keep books, records and accounts that, in reasonable detail, accurately and fairly reflect the issuer's transactions and disposition of assets, or knowingly providing substantial assistance to an issuer in failing to devise and maintain a system of reasonable internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statement in accordance with Generally Accepted Accounting Principles or any other criteria applicable to such statements.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that this Court will retain jurisdiction over this matter and Kuykendall* 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.

DONE AND ORDERED in Chambers at Miami, Florida, this 9th day of November, 2009.



DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

* for sixty (60) days
Copies to counsel and parties of record