IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

SECURITIES AND EXCHANGE COMMISSON, Plaintiff, v. BUTTONWOOD FINANCIAL GROUP, LLC and JON MICHAEL MCGRAW, Defendants.	)	No. 21-00686-CV-W-BP

ORDER GRANTING MOTION FOR ENTRY OF CONSENT FINAL JUDGMENT AGAINST BOTH DEFENDANTS

On September 23, 2021, Plaintiff the Securities and Exchange Commission (the "Commission") filed this action against Defendants Buttonwood Financial Group, LLC ("Buttonwood") and Jon McGraw, alleging violations of the Investment Advisers Act (the "Advisers Act"). (*See* Doc. 1.) Generally, the Commission claims Defendants were investment advisors, and, under their typical fee arrangement, clients would pay a lump sum for all investment advice and transaction costs. This created a conflict of interest, the Commission alleges, because Defendants were incentivized to select investments with lower transaction costs—even if the investments had higher internal expenses, which harmed clients—so that they could keep a larger portion of the fees they were paid.

The Complaint alleges that, from 2014 to at least 2019, Defendants breached duties owed to their clients by failing to disclose the above conflict of interest and by selecting investments that were not in their clients' best interests. It also references a specific agreement Defendants reached with their broker in November 2016. The Commission asserts three claims:

- Count I alleges Defendants violated Section 206(1) of the Advisers Act, 15 U.S.C. § 80b-6(1), during the period of the November 2016 agreement;

- Count II alleges Defendants violated Section 206(2) of the Advisers Act, 15 U.S.C. § 80b-6(2), by engaging in misconduct, including misconduct related to the November 2016 agreement, from 2014 to at least 2019; and

- Count III alleges Buttonwood violated Section 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-7 under that Section, 17 C.F.R. 275.206(4)-7, by failing to implement written policies and procedures to prevent violations of the Advisers Act.

The Commission seeks permanent injunctive relief, disgorgement of ill-gotten gains with prejudgment interest, and civil penalties.

On August 21, 2023, the parties informed the Court they had reached a settlement in principle and were taking steps necessary to gain the Commission's approval. (Doc. 73.) On October 11, the parties filed a Stipulation to Dismiss Count I of the Complaint, (Doc. 75), and the Commission filed a Motion for Entry of Consent Final Judgment Against Both Defendants, (Doc. 76.) Along with the Motion, the Commission filed Consents executed by Buttonwood and McGraw, (Docs. 76-1, 76-2), and a proposed Final Judgment, (Doc. 76-3.)

In consenting to judgment on Counts II and III, Defendants do not admit or deny the allegations in the Complaint (except for purposes of the Court's jurisdiction and paragraph IV below) and waive their right to findings of fact and conclusions of law. (Doc. 76-3, p. 1.) The proposed Final Judgment includes permanent injunctions against the conduct discussed in Counts II and III. (Doc. 76-3, pp. 1-2.) It further provides Defendants must disgorge ill-gotten gains, pay prejudgment interest on that amount, and pay civil penalties. Specifically, Buttonwood must disgorge $139,073, plus prejudgment interest in the amount of $16,107.13; McGraw is jointly and severally liable for $79,966.98 of the disgorgement and $9,261.60 of the prejudgment interest. (Doc. 76-3, pp. 2-3.) As to civil penalties, Buttonwood must pay $100,000, and McGraw must pay $45,000. (Doc. 76-3, p. 3.) Defendants also waive their right to appeal. (Doc. 76-3, p. 1.)

In its Motion, the Commission asks the Court to approve the settlement and enter the proposed Final Judgment. With respect to approval, the Court reviews "the settlement for fairness, reasonableness, and adequacy." *E.E.O.C. v. Prod. Fabricators, Inc.*, 666 F.3d 1170, 1172 (8th Cir. 2012) (quotation omitted). While the Eighth Circuit has not explicitly specified the relevant considerations for this analysis, its prior decisions reveal the Court should consider whether the settlement (1) is procedurally fair (i.e., the negotiation was in good faith and at an arm's length); (2) is substantively fair (i.e., the defendant bears the cost of the harm caused); (3) reasonably resolves the controversy at issue; (4) furthers the purposes of, and is consistent with, relevant statutes; (5) serves the public interest; and (6) provides for an effective and appropriate enforcement mechanism. *See, e.g.*, *United States v. BP Amoco Oil PLC*, 277 F.3d 1012, 1018-1021 (8th Cir. 2002); *Angela R. by Hesselbein v. Clinton*, 999 F.2d 320, 324-25 (8th Cir. 1993); *United States v. Hercules, Inc.*, 961 F.2d 796, 800 (8th Cir. 1992); *see also S.E.C. v. Citigroup Glob. Markets, Inc.*, 752 F.3d 285, 294-95 (2d Cir. 2014); *S.E.C. v. Kleyman*, 2021 WL 4622227 (D. Minn. Oct. 7, 2021).

The Court finds the parties' settlement should be approved. First, it is procedurally fair. Defendants are represented by counsel, and the parties litigated this case for approximately two years before settling. Further, each Defendant has executed a Consent, which states "[the relevant] Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce [the relevant] Defendant to enter into this Consent." (Doc. 76-1, ¶ 7, Doc. 76-2, ¶ 7.) Thus, there is no indication that the settlement was improperly negotiated.

