

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

CASE NO. 12-CV-62211-DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JAMES F. ELLIS,

Defendant.

**JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AS TO
DEFENDANT JAMES F. ELLIS**

Plaintiff Securities and Exchange Commission commenced this action by filing its Complaint against, among others, Defendant James F. Ellis. In its Complaint, the Commission sought, among other relief against Ellis:

A permanent injunction to prohibit violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)]; Section 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 Disgorgement, plus prejudgment interest, and a civil penalty.

Ellis, by the attached Consent, acknowledges service of the summons and Complaint, consents to the jurisdiction of this Court over him and over the subject matter of this action, consents to the entry of this Judgment of Permanent Injunction and Other Relief as to Defendant James F. Ellis (“Judgment”) without admitting or denying the allegations of the Complaint (except as to jurisdiction); Ellis also has waived findings of fact and conclusions of law and has waived any right to appeal from this Judgment. This Court, having accepted Ellis’ Consent and

having jurisdiction over him and the subject matter of this action, and having considered the record in this case, orders as follows:

I.

SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT

IT IS ORDERED AND ADJUDGED that Ellis and his agents, servants, 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 Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)] 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].

II.

VIOLATION OF SECURITIES ACT SECTION 17(a)

IT IS FURTHER ORDERED AND ADJUDGED that Ellis and his agents, servants, 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 Section 17(a) of 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 the use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud by, in the offer or sale of any security, engaging in a deception involving: (i) any investment strategy or investment in securities; (ii) the use of investor funds; (iii) compensation to Ellis; or (iv) the misappropriation of investor funds or investment proceeds;
- (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 the light of the circumstances under which they were made, not misleading either orally or in writing, concerning: (i) any investment strategy or investment in securities; (ii) the use of investor funds; (iii) compensation to Ellis; or (iv) misappropriating investor funds or investment proceeds; 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 by, in the offer or sale of any security, directly or indirectly, deceiving any purchaser or prospective purchaser about: (i) any investment strategy or investment in securities; (ii) the use of investor funds; or (iv) the misappropriation of investor funds or investment proceeds.

III.

VIOLATION OF EXCHANGE ACT SECTION 10(b) AND RULE 10b-5

IT IS FURTHER ORDERED AND ADJUDGED that Ellis and his agents, servants, 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 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:

- (b) to employ any device, scheme, or artifice to defraud by, directly or indirectly, engaging in a deception involving: (i) any investment strategy or investment in securities; (ii) the use of investor funds; (iii) compensation to Ellis; or (iv) the misappropriation of investor funds or investment proceeds;
- (c) 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, either orally or in writing,

concerning: (i) any investment strategy or investment in securities; (ii) the use of investor funds; (iii) compensation to Ellis; or (iv) misappropriating investor funds or investment proceeds; or

- (d) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person by, directly or indirectly, deceiving any person about: (i) any investment strategy or investment in securities; (ii) the use of investor funds; (iii) compensation to Ellis; or (iv) the misappropriation of investor funds or investment proceeds.

IV.

DISGORGEMENT AND CIVIL PENALTY

IT IS FURTHER ORDERED AND ADJUDGED that Ellis shall pay disgorgement of ill-gotten gains, prejudgment interest, and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) 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 December 31, 2011, 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) Ellis will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Ellis 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 and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

V.

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

VI.

IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment.

VII.

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 Judgment forthwith and without further notice.

VIII.

IT IS FURTHER ORDERED AND ADJUDGED that on or before February 15, 2013, the Plaintiff shall file its motion for disgorgement and/or civil penalties.

DONE AND ORDERED in Chambers in Fort Lauderdale, Broward County, Florida this
16th day of January, 2013.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies provide to:

Counsel of Record