

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

SOLOMON RC ALI, a/k/a RICHARD
MARSHALL CARTER, JR.,

Defendant.

Civil Action No.

1:18-CV-1832-RWS

FINAL JUDGMENT AGAINST DEFENDANT SOLOMON RC ALI

As directed in the Court’s June 24, 2020 Order [Doc. 108], the Securities and Exchange Commission (“SEC”) filed a motion for remedies [Doc. 111] that is presently before the Court for consideration. After reviewing the record, including the SEC’s motion [Doc. 111], Defendant Ali’s brief in opposition [Doc. 113], and the SEC’s reply [Doc. 114], the Court enters the following Order.¹

¹In the June 24 Order [Doc. 108], the Court directed that, in his response to the SEC’s motion for remedies, Defendant should request a hearing if he desired one. Defendant addressed the merits of the SEC’s motion in his response [Doc. 113] but did not request a hearing. Finding the parties have fully addressed the issues, the Court will rule on the remedies requested by the SEC without a hearing.

As an initial matter, the SEC's request for leave to amend the Complaint so as to drop Counts IV, VII, and VIII is **GRANTED**, and said counts are deemed withdrawn as to Defendant Ali.

By Order [Doc. 90] entered April 10, 2020, the Court granted summary judgment to the SEC on Counts I, II, III, V, and IX. The Court will address each of the remedies sought by the SEC based on those claims:

I. Future Violations of Securities Laws

The SEC asks that the Court enjoin Defendant Ali from engaging in future securities laws violations.

The SEC is entitled to injunctive relief when it establishes (1) a *prima facie* case of previous violations of federal securities laws, and (2) a reasonable likelihood that the wrong will be repeated. Indicia that a wrong will be repeated include the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of the conduct, and the likelihood that the defendant's occupation will present opportunities for future violations. While scienter is an important factor in this analysis, It is not a prerequisite to injunctive relief.

SEC v. Calvo, 378 F.3d 1211, 1216 (11th Cir. 2004) (internal citations and quotations omitted).

In his response [Doc. 113] to the SEC's motion, Defendant Ali opposes other remedies sought by the SEC, but he does not specifically offer any opposition to this requested remedy. Based on the Court's findings upon entry of summary judgment in favor of the SEC, the Court finds that injunctive relief is warranted. Though evidence showing losses to specific investors is lacking, the evidence established that the scheme created a substantial risk of loss to investors. "In other cases in the Northern District of Georgia, however, courts have frequently found that defendants have acted egregiously when they have misled investors." SEC v. Miller, 744 F. Supp. 2d 1325, 1337 (N.D. Ga. 2010) (collecting cases).

Defendant's conduct did not involve an isolated incident but involved nine false and misleading press releases touting four transactions. Defendant played a significant role by personally drafting and publishing the fraudulent press releases. The Court has previously found the evidence establishes scienter as to Defendant. Finally, due to Defendant's positions in several companies and his failure to accept responsibility for his conduct, the Court is not

convinced that he would not engage in future violations. Therefore, injunctive relief is appropriate.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
that Defendant Ali is 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 [17 C.F.R. § 241.10b-5] promulgated thereunder, including directly or indirectly through or by means of any other person, as prohibited by Section 20(b) of the Exchange Act [15 U.S.C. § 78t(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:

- (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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED

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 Order by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys and (b) other persons in active concert or participation with Defendant Ali or with anyone described in (a).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED

that Defendant Ali is 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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED

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 Order by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys and (b) other persons in active concert or participation with Defendant Ali or with anyone described in (a).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED

that Defendant Ali is permanently restrained and enjoined from violating, directly or indirectly, Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)], and Rule 16a-3 [17 C.F.R. § 240.16a-3] promulgated thereunder, by failing to file information, documents, and reports as required pursuant to Section 16(a) of the Exchange Act and Rule 16a-3, in the absence of any applicable exemption, when Defendant Ali is directly or indirectly, the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l], or is a director or an officer of an issuer of such security.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED

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 Order by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys and (b) other persons in active concert or participation with Defendant Ali or with anyone described in (a).

II. Officer and Director Bar

The SEC seeks a permanent officer and director bar against Defendant Ali. Defendant asserts that his conduct does not warrant a permanent bar, and he does not deserve greater punishment than the other defendants in this case who received five-year bars.

The Court may enter an officer and director bar "permanently or for such period of time as it shall determine . . . if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer." See 15 U.S.C. § 77t(e); 15 U.S.C. § 78u(d)(2). The following factors are used to determine unfitness:

(1) the nature and complexity of the scheme; (2) the defendant's role in the scheme; (3) the use of corporate resources in executing the scheme; (4) the defendant's

financial gain (or loss avoidance) from the scheme; (5) the loss to investors and others as a result of the scheme; (6) whether the scheme represents an isolated occurrence or a pattern of misconduct; (7) the defendant's use of stealth and concealment; (8) the defendant's history of business and related misconduct; and (9) the defendant's acknowledgement of wrongdoing and the credibility of his contrition.

