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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

2003 DEC 15 AM 10:05
U.S. DISTRICT COURT
TAMPA, FLORIDA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

CASE NO: 8:00-cv-383-T-26TGW

WILLIAM H. BLACK,

Defendant.

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ORDER

This cause comes before the Court on Plaintiff's Motion for Summary Judgment (dkt. 69) and supporting memorandum of law (dkt 70). Also before the Court are Defendant's Response (dkt. 83) and supporting memorandum of law (dkt. 84).

In February 2000, the United States indicted Defendant, sports agent William H. Black, for conspiracy to commit mail fraud, wire fraud, and obstruction of justice and defrauding the United States Government . United States v. William H. Black, et al., Case No. 1:00-cr-15SPM (N.D. Fla., Gainesville Division). At the same time, Plaintiff, the Securities and Exchange Commission ("SEC") charged Black with securities fraud in connection with the same schemes to defraud. The operative facts and fraud charged by the United States and the SEC are virtually identical, as they are tied to two schemes by Black to defraud his clients, professional athletes, for his own personal gain. More specifically, the charges and allegations are that Black, along with his business partner James Franklin, defrauded some two-dozen client-athletes in two schemes beginning in early 1996 and continuing through February 2000.

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The SEC's complaint raises violations of the following securities laws: Section 17(a) of the Securities Act of 1933; Sections 10(b), 15(a), and 15(c) of the Securities Exchange Act of 1934; Sections 106(1) and 206(2) of the Investment Advisers Act of 1940; and Rules 10b-5 and 15c1-2 thereunder. The SEC's action was stayed pending resolution of the criminal case. On January 31, 2002, after trial in the criminal case, the jury found Black guilty. On November 25, 2003, the Eleventh Circuit Court of Appeals affirmed Black's criminal conviction, finding that "the evidence of appellant's guilt was overwhelming." (See dkt. 112, ex. 1, *United States v. Linda Wilson, William H. Black*, No. 02-12659 (11th Cir., Nov. 25, 2003) at 4).¹

The SEC moves for summary judgment in the instant case on grounds of collateral estoppel. Under the doctrine of collateral estoppel, all material issues directly and conclusively decided by a court in a prior litigation are binding upon the parties in a subsequent suit based on a different cause of action. *Montana v. United States*, 440 U.S. 147, 153 (1979). As the SEC correctly argues, application of collateral estoppel from a criminal proceeding to a subsequent civil proceeding is not in doubt. *SEC v. Bilzerian*, 153 F.3d 1278 (11th Cir. 1998). And as the Court held in *United States v. Padell*, 572 F.2d 31 (2nd Cir. 1978), "it is well-settled that a criminal conviction, whether by jury verdict or guilty plea, constitutes estoppel in favor of the United States in a subsequent civil proceeding as to those matters determined by the judgment in the criminal case." 572 F.2d at 35. The fact that a criminal conviction does not rest on all of the same statutes as are involved in a civil action does not affect the collateral estoppel effect of the

¹ The Court, by order entered May 6, 2003, deferred ruling on the Plaintiff's Motion for Summary Judgment pending a decision from the Eleventh Circuit Court of Appeals in the Defendant Black's criminal appeal. See docket 88.

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conviction. *SEC v. Dimensional Entertainment*, 493 F.Supp. 1270, 1277 (S.D.N.Y. 1980) (The fact that the conviction rests on the same set of facts that would establish civil liability is the important point). The conviction of Black involved the same conduct at issue in the SEC's instant Complaint and the factual allegations raised here are identical to those on which the conviction is based.. Thus, the doctrine of collateral estoppel precludes Black from relitigating any of the SEC's claims.

The SEC also seeks a permanent injunction against the statutory violations charged in the Complaint. The Eleventh Circuit has ruled that once a violation is proven, the SEC need only show a reasonable likelihood of further violations in the future to obtain injunctive relief. The Court considers several factors in determining whether this burden is met: (1) the egregiousness of a defendant's action; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of a defendant's recognition of the wrongful nature of his conduct. See *SEC v. Carriba Air*, 681 F.2d 1318, 1322 (11th Cir. 1982); *SEC v. Blatt*, 583 F.2d 1325, 1334 (5th Cir. 1978). Here, the SEC has clearly met its burden. Black abused the trust of his clients by steering their salaries and bonuses to poor investments in which he made personal profit. Black engaged in such fraudulent schemes over a period of several years. Black's scienter is evidenced by his efforts to conceal his illegal acts. Finally, Black does not concede in any way that he violated the law. Therefore, a permanent injunction is appropriate.

Finally, the SEC seeks to disgorge Black of all illegal gains. The Court clearly has the power to order this relief. See *Blatt*, 583 F.2d 1325, 1335 (5th Cir. 1978). Disgorgement is indeed a remedy often granted against those who violate the securities law. See *SEC v. Yun*, 148 F.Supp.2d 1287, 1289-1290 (M.D. Fla. 2001). The evidence presented to the Court establishes

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that Black made \$1,647,119 in illegal gains. (See dkt. 71, Mejia Declaration at ¶¶ 11-13.)

Prejudgment interest in the amount of \$1,002,871.60 has also accrued. (See *id.* at ¶ 14.)

Therefore, the SEC is entitled to a total of \$2,649,990.60 in disgorgement and prejudgment interest. (See *id.* at ¶ 15.)

ACCORDINGLY, it is ORDERED AND ADJUDGED:

- 1) Plaintiff SEC's Motion for Summary Judgment (dkt. 69) is granted.
- 2) The Clerk shall enter final judgment in favor of Plaintiff and against Defendant Black on all counts of the Complaint and in the amount of \$2,649,990.60.
- 3) The Plaintiff shall file a status report with this Court on or before January 5, 2004, advising of its intentions to pursue this lawsuit against the remaining Defendants.

DONE AND ORDERED at Tampa, Florida, on December 15, 2003.


RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
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F I L E C O P Y
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Date Printed: 12/16/2003

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