

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-cv-80496-MARRA/MATTHEWMAN

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
v.)
)
DANIEL P. McKELVEY <i>et al.</i> ,)
)
Defendants,)
)
and)
)
AU CONSULTING LLC <i>et al.</i> ,)
)
Relief Defendants.)
_____)

**ORDER GRANTING PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT AGAINST
DEFENDANT SCOTT F. HUGHES, AND ENTRY OF JUDGMENT
OF PERMANENT INJUNCTION AND OTHER RELIEF**

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 Scott F. Hughes [DE 28]. 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 Hughes as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has personal jurisdiction over Hughes and the subject matter of this action. Venue is proper in the Southern District of Florida.
2. Hughes was properly served on April 21, 2015 with a summons and a copy of the Complaint pursuant to Rule 4 of the Federal Rules of Civil Procedure [DE 6]. Thus, he has proper notice of this action.

3. Pursuant to Fed. R. Civ. P. 12(a)(1)(A), Hughes' answer or other responsive filing to the Commission's Complaint was due on or before May 12, 2015.

4. Hughes failed to timely respond to the Complaint, and on May 14, 2015, the Clerk entered a default against him [DE 14].

5. By virtue of the Clerk's default and failure to respond to the Complaint, Hughes 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 Hughes committed the violations alleged in the Complaint.

6. Hughes is not an infant or 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 Default Judgment of Permanent Injunction and Other Relief Against Defendant Scott F. Hughes is **GRANTED**. Default Judgment is entered against Hughes as follows:

I.

SECTION 17(a) OF THE SECURITIES ACT

IT IS FURTHER ORDERED AND ADJUDGED that Hughes is permanently restrained and enjoined from aiding and abetting any violation of Section 17(a) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77q(a), by knowingly or recklessly providing substantial assistance to any person that, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, employs any device, scheme, or artifice to defraud; obtains money or property by means of untrue statements of material facts or omissions to state material facts

necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or engages in transactions, practices and courses of business which operates or would operate as a fraud or deceit upon the purchasers and prospective purchasers of such securities; by (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 in or offering of securities; (B) the registration status of such offering or of such securities; (C) the prospects for success of any product or company; (D) the use of investor funds; or (E) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, 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) Hughes' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Hughes or with anyone described in (a).

II.

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

IT IS FURTHER ORDERED AND ADJUDGED that Hughes is permanently restrained and enjoined from aiding and abetting any violation of 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, by knowingly or recklessly providing substantial assistance to any person that directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, in connection with the purchase or sale of any security, employs any device, scheme or

artifice to defraud; makes untrue statements of material facts and omits to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engages in acts, practices and courses of business which operate or would operate as a fraud or deceit upon any person; by (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 in or offering of securities; (B) the registration status of such offering or of such securities; (C) the prospects for success of any product or company; (D) the use of investor funds; or (E) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, 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) Hughes' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Hughes or with anyone described in (a).

III.

SECTION 13(b)(5) AND RULE 13b2-1 OF THE EXCHANGE ACT

IT IS FURTHER ORDERED AND ADJUDGED that Hughes is permanently restrained and enjoined from violating Section 13(b)(5) and Rule 13b2-1 of the Exchange Act, 15 U.S.C. § 78m(b)(5) and 17 C.F.R. § 240.13b2-1, by, directly or indirectly, circumventing or failing to implement a system of internal accounting controls described in Section 13(b)(2)(B) of the Exchange Act, or falsifying or causing to be falsified, books, records, and accounts described in Section 13(b)(2)(A) of the Exchange Act.

IT IS FURTHER ORDERED AND ADJUDGED that, 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) Hughes' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Hughes or with anyone described in (a).

IV.

RULE 13b2-2 OF THE EXCHANGE ACT

IT IS FURTHER ORDERED AND ADJUDGED that Hughes is permanently restrained and enjoined from violating Rule 13b2-2 of the Exchange Act, 17 C.F.R. § 240.13b2-2, by, directly or indirectly, making or causing to be made a materially false or misleading statement, or omitting to state, or causing another person to omit to state, a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with an audit, review or examination of the financial statements of an issuer required to be made, or the preparation or filing of any document or report required to be filed with the Commission.

