

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-cv-60082-DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION)
)
Plaintiff,)
)
v.)
)
FREDERIC ELM f/k/a FREDERIC ELMALEH,)
<i>et al.</i>)
)
Defendants,)
and)
)
AMANDA ELM f/k/a AMANDA ELMALEH,)
)
Relief Defendant.)
_____)

JUDGMENT AS TO DEFENDANT FREDERIC ELM f/k/a FREDERIC ELMALEH

The Securities and Exchange Commission having filed a Complaint and Defendant Frederic Elm f/k/a Frederic Elmaleh (“Elm”) having entered a general appearance; consented to the Court’s jurisdiction over him and over 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 except as otherwise provided herein in Paragraph XIII); waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

I.

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

IT IS ORDERED AND ADJUDGED that Elm, and his directors, officers, agents, servants, employees, attorneys, representatives and those persons in active concert or participation with them, and each of them, are hereby 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, 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) Elm’s qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

II.

SECTION 17(a)(2) OF THE SECURITIES ACT

IT IS FURTHER ORDERED AND ADJUDGED that Elm, and his directors, officers, agents, servants, employees, attorneys, representatives and those persons in active concert or participation with them, and each of them, are hereby permanently restrained and enjoined from violating Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2), 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 obtain money or property by means of any untrue statement of a material fact or any omission 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, by, directly or indirectly (i) creating a 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) Elm's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

III.

SECTION 17(a)(3) OF THE SECURITIES ACT

IT IS FURTHER ORDERED AND ADJUDGED that Elm, and his directors, officers, agents, servants, employees, attorneys, representatives and those persons in active concert or participation with them, and each of them, are hereby permanently restrained and enjoined from violating Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3), 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 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, 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) Elm's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

IV.

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

IT IS FURTHER ORDERED AND ADJUDGED that Elm, and his directors, officers, agents, servants, employees, attorneys, representatives and those persons in active concert or participation with them, and each of them, are hereby permanently restrained and enjoined from violating Section 10(b) and Rule 10b-5(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b) and 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, 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) Elm’s qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

V.

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

IT IS FURTHER ORDERED AND ADJUDGED that Elm, and his directors, officers, agents, servants, employees, attorneys, representatives and those persons in active concert or participation with them, and each of them, are hereby permanently restrained and enjoined from violating Section 10(b) and Rule 10b-5(b) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b), 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 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, by, directly or indirectly (i) creating a 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) Elm's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

VI.

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

IT IS FURTHER ORDERED AND ADJUDGED that Elm, and his directors, officers, agents, servants, employees, attorneys, representatives and those persons in active concert or participation with them, and each of them, are hereby permanently restrained and enjoined from violating Section 10(b) and Rule 10b-5(c) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(c), 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 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, 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) Elm's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

VII.

SECTION 206(1) OF THE ADVISERS ACT

IT IS FURTHER ORDERED AND ADJUDGED that Elm, and his directors, officers, agents, servants, employees, attorneys, representatives and those persons in active concert or participation with them, and each of them, are hereby permanently restrained and enjoined from violating Section 206(1) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. § 80b-6(1), by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser, to employ any device, scheme, or artifice to defraud any client or prospective client, by, directly or indirectly (i) creating a 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) Elm's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

VIII.

SECTION 206(2) OF THE ADVISERS ACT

IT IS FURTHER ORDERED AND ADJUDGED that Elm, and his directors, officers, agents, servants, employees, attorneys, representatives and those persons in active concert or participation with them, and each of them, are hereby permanently restrained and enjoined from

violating Section 206(2) of the Advisers Act, 15 U.S.C. § 80b-6(2), by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser, to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client, by, directly or indirectly (i) creating a 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) Elm's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

IX.

SECTION 206(4) AND RULE 206(4)-8(a)(1) OF THE ADVISERS ACT

IT IS FURTHER ORDERED AND ADJUDGED that Elm, and his directors, officers, agents, servants, employees, attorneys, representatives and those persons in active concert or participation with them, and each of them, are hereby permanently restrained and enjoined from violating Section 206(4) and Rule 206(4)-8(a)(1) of the Advisers Act, 15 U.S.C. § 80b-6(4) and 17 C.F.R. § 275.206(4)-8(a)(1), by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser to a pooled investment vehicle, to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle, by, directly or indirectly (i) creating a 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) Elm's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

X.

SECTION 206(4) AND RULE 206(4)-8(a)(2) OF THE ADVISERS ACT

IT IS FURTHER ORDERED AND ADJUDGED that Elm, and his directors, officers, agents, servants, employees, attorneys, representatives and those persons in active concert or participation with them, and each of them, are hereby permanently restrained and enjoined from violating Section 206(4) and Rule 206(4)-8(a)(2) of the Advisers Act, 15 U.S.C. § 80b-6(4) and 17 C.F.R. § 275.206(4)-8(a)(2), by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser to a pooled investment vehicle, to otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle, by, directly or indirectly (i) creating a 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) Elm's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

XI.

DISGORGEMENT AND CIVIL PENALTY

IT IS FURTHER ORDERED AND ADJUDGED that Elm 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); Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d); and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e). The Court shall determine the amounts of the disgorgement and civil penalty upon motion of the Commission. Prejudgment interest on disgorgement shall be calculated from December 1, 2014 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) Elm will be precluded from arguing he and Defendants Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund LP, Elm Tree 'e'conomy Fund LP, and Elm Tree Motion Opportunity LP did not violate the federal securities laws as alleged in the Complaint; (b) Elm 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 penalty, the parties may take discovery, including discovery from appropriate non-parties.

XII.

INCORPORATION OF CONSENT

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

XIII.

BANKRUPTCY NONDISCHARGEABILITY

IT IS FURTHER ORDERED AND ADJUDGED that, 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 Elm, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Elm 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 Elm 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).

XIV.

RETENTION OF JURISDICTION

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

XV.

RULE 54(b) CERTIFICATION

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 Fort Lauderdale, Florida, this 25th day of March 2015.

A handwritten signature in black ink, reading "William P. Dimitrouleas". The signature is written in a cursive style with a horizontal line underneath the name.

WILLIAM P. DIMITROULEAS

United States District Judge

Copies to:

Counsel of Record