

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division

**Case Number: 13-23115-CIV-MARTINEZ-GOODMAN**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

BERNARD H. BUTTS, JR., *et al.*,  
Defendants,

**JUDGMENT AS TO DEFENDANTS SIDNEY BANNER  
AND EXPRESS COMMERCIAL CAPITAL LLC**

The Securities and Exchange Commission (“SEC”) having filed a Complaint and Defendants Sidney Banner (“Banner”) and Express Commercial Capital LLC (“Express Commercial”) having entered a general appearance; consented to the Court’s jurisdiction over Defendants and the subject matter of this action; consented to entry of this Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and provided herein in paragraph 6) and to entry of a permanent injunction prohibiting them from further violations of the federal securities laws, but leaving the issues of disgorgement, prejudgment interest and civil penalties to be resolved by a later motion; waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment. Accordingly, it is hereby:

**ORDERED AND ADJUDGED**

1. The SEC’s Unopposed Motion for Entry of Judgment as to Sidney Banner and Express Commercial Capital LLC [ECF No. 160] is GRANTED;

2. Defendants Sidney Banner and Express Commercial 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 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 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 a 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 of 1933 (“Securities Act”) [15 U.S.C. § 77h].

Additionally, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendants’ officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a);

3. Defendants Sidney Banner and Express Commercial 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;
- (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

by, directly or indirectly, (i) creating the false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

- (A) any investment strategy or investment in securities;
- (B) the prospects for success of any product or company;
- (C) the use of investor funds;
- (D) compensation to any person;
- (E) Defendant's qualifications to advise investors;
- (F) the misappropriation of investor funds or investment proceeds;
- (G) any investment in Standby Letter of Credit trading program;
- (H) the safety and security of any investment; or
- (I) the risk involved in investing in a securities offering.

Additionally, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a);

4. Defendants Sidney Banner and Express Commercial 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 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

by, directly or indirectly, (i) creating the false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

- (A) any investment strategy or investment in securities;
- (B) the prospects for success of any product or company;
- (C) the use of investor funds;
- (D) compensation to any person;
- (E) Defendant’s qualifications to advise investors;
- (F) the misappropriation of investor funds or investment proceeds;
- (G) any investment in Standby Letter of Credit trading program;
- (H) the safety and security of any investment; or

(I) the risk involved in investing in a securities offering.

Additionally, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a);

5. Defendants Sidney Banner and Express Commercial are permanently restrained and enjoined from violating, directly or indirectly, Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)], while engaged in the business of effecting transactions in the securities of their accounts or the account of others, making use of the means or instruments of transportation or communication in interstate commerce or the mails to effect transactions in or induce or attempt to induce the purchase or sale of securities, without registration with the Commission as a broker-dealer.

Additionally, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a);

6. Defendants Sidney Banner and Express Commercial shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and civil penalties 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 penalties upon motion of the SEC. Prejudgment interest shall be calculated from February 19, 2013, 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 SEC's motion for disgorgement and civil penalties, and at any hearing held on such a motion: (a) Defendants will be precluded from arguing

that they did not violate the federal securities laws as alleged in the Complaint; (b) Defendants 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 SEC's motion for disgorgement and civil penalties, the parties may take discovery, including discovery from appropriate non-parties;

7. Solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendant Banner, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant Banner under this Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant Banner of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19);

8. The Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendants shall comply with all of the undertakings and agreements set forth therein;

9. This Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment; and

10. 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 Miami, Florida, this 2 day of April, 2015.

  
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JOSE E. MARTINEZ  
UNITED STATES DISTRICT JUDGE

Copies provided to:  
Magistrate Judge Goodman  
All Counsel of Record