Second and third, the settlement is substantively fair, and it reasonably resolves the dispute at issue. Defendants allegedly violated the Advisers Act by failing to disclose a conflict of interest, by purchasing securities that were less advantageous to their clients, and by failing to adopt written rules and policies that would prevent such violations. Although Defendants do not admit or deny the allegations in the Complaint, the settlement enjoins Defendants from future violations of the kind alleged in Counts II and III and requires them to (1) disgorge ill-gotten gains, (2) pay prejudgment interest on that amount, and (3) pay civil penalties. The proposed Final Judgment specifies Defendants are disgorging the net profits they received due to the conduct alleged in the Complaint. (Doc. 76-3, pp. 2-3.) This provides for almost all the relief sought by the Commission. As mentioned above, the parties have agreed to dismiss Count I. The Commission suggests this is because Count I requires a finding of scienter (i.e., an intent to deceive or defraud), while Counts II and III require only negligence. (Doc. 76, p. 3.) Although the standards may be different, the Complaint reveals that the conduct relevant to Count I is also encompassed in Count II. (*Compare* Doc. 1, ¶¶ 97-101 *with* Doc. 1, ¶¶ 107-111.) As a result, the Court is satisfied that Defendants are being held responsible for the harm they allegedly caused and that this dispute is being properly resolved.

Fourth and fifth, the settlement serves the purposes of, and is consistent with, the Advisors Act and is in the public interest.

> The [Advisers Act] was the last in a series of Acts designed to eliminate certain abuses in the securities industry, abuses which were found to have contributed to the stock market crash of 1929 and the depression of the 1930's. . . . A fundamental purpose, common to these statutes, was to substitute a philosophy of full disclosure for the philosophy of caveat emptor and thus to achieve a high standard of business ethics in the securities industry.

S.E.C. v. Cap. Gains Rsch. Bureau, Inc., 375 U.S. 180, 186 (1963) (footnotes omitted). The relief included in the proposed Final Judgment is available under the Advisors Act. 15 U.S.C. § 80b-

9(d) (providing for injunctive relief); *S.E.C. v. Quan*, 817 F.3d 583, 587, 594 (8th Cir. 2016) (affirming an award of disgorgement, plus prejudgment interest, when a violation of the Advisers Act was alleged); 15 U.S.C. § 80b-9(e)(2) (providing for penalties). And the settlement—by enjoining future misconduct and requiring disgorgement of gains received from prior allegedly unlawful conduct—will prevent securities abuses and help achieve a higher standard of ethics in the industry.

Lastly, the proposed Final Judgment includes an appropriate enforcement mechanism. Overall, the Court will "retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment." (Doc. 76-3, p. 5.) With respect to monetary relief, Defendants are directed to send all funds to the Commission and are told how to do so. (Doc. 76-3, p. 3.) Further, the Commission is permitted to use all collection procedures authorized by law, including seeking civil contempt. (Doc. 76-3, pp. 3-4.) Finally, the Commission will hold the sum paid and any interest earned thereon in a fund and will subsequently seek Court approval regarding its distribution. (Doc. 76-3, p. 4.)

For these reasons, the Court **APPROVES** the parties' settlement, **GRANTS** the Motion for Entry of Consent Final Judgment Against Both Defendants, (Doc. 76), **ACCEPTS** the Consents executed by Defendants, (Doc. 76-1, 76-2), and **ENTERS** the following Final Judgment:

I.

Defendants are permanently restrained and enjoined from violating Section 206(2) of the Advisers Act, 15 U.S.C. § 80b-6(2), as investment advisers by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

II.

Buttonwood is permanently restrained and enjoined from violating Section 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-7 thereunder, 17 C.F.R. § 275.206(4)-7, by providing investment advice without adopting and implementing written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules that the Commission has adopted under the Advisers Act.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Buttonwood's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Buttonwood or with anyone described in (a).

III.

Buttonwood is liable for disgorgement of $139,073, representing net profits gained by Buttonwood as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $16,107.13. With respect to the preceding $139,073 in disgorgement and $16,107.13 in prejudgment interest, McGraw is jointly and severally liable with Buttonwood for (1) disgorgement of $79,966.98, representing net profits gained by McGraw as a result of the conduct alleged in the Complaint, and (2) prejudgment interest thereon in the amount of $9,261.60. Further, Buttonwood is liable for a civil penalty in the amount of $100,000 pursuant to Section 209(e) of Advisers Act, 15 U.S.C. § 80b-9(e), and McGraw is liable for a civil penalty in the

amount of $45,000 pursuant to Section 209(e) of Advisers Act, 15 U.S.C. § 80b-9(e). Defendants shall satisfy this obligation by paying $300,180.13 to the Commission within 30 days after entry of this Final Judgment.

Defendants may transmit payment electronically to the Commission, 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 Commission's website at http://www.sec.gov/about/offices/ofm.htm. Defendants 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; Buttonwood Financial Group, LLC and Jon Michael McGraw as defendants in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendants shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendants relinquish all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendants.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by using all collection procedures authorized by law, including, but not limited to, moving for civil contempt at any time after 30 days following entry of this Final Judgment. The Commission may enforce the Court's judgment for penalties by the use of all collection procedures authorized by law, including the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.,*

and moving for civil contempt for the violation of any Court orders issued in this action. Defendants shall pay postjudgment interest on any amounts due after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961.

The Commission shall hold all funds paid by Defendants, together with any interest and income earned thereon, in a fund (the "Fund"). The Court shall retain jurisdiction over the administration of any distribution of the Fund, and the Fund may only be disbursed pursuant to an Order of the Court.

Regardless of how they are distributed, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the Government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendants shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendants' payment of disgorgement in this action, argue that they are entitled to, nor shall they further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendants' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendants shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund established pursuant to the provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendants by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

IV.

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 McGraw, and further, any debt for disgorgement, prejudgment interest, civil penalty, or other amounts due by McGraw under this Final 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 McGraw 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).

V.

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

IT IS SO ORDERED.

/s/ Beth Phillips
BETH PHILLIPS, CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATE: November 21, 2023