

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 11-CV-80038-MARRA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ROGER AUGUST KIMMEL, JR., et al.,

Defendant.

**JUDGMENT OF PERMANENT INJUNCTION AND
OTHER RELIEF AS TO ROGER AUGUST KIMMEL, JR.**

Plaintiff Securities and Exchange Commission commenced this action by filing its Complaint against, among others, Defendant Roger August Kimmel, Jr. In its Complaint, the Commission sought, among other relief against Kimmel, a permanent injunction to prohibit violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], and Sections 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]; and an order requiring Kimmel to pay disgorgement, prejudgment interest, and a civil money penalty pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act.

Kimmel, by the attached Consent, has: entered a general appearance; consented to the Court’s jurisdiction over Kimmel and the subject matter of this action; consented to entry of this Judgment of Permanent Injunction and Other Relief (“Judgment”) without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment. This Court, having

accepted such Consent, having jurisdiction over Kimmel and the subject matter of this action, and being fully advised in the premises, orders as follows:

I.

SECTION 17(a) OF THE SECURITIES ACT

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

II.

SECTION 10(b) and RULE 10b-5 OF THE SECURITIES ACT

IT IS FURTHER ORDERED AND ADJUDGED that Kimmel, his officers, agents, servants, representatives, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this 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 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [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.

III.

DISGORGEMENT AND CIVIL PENALTY

IT IS FURTHER ORDERED AND ADJUDGED that Kimmel 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)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. The Court shall determine the amounts of the disgorgement and civil penalty upon motion of the Commission. Prejudgment interest shall be calculated from July 2, 2008, 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 or civil penalties, and at any hearing held on such a motion: (a) Kimmel will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Kimmel may not challenge the validity of the Consent or this 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 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 Kimmel's Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Kimmel 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 Kimmel in order to enforce the terms of this Judgment.

VI.

CERTIFICATION UNDER RULE 54(b)

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 Judgment forthwith and without further notice.

DONE AND ORDERED in Chambers at West Palm Beach Florida, this 12th day of January, 2011.



KENNETH A. MARRA
UNITED STATES DISTRICT JUDGE