

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BIO-TECH INDUSTRIES, INC., ET AL.,

Defendants.

98 Civ. 2298 (GK)

**FILED**

**MAY 10 1999**

WENDY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

**FINAL JUDGMENT AS TO STEVEN SCHWARTZ**

Plaintiff Securities and Exchange Commission ("Commission") filed this action on September 24, 1998. Defendant Steven Schwartz ("Schwartz") was served with a summons and complaint on September 29, 1998, and thereafter failed to respond to the complaint. Based on Schwartz's default and the Commission's Application for Entry of Final Judgment by Default as to defendant Schwartz and the supporting documentation, and it appearing that this Court has jurisdiction over Schwartz and the subject matter hereof, and the Court being fully advised in the premises, **IT IS HEREBY:**

**I.**

**ORDERED, ADJUDGED AND DECREED** that Schwartz and his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them, and each of them, who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] by,

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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 the use of the mails, directly or indirectly --

- (1) employing any device, scheme, or artifice to defraud; or
- (2) obtaining 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
- (3) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

## II.

**FURTHER ORDERED, ADJUDGED AND DECREED** that Schwartz and his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them, and each of them, who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined from violating Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], by:

directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

- (1) employing any device, scheme, or artifice to defraud;

(2) making any untrue statement of a material fact or omitting 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

(3) engaging 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.

**FURTHER ORDERED, ADJUDGED AND DECREED** that Schwartz and his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them, and each of them, who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined from violating Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Rules 12b-20, 13a-1 or 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 or 240.13a-13], by:

(a) while directly or indirectly controlling an issuer which has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)], unless the controlling person is acting in good faith and is not directly or indirectly inducing the act or acts constituting the violation or cause of action, pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], failing to file with the Commission, in accordance with such rules and regulations as the Commission may

prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security --

(1) such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 [15 U.S.C. § 78l] except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962;

(2) such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof), as the Commission may prescribe [as required by Rules 13a-1 and 13a-13]; or

(b) failing to, in addition to the information expressly required to be included in a statement or report, add such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made not misleading [as required by Rule 12b-20].

#### IV.

**FURTHER ORDERED, ADJUDGED AND DECREED** that Schwartz and his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them, and each of them, who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined from directly or indirectly

violating Sections 13(b)(2)(A) or 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) or 78m(b)(2)(B)], by

while directly or indirectly controlling an issuer which has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)], unless the controlling person in acting in good faith and is not directly or indirectly inducing the act or acts constituting the violation or cause of action, pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], failing to --

(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer [as required by Section 13(b)(2)(A)]; and

(B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that --

(i) transactions are executed in accordance with management's general or specific authorization;

(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

(iii) access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences [as required by Section 13(b)(2)(B)].

V.

**FURTHER ORDERED, ADJUDGED AND DECREED** that Schwartz and his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them, and each of them, who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined from directly or indirectly violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)], or Rules 13b2-1 and 13b2-2 thereunder [17 C.F.R. 240.13b2-1 and 240.13b2-2], by

(1) knowingly circumventing or knowingly failing to implement a system of internal accounting controls, or knowingly falsifying any book, record, or account described in 15 U.S.C. § 13(b)(2) [as prohibited by 15 U.S.C. § 13(b)(5)]; or

(2) directly or indirectly falsifying or causing to be falsified, any book, record or account subject to 15 U.S.C. § 13(b)(2)(A) [as prohibited by 17 C.F.R. § 240.13b2-1]; or

(3) as a director or officer of an issuer, directly or indirectly --

(a) making or causing to be made a materially false or misleading statement, or

(b) omitting to state, or causing another person to omit to state, any material fact necessary in order to make statements made, in the light of the

circumstances under which such statements were made, not misleading to an accountant in connection with

(i) any audit or examination of the financial statements of the issuer required to be made pursuant to Section 13(b)(2) of the Exchange Act [15 U.S.C. §78m(b)(2)] and rule promulgated thereunder or

(ii) the preparation or filing of any document or report required to be filed with the Commission pursuant to Section 12(b)(2) of the Exchange Act [15 U.S.C. §78m(b)(2)] and rules promulgated thereunder or otherwise [as prohibited by 17 C.F.R. §240.13b2-2].

**VI.**

**FURTHER ORDERED, ADJUDGED AND DECREED** that Schwartz is permanently and unconditionally 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)].

**VII.**

**FURTHER ORDERED, ADJUDGED AND DECREED** that Schwartz pay disgorgement in the amount of \$108,333, representing his gains from the conduct alleged in the Complaint, plus pre-judgment interest thereon.

**VIII.**

**FURTHER ORDERED, ADJUDGED AND DECREED** that Schwartz pay a civil penalty in the amount of \$108,333, pursuant to Section 20(d) of the Securities Act [15 U.S.C. §

771(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

**IX.**

**FURTHER ORDERED, ADJUDGED, AND DECREED** that defendant Schwartz shall cause to be delivered within twenty (20) business days of the entry of the Final Judgment a certified check or cashier's check in the amount of \$108,333, plus prejudgment interest thereon, representing the sum total of the disgorgement as described in paragraph VII, above, to the Office of the Comptroller of the Commission, Securities & Exchange Commission, 450 Fifth Street, N.W., Mail-Stop 0-3, Washington, D.C., 20549-0003. The check shall be made payable to the "SECURITIES AND EXCHANGE COMMISSION " and bear on its face the caption "SEC v. BIO-TECH INDUSTRIES, INC." Defendant Schwartz shall also deliver a photocopy of the check within twenty business days of the entry of the Final Judgment in this action to Erich T. Schwartz, Esq., Assistant Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail-Stop 7-6, Washington, D.C., 20549-0706. Thereafter the Office of the Comptroller shall distribute those funds to the United States Treasury.

**X.**

**FURTHER ORDERED, ADJUDGED, AND DECREED** that defendant Schwartz shall deliver within twenty (20) business days of the entry of the Final Judgment a certified check or cashier's check in the amount of \$108,333, representing civil penalties pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 77(d) and 15 U.S.C. § 78u(d)(3)], as described in paragraph VIII, above, to The Office of the Comptroller of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW, Mail-Stop 0-3,

Washington, DC 20549-0003. The check shall be made payable to the "SECURITIES AND EXCHANGE COMMISSION" and bear on its face the caption "SEC v. BIO-TECH INDUSTRIES, INC." Defendant Schwartz shall also deliver a photocopy of the check within twenty business days of the entry of the Final Judgment in this action to Erich T. Schwartz, Esq., Assistant Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 7-6, Washington, D.C., 20549-0706. Thereafter the Office of the Comptroller shall distribute those funds to the United States Treasury.

**XI.**

**FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court shall retain jurisdiction over defendant Schwartz in this matter for all purposes, including enforcement and implementation of this Final Judgment.

**XII.**

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.

**IT IS SO ORDERED.**

  
UNITED STATES DISTRICT JUDGE

Dated: May 7, 1999  
Washington, D.C.