IT IS FURTHER ORDERED AND ADJUDGED that, 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) Hughes' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Hughes or with anyone described in (a).

V.

SECTION 13(b)(2)(A) AND 13(b)(2)(B) OF THE EXCHANGE ACT

IT IS FURTHER ORDERED AND ADJUDGED that Hughes is permanently restrained and enjoined from aiding and abetting any violation of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(2)(B), by knowingly or recklessly providing substantial assistance to any issuer that fails to make and keep books, records, and accounts in accordance with Section 13(b)(2)(A) of the Exchange Act, or fails to devise and maintain a system of internal accounting controls in accordance with Section 13(b)(2)(B) of the Exchange Act.

IT IS FURTHER ORDERED AND ADJUDGED that, 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) Hughes' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Hughes or with anyone described in (a).

VI.

RULE 15d-15 OF THE EXCHANGE ACT

IT IS FURTHER ORDERED AND ADJUDGED that Hughes is permanently restrained and enjoined from violating Rule 15d-15 of the Exchange Act, 17 C.F.R. § 240.15d-15, by, directly or indirectly, failing to evaluate the effectiveness of any issuer's disclosure controls and procedures, the effectiveness of the issuer's internal control over financial reporting, or any change in the issuer's internal control over financial reporting that occurred during each of the issuer's fiscal quarters that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

IT IS FURTHER ORDERED AND ADJUDGED that, 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) Hughes' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Hughes or with anyone described in (a).

VII.

RULE 15d-14 OF THE EXCHANGE ACT

IT IS FURTHER ORDERED AND ADJUDGED that Hughes is permanently restrained and enjoined from violating Rule 15d-14 of the Exchange Act, 17 C.F.R. § 240.15d-14, by, directly or indirectly, failing to sign, or improperly authorizing his signature to be used on, the certifications in the forms specified in the applicable exhibit filing requirements of the required reports an issuer files with the Commission.

IT IS FURTHER ORDERED AND ADJUDGED that, 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) Hughes' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Hughes or with anyone described in (a).

VIII.

**SECTION 15(d) AND RULES 12b-11, 12b-20 AND 15d-13 OF THE EXCHANGE ACT,
AND RULE 302 OF REGULATION S-T OF THE SECURITIES ACT**

IT IS FURTHER ORDERED AND ADJUDGED that Hughes is permanently restrained and enjoined from aiding and abetting any violation of Section 15(d) and Rules 12b-11, 12b-20 and 15d-13 of the Exchange Act, 15 U.S.C. § 78o(d), and 17 C.F.R. §§ 240.12b-11, 240.12b-20 and 240.15d-13; and Rule 302 of Regulation S-T of the Securities Act, 17 C.F.R. §

232.302; by knowingly or recklessly providing substantial assistance to any issuer that fails to comply with the required reporting provisions of the federal securities laws set forth in Section 15(d) and Rules 12b-11, 12b-20 and 15d-13 of the Exchange Act, and Rule 302 of Regulation S-T of the Securities Act.

IT IS FURTHER ORDERED AND ADJUDGED that, 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) Hughes' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Hughes or with anyone described in (a).

IX.

OFFICER AND DIRECTOR BAR

IT IS FURTHER ORDERED AND ADJUDGED that, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), and Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e), Hughes is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

X.

PENNY STOCK BAR

IT IS FURTHER ORDERED AND ADJUDGED that Hughes 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.

XI.

DISGORGEMENT AND CIVIL PENALTY

IT IS FURTHER ORDERED AND ADJUDGED that Hughes 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), 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. Prejudgment interest on disgorgement shall be calculated from November 30, 2010 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) Hughes will be precluded from arguing he did not violate the federal securities laws as alleged in the Complaint; (b) Hughes 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.

XII.

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 Hughes, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Sanders 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 Hughes 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).

XIII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction over this matter and over Hughes 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.

XIV.

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 West Palm Beach, Florida, this 20th day of

JUNE, 2015.



KENNETH A. MARRA
UNITED STATES DISTRICT JUDGE