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CLERK

UNITED STATES DISTRICT COURT
for the
DISTRICT OF WYOMING

United States Securities
and Exchange Commission,

Plaintiff,

v.

ZAPPA INTERNATIONAL CORPORATION,
et al.

Defendants.

Case No. 98-CV-213-B

DEFAULT JUDGMENT
OF PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF
AGAINST SCOTT B. WALKER AND EQUITY MANAGEMENT SERVICES

The Plaintiff Securities and Exchange Commission commenced this action by filing its Complaint on September 1, 1998, and filed an Amended Complaint on November 18, 1998. The defendants Scott B. Walker, and Equity Management Services have not filed Answers to the Amended Complaint. Default was entered against defendants Walker and Equity Management Services by the Clerk of the Court on February 7, 2000. On February 28, 2000, the Plaintiff filed a motion requesting entry of default judgment against these defendants pursuant to Fed. R. Civ. P. 55(b)(2) and requested entry of a permanent injunction, disgorgement, and prejudgment interest. More than 3 days have passed since the Plaintiff sent notice to the defendants of its request for entry of this default judgment.

The Court finds that the defendants Scott B. Walker and Equity Management Services were served with the Amended Complaint on November 23, 1998. These defendants failed to file

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Answers to the Amended Complaint. The Court finds that it has personal jurisdiction over these defendants, and subject matter jurisdiction over this case. Based on these facts, it is appropriate for the Court to enter a default judgment against defendants Scott B. Walker and Equity Management Services.

When a default is entered, the Court considers the allegations in the amended complaint as true. *Beck v. Atlantic Contracting Co.*, 157 F.R.D. 61, 64 (D. Kan. 1994), *citing, Thomson v. Wooster*, 114 U.S. 104, 109-10 (1885). Plaintiff submitted additional evidence of these defendants' violations to the Court during the preliminary injunction hearing on October 2, 1998. Based on the allegations in the amended complaint and evidence submitted at the preliminary injunction hearing, the Court finds that defendants Walker and Equity Management Services violated the anti-fraud provisions of the federal securities laws contained at Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5].

The Court finds that Walker, both personally and as the trustee of Equity Management Services, made false statements in connection with the sale of investments in a fictitious trading program of prime bank instruments. Beginning in early 1998, Walker falsely represented to investors that the investments were guaranteed against loss by a "top One Hundred World Bank" which issued a guarantee of 106 percent of the principal invested. Walker falsely represented the funds would be invested by an International Monetary Fund licensed trader and that the bank instruments were approved by the International Chamber of Commerce and the Federal Reserve.

Walker falsely represented that investors would receive returns of between 50% to 100% of the principal invested per trade.

Walker had no basis for these statements. He did not obtain a bank guarantee. He did not know the person trading the funds, and if he had inquired of the International Monetary Fund, he would have learned that the IMF does not license traders. Neither the International Chamber of Commerce nor the Federal Reserve participate in, or approve prime bank instrument trading programs. Walker knew or was reckless in not knowing that the prime bank instrument trading program did not exist, and so he had no basis for the claims of 50% to 100% returns per trade. Walker failed to disclose that he received commissions ranging from 10 to 20 percent of the money invested. He failed to disclose that he paid commissions to other persons who acted as finders of new investors. He also failed to disclose he used investors' funds to repay other investors and to pay his personal expenses. Walker's actions and knowledge are attributed to Equity Management Services, because he acted as Equity's trustee and agent.

The Commission has submitted evidence on the amount of disgorgement and prejudgment interest that the defendants should pay. The defendants Walker and Equity Management Services have not disputed these amounts. The Court finds that a hearing is not necessary to set the amount of disgorgement and prejudgment interest. The Court finds that defendants Walker and Equity Management Services raised \$220,000.00 from investors, which amount has not yet been repaid to investors. The Court finds that investors were deprived of the use of this money and that an award of prejudgment interest in the amount of \$27,049.60 is

appropriate based on the rates prescribed in the IRS underpayment schedule for the period from September 1, 1998 through February 28, 2000.

The Court being fully advised in the premises and there being no just cause for delay:

I.

IT IS ORDERED, ADJUDGED AND DECREED that the Defendants Scott B. Walker, Equity Management Services, and the officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, who receive actual notice of this order by personal service or otherwise, and each of them, be and hereby are restrained and enjoined from, directly or indirectly violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] by using any means or instruments of transportation or communication in interstate commerce, or using the mails, in the offer or sale of any securities, to:

- a. employ any device, scheme, or artifice to defraud;
- b. 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; or
- c. engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any purchaser.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants Scott B. Walker, Equity Management Services, and the officers, agents, servants, employees, attorneys, and

those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, and each of them, be and hereby are restrained and enjoined from, directly or indirectly violating Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) [15 U.S.C. § 78j(b)], and Rule 10b-5 promulgated thereunder [17 C.F.R. §240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, to:

- a. employ any device, scheme, or artifice to defraud;
- b. 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. engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Scott L. Walker, and Equity Management Services jointly and severally pay disgorgement in the amount of \$220,000.00, representing proceeds that they received for the conduct alleged in the Amended

Complaint and prejudgment interest of \$27,049.60. Defendant Walker has been ordered to pay restitution of \$220,000.00 jointly and severally with defendants Scott L. Simpson and Wayne L. Nattrass in *U.S. v. Scott B. Walker*, Case No. 99-CR-009-1B (D. Wyo.). Any payments of restitution paid to the registry of the Court by defendants Walker, Simpson or Nattrass in the criminal case shall be credited against this judgment ordering disgorgement in this civil case.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Walker, and Equity Management Services upon entry of this Final Judgment, shall sign an acknowledgment of receipt of this Final Judgment within fourteen days of the order's entry and promptly return the acknowledgment to Plaintiff's counsel of record for filing with this Court.


V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for purposes of enforcing this Final Judgment.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there being no just reason for delay, the Clerk of the Court is hereby directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure to enter this Final Judgment forthwith and without further notice.

ORDERED in Cheyenne, Wyoming on March 3, 2000.


Clarence A. Brimmer
UNITED STATES DISTRICT JUDGE