Miller, 744 F. Supp. 2d at 1347 (quoting SEC v. Levine, 517 F. Supp. 2d 121, 145-46 (D.D.C. 2007)). Many of the Court's findings in the ruling on the motion for summary judgment that support the injunction of future violations of securities laws also support the bar requested by the SEC. Defendant was a key player in the fraudulent conduct in issue in this case. His knowledge of the illegality of his conduct was clear and his lack of contrition evidences the risk of future violations if he is not barred. The nature of his involvement and his response to the claims in this case justify more serious sanctions against him than those imposed on other defendants. However, two factors mitigate in Defendant's favor. First, Defendant Ali has not previously been cited for securities laws violations. "While it is not essential for a lifetime ban that there be past violations, in the absence of such violations, a court must articulate a factual basis for a finding that there is a likelihood of recurrence." SEC v. Alliance Transcription Serv., Inc.,

No. CV 08-1464-PHX-NVW, 2009 WL 5128565 at *9 (D. Ariz. Dec. 18, 2009). Second, this absence of prior violations is more significant based on Defendant's age and years of working in this field. Thus, while the other factors, including his lack of acceptance of responsibility, may support a lifetime bar, the Court finds that something less is warranted under these facts.

THEREFORE, IT IS FURTHER ORDERED, ADJUDGED, AND DECREED 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)], Defendant Ali is prohibited, for a period of ten years, 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)].

III. Penny Stock Bar

The SEC also seeks a penny stock bar against Defendant Ali. Defendant oppose a penny stock offering bar greater than 5 years. Based on the findings set forth above, the Court finds that the

injunctive relief sought by the SEC is appropriate, but again finds that the appropriate length of the bar is ten years.

THEREFORE, IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Ali is barred for a period of ten years 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. 241.3a51-1].

IV. Civil Penalties

Three tiers of monetary penalties are authorized for statutory violations of the Securities Act and the Exchange Act. “The first-tier penalty may be imposed for any violation; a second-tier penalty may be imposed if the violation ‘involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement’; and the third-tier penalty may be imposed when the second-tier requirements are met and the ‘violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other

persons,’ 15 U.S.C. §§ 77t(d)(2), 78u(d)(3). Civil penalties are intended to punish the individual wrongdoer and to deter him and others from future securities violations.” SEC v. Monterosso, 756 F. 3d 1326, 1338 (11th Cir. 2010).

“In determining whether to award civil penalties, courts consider numerous factors, including the egregiousness of the violation, the isolated or repeated nature of the violations, the degree of scienter involved, whether the defendant concealed his trading, and the deterrent effect given the defendant’s financial worth.” Miller, 744 F. Supp. 2d at 1344 (citing SEC v. Sargent, 329 F.3d 34, 42 (1st Cir. 2003)). “Because the relevant statutes authorize penalties for ‘each violation,’ courts are empowered to multiply the statutory penalty amount by the number of statutes the defendant violated, and many do.” Id. at 1345. The Acts authorize imposition of penalties “for each violation” which has also been treated as each “act or omission.” SEC v. Tourre, 4 F. Supp. 3d 579, 592 (2nd Cir. 2014).

The SEC recommends that the Court impose a \$150,000 civil penalty for Defendant Ali’s violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5

thereunder. The SEC argues that the penalty fits within both the second- and third-tier limits based on the number of statutes violated and the number of violations committed by Defendant Ali. The SEC also recommends that the Court impose a first-tier penalty of \$7500 based on Defendant Ali's violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Defendant Ali argues that the Court should enter a single penalty against him. He asserts that the entire fraudulent scheme should be treated as a single violation. He further argues that the SEC has failed to establish that a third-tier penalty is appropriate in the case. Finally, he asserts that the recommended penalty is out of line with the penalties of \$25,000 assessed against the other defendants in the case.

Based on the findings made by the Court in ruling on the motion for summary judgment, the Court finds that the evidence establishes violations of at least two statutes and no less than four acts or omissions.² Moreover, the Court finds sufficient evidence to support a

² The four violations are the four transactions proven against Defendant. Evidence would support a finding of nine violations based on the nine false and misleading press releases authored and published by Defendant. However, considering the Rule of Lenity, the Court will limit its consideration of violations to the four transactions.

Tier 3 penalty. “While there was no direct evidence of loss, . . . the fraudulent scheme created a substantial risk of loss as the revenue overstatements would have been important to any reasonable shareholder.” Monterosso, 756 F.3d at 1338.

Based on the foregoing, the Court imposes a civil penalty of \$100,000 for Defendant Ali’s violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder and a civil penalty of \$7500 for his violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder, for a total civil penalty of \$107,500.

ACCORDINGLY, IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Ali shall pay a civil penalty of \$107,500 to the Securities and Exchange Commission pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. Defendant Ali shall make this payment within 30 days after entry of Final Judgment.

Defendant Ali may transmit payment electronically to the SEC, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via

Pay.gov through the SEC website at

<http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Solomon RC Ali as a defendant in this action; and specifying that payment is made pursuant to Final Judgment.

Defendant Ali shall simultaneously transmit photocopies of evidence of payment and case identifying information to the SEC's counsel in this action. By making this payment, Defendant Ali relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant Ali. The SEC shall send the funds paid pursuant to this Final Judgment to the United States Treasury. Defendant Ali shall pay post-judgment interest on any delinquent payments pursuant to 28 U.S.C. § 1961.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED

that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

SO ORDERED this 22nd day of January, 2021.



RICHARD W. STORY
United States District Judge