

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 13-cv-61761- HURLEY/HOPKINS

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
v.)
)
MARK BALBIRER,)
)
Defendant.)
_____)

**ORDER GRANTING PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT
AGAINST DEFENDANT MARK BALBIRER AND ENTERING JUDGMENT
OF PERMANENT INJUNCTION AND OTHER RELIEF**

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 Mark Balbirer. Having considered the motion and the entire record, the Court enters the following order granting the motion and entering a Default Judgment of Permanent Injunction and Other Relief against Balbirer as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has personal jurisdiction over Balbirer and the subject matter of this action. Venue is proper in the Southern District of Florida.
2. Balbirer was properly served with a summons and a copy of the Complaint pursuant to Rule 4 of the Federal Rules of Civil Procedure. Thus, he has proper notice of this action.
3. As of the date of this Order, Balbirer has failed to answer or otherwise file a responsive pleading to the Complaint as required by the Federal Rules of Civil Procedure.
4. The Clerk entered a default against Balbirer on October 2, 2013. (DE 8.)

5. By virtue of the default and failure to respond to the Complaint, Balbirer is deemed to have admitted the allegations of the Complaint, and the Commission has established liability against him. *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987). Thus, the Court finds Balbirer committed the violations alleged in the Complaint.

6. Balbirer is not an infant or an incompetent person, and has no guardian, committee, conservator or other such person 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 Mark Balbirer is **GRANTED**. Default Judgment is entered against Balbirer as follows:

I.

SECTION 17(a)(1) OF THE SECURITIES ACT OF 1933

IT IS ORDERED AND ADJUDGED that Balbirer and his agents, servants, employees, attorneys, representatives 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)(1) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77q(a)(1), 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, to employ any device, scheme, or artifice to defraud, by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person about the price or trading market for any security, or (ii) making any false or misleading statement, or disseminating any false or misleading documents, materials, or information, concerning matters relating to a decision by an investor or prospective investor to buy or sell securities of any company.

II.

**SECTION 10(b) OF THE SECURITIES EXCHANGE ACT OF 1934
AND EXCHANGE ACT RULE 10b-5(a)**

IT IS FURTHER ORDERED AND ADJUDGED that Balbirer and his agents, servants, employees, attorneys, representatives 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 (“Exchange Act”), 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(a), 17 C.F.R. § 240.10b-5(a), 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, to employ any device, scheme, or artifice to defraud, by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person about the price or trading market for any security, or (ii) making any false or misleading statement, or disseminating any false or misleading documents, materials, or information, concerning matters relating to a decision by an investor or prospective investor to buy or sell securities of any company.

III.

PENNY STOCK BAR

IT IS FURTHER ORDERED AND ADJUDGED that Balbirer is permanently barred from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act, 17 C.F.R. 240.3a51-1.

IV.

DISGORGEMENT AND CIVIL PENALTY

IT IS FURTHER ORDERED AND ADJUDGED that Balbirer 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)(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, which motion shall be filed within 90 days after Balbirer is sentenced in the parallel criminal proceeding, *USA v. Balbirer*, Case No. 13-20605-CR-COOKE (S.D. Fla. August 14, 2013). Prejudgment interest shall be calculated from December 1, 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 penalty, and at any hearing held on such a motion: (a) Balbirer will be precluded from arguing he did not violate the federal securities laws as alleged in the Complaint; (b) Balbirer may not challenge the validity of 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 penalty, the parties may take discovery, including discovery from appropriate non-parties.

V.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction over this matter and over Balbirer in order to implement and carry out the terms of

C.


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.

VI.

RULE 54(b) CERTIFICATION

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.

Done and Ordered in Chambers in West Palm Beach, Florida, this th 26 day of November, 2013.


DANIEL T. K. HURLEY
UNITED STATES DISTRICT JUDGE

Copies to:

Patrick R. Costello, Esq.
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, Florida 33131

Mark Balbirer, *pro se*
2400 NE 10th Street, Apt. 308
Pompano Beach, FL 33062-4147