

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

-vs-

Case No. 8:10-cv-2859-T-27MAP

**RICHARD D. MITTASCH, CHRISTOPHER T.
PAGANES, GLENN M. BARIKMO and
IMPERIUM INVESTMENT ADVISORS, LLC,**

Defendants.

_____ /

JUDGMENT IN A CIVIL CASE

IT IS ORDERED AND ADJUDGED that final judgment is entered against Defendants, Richard D. Mittasch, Christopher T. Paganes, Glenn M. Barikmo and Imperium Investment Advisors, LLC, as set forth in the attached order.

Date: June 30, 2011

SHERYL L. LOESCH, CLERK

By: s/ B. Sohn, Deputy Clerk

Copies furnished to:

Counsel of Record
Unrepresented Parties

CIVIL APPEALS JURISDICTION CHECKLIST

1. **Appealable Orders:** Courts of Appeals have jurisdiction conferred and strictly limited by statute:
 - (a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291:** Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” Pitney Bowes, Inc. v. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge’s report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).
 - (b) **In cases involving multiple parties or multiple claims,** a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys’ fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy’s Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).
 - (c) **Appeals pursuant to 28 U.S.C. Section 1292(a):** Appeals are permitted from orders “granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions...” and from “[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed.” Interlocutory appeals from orders denying temporary restraining orders are not permitted.
 - (d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court’s denial of a motion for certification is not itself appealable.
 - (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass’n v. Blythe Eastman Paine Webber, Inc., 890 F. 2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).

2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:
 - (a) **Fed.R.App.P. 4(a)(1):** A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.
 - (b) **Fed.R.App.P. 4(a)(3):** “If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.”
 - (c) **Fed.R.App.P.4(a)(4):** If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.
 - (d) **Fed.R.App.P.4(a)(5) and 4(a)(6):** Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.
 - (e) **Fed.R.App.P.4(c):** If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution’s internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

3. **Format of the notice of appeal:** Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant

4. **Effect of a notice of appeal:** A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).

Rev.: 4/04

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CASE NO. 8:10-CV-2859-T-27MAP

**ROBERT L. BUCKHANNON,
TERRY D. RAWSTERN,
DALE E. ST. JEAN,
GREGORY D. TINDALL,
RICHARD D. MITTASCH,
CHRISTOPHER T. PAGANES,
GLENN M. BARIKMO and
IMPERIUM INVESTMENTADVISORS, LLC,**

Defendants.

ORDER

BEFORE THE COURT is Plaintiff Securities and Exchange Commission's Motion for Entry of Default Judgment of Permanent Injunction and Other Relief Against Defendants Richard D. Mittasch, Christopher T. Paganes, Glenn M. Barikmo, and Imperium Investment Advisors LLC. (Dkt. 42). Upon consideration, the motion (Dkt. 42) is GRANTED.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has jurisdiction over Defendants Mittasch, Paganes, Barikmo, and Imperium and the subject matter of this action. Venue is proper in the Middle District of Florida.
2. Defendants Mittasch, Paganes, Barikmo, and Imperium were properly served with a copy of the Summons and Complaint pursuant to Rule 4 of the Federal Rules of Civil Procedure. Thus, each Defendant has proper notice of this action.
3. Defendants Barikmo and Imperium have not answered or otherwise responded to the

complaint as required by the Federal Rules of Civil Procedure. On Plaintiff's motion, the clerk entered defaults against Barikmo and Imperium.

4. Defendants Mittasch and Paganes filed answers to the complaint. However, for reasons previously explained (Dkt. 29), the answers of Mittasch and Paganes were stricken. On this Court's direction, the clerk entered defaults against Mittasch and Paganes.

5. By virtue of their defaults, Mittasch, Paganes, Barikmo, and Imperium are deemed to have admitted the allegations of the Complaint, and liability is established against each of them. *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987). Accordingly, the Court finds that Mittasch, Paganes, Barikmo, and Imperium committed the violations alleged in the complaint.

6. Plaintiff's motion for default judgment was served on Mittasch, Paganes, Barikmo, and Imperium. However, no responses were filed, as required by Local Rule 3.01(b). Accordingly, these Defendants have not made any objection to the measures or scope of relief requested by Plaintiff, including the issuance of a permanent injunction, disgorgement of ill-gotten gains, pre-judgment interest, and payment of a civil penalty (at an amount to be determined at a later date).

Accordingly, it is **ORDERED AND ADJUDGED** that Plaintiff's Motion for Entry of Default Judgment of Permanent Injunction and Other Relief Against Defendants Richard D. Mittasch, Christopher T. Paganes, Glenn M. Barikmo, and Imperium Investment Advisors LLC is **GRANTED**. Default Judgment is entered as follows:

I. PERMANENT INJUNCTION

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

Mittasch, Paganes, Barikmo, and Imperium, their 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.

B. Sections 206(1), (2), and (4) of the Advisers Act and Rule 206(4)-8

Mittasch, Paganes, Barikmo, and Imperium, their 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 206(1) and 206(2) and 206(4) and Rule 206(4)-8 of the Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-6(1), 80b-6(2), 80b-6(4) and 17 C.F.R. § 275.206(4)-8, by knowingly providing substantial assistance to: directly or indirectly, through use of the mails or any means or instrumentalities of interstate commerce: (i) employ devices, schemes or artifices to defraud clients or prospective clients; or (ii) engage in transactions, practices and courses of business which are now operating or will operate as a fraud or deceit upon clients or prospective clients.

II. DISGORGEMENT

A. **Mittasch** is liable for disgorgement of \$611,750, representing profits gained as a result of the conduct alleged in the complaint, together with prejudgment interest thereon in the amount of \$85,023.08, for a total of **\$696,773.08**, for which let execution issue.

B. **Paganes** is liable for disgorgement of \$650,000, representing profits gained as a result of the conduct alleged in the complaint, together with prejudgment interest thereon in the amount of \$90,339.19, for a total of **\$740,339.19**, for which let execution issue.

C. **Barikmo** is liable for disgorgement of \$7,500, representing profits gained as a result of the conduct alleged in the complaint, together with prejudgment interest thereon in the amount of \$1,042.38, for a total of **\$8,542.38**, for which let execution issue.

D. In addition to the amounts of disgorgement ordered against Mittasch, Paganes, and Barikmo individually in Section II.A-C, above, **Imperium, Mittasch, Paganes, and Barikmo** are liable, jointly and severally, for disgorgement of \$720,200, representing profits gained as a result of the conduct alleged in the complaint, together with prejudgment interest thereon in the amount of \$100,095.85, for a total of **\$820,295.85**, for which let execution issue.

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 Judgment.

III. CIVIL MONEY PENALTY

Mittasch, Paganes, Barikmo, and Imperium shall pay a civil penalty pursuant to Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d); and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-

9(e). The amount of the civil penalty will be determined by the Court upon the Commission's motion, which shall be filed within 120 days of this Order.

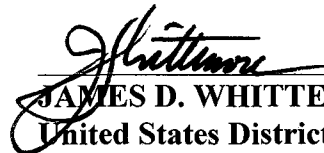
IV. RETENTION OF JURISDICTION

This Court will retain jurisdiction over this matter and Defendants Mittasch, Paganes, Barikmo, and Imperium 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.

V. RULE 54(b) CERTIFICATION

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is directed to enter this Judgment forthwith and without further notice.

DONE AND ORDERED this 28th day of June, 2011.



JAMES D. WHITTEMORE
United States District Judge

Copies to:
Counsel and unrepresented parties