

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-CV-80808-RYSKAMP/HOPKINS

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
v.)
)
SHELDON R. SIMON,)
)
Defendant.)
)

**ORDER GRANTING PLAINTIFF'S MOTION FOR ENTRY OF
DEFAULT JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF
AGAINST DEFENDANT SHELDON SIMON**

THIS MATTER is before the Court on Plaintiff Securities and Exchange Commission's Motion for Entry of Default Judgment of Permanent Injunction and Other Relief Against Defendant Sheldon Simon. Having considered the motion and the entire record, the Court enters the following order granting the Plaintiff's motion:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has personal jurisdiction over the Defendant and the subject matter of this action. Venue is proper in the Southern District of Florida.
2. Simon was served with a copy of the Summons and Complaint on September 16, 2013, by personal service.
3. Simon's responsive pleading was due October 7, 2013, but he has not answered or otherwise responded to the Complaint as required by the Federal Rules of Civil Procedure.
4. The Clerk of the Court entered a default against Simon on October 8, 2013.
5. By virtue of his default and failure to respond to the complaint, Simon is deemed to have admitted the allegations of the Complaint, and liability is established against him.

Buchanan v. Bowman, 820 F.2d 359, 361 (11th Cir. 1987). Accordingly, the Court finds Simon committed the violations alleged in the Complaint.

6. Simon is not an infant or an incompetent person, has no guardian, committee, conservator or other such person appearing on his behalf, and is not on active duty in the United States military.

Accordingly, it is:

ORDERED AND ADJUDGED that Plaintiff's Motion for Entry of Default Judgment of Permanent Injunction and Other Relief Against Defendant Simon is **GRANTED**. Default Judgment is entered against Simon as follows:

I.

SECTION 10(B) OF THE SECURITIES EXCHANGE ACT OF 1934

IT IS ORDERED AND ADJUDGED that Simon 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 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.

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 17(A) OF THE SECURITIES ACT OF 1933

IT IS FURTHER ORDERED AND ADJUDGED that Simon 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 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.

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 Simon 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 PREJUDGMENT INTEREST

IT IS FURTHER ORDERED AND ADJUDGED that Simon 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 to be made within 90 days of the date Simon is sentenced in the matter *United States v. Simon*, 13-cr-60202-KAM (S.D. Fla.). Prejudgment interest shall be calculated from May 11, 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) Simon will be precluded from arguing he did not violate the federal securities laws as alleged in the Complaint; (b) Simon 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

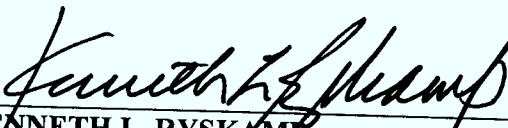
IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction over this matter and Simon in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

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. *The Clerk of Court shall CLOSE this case.*

Done and Ordered in Chambers At West Palm Beach, Florida, this 4 day of
Dec, 2013.


KENNETH L. RYSKAMP
UNITED STATES DISTRICT JUDGE

cc: Counsel of record and *pro se* defendant