

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

U.S. SECURITIES AND EXCHANGE )  
COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
DOUGLAS E. ELSTUN, )  
 )  
Defendant. )

Case No. 4:21-CV-00206-BCW

**ORDER AND CONSENT FINAL JUDGMENT**

Before the Court is Plaintiff’s Unopposed Motion for Entry of Final Judgment on Consent. (Doc. #10). The Court, being duly advised of the premises, having reviewed the terms of the parties’ agreement, grants the motion and enters Final Judgment as follows.

Plaintiff, the U.S. Securities and Exchange Commission (“Commission”) filed a complaint on March 29, 2021 against Defendant Douglas E. Elstun. (Doc. #1). Counsel entered an appearance on Defendant’s behalf, and Defendant consented to this Court’s personal jurisdiction over him and subject matter jurisdiction over this matter.

On June 15, 2021, the Court entered an Order on the parties’ joint motion, staying this case pending the Commission’s approval of a settlement proposal. (Doc. #8). The Commission filed the instant motion for entry of consent judgment on August 18, 2021 (Doc. #8), and with Defendant having consented to entry of this Final Judgment without admitting or denying the allegations of the complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VIII), having waived findings of fact and conclusions of law, and having waived any right to appeal from this Final Judgment, it is hereby

**I.** ORDERED, ADJUDGED, AND DECREED Defendant is permanently restrained and enjoined from violating, directly or indirectly, Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. § 80b-6(1) and 15 U.S.C. § 80b-6(2)] while acting as an investment adviser or associated person of an investment adviser, directly or indirectly, by use of the mails or any means or instrumentality of interstate commerce:

(a) to employ any device, scheme, or artifice to defraud any client or prospective client; and

(b) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. It is further

ORDERED, 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) Defendant’s officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a). It is further

**II.** ORDERED Defendant is permanently restrained and enjoined from aiding and abetting any violation of Section 204(a) of the Advisers Act [15 U.S.C. § 80b-4(a)] and Rule 204-2(a)(10) thereunder [17 C.F.R. §§ 275.204-2(a)(10)] by knowingly or recklessly providing substantial assistance to an investment adviser registered or required to be registered under Section 203 of the Advisers Act [15 U.S.C. § 80b-3] that makes use of the mails or of any means or instrumentality of interstate commerce in connection with its business as an investment adviser and fails to make and keep true, accurate, and current the following books and records relating to its investment advisory business: all written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such. It is further

ORDERED, 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) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a). It is further

**III.** ORDERED Defendant is permanently restrained and enjoined from aiding and abetting any violation of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-2 thereunder [17 C.F.R. §§ 275.206(4)-2] by knowingly or recklessly providing substantial assistance to an investment adviser registered or required to be registered under Section 203 of the Advisers Act [15 U.S.C. § 80b-3] that, by use of the mails or any means or instrumentality of interstate commerce, maintains custody of client funds or securities and fails to comply with the provisions in Rule 206(4)-2. It is further

ORDERED 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) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a). It is further

**IV.** ORDERED Defendant is permanently restrained and enjoined from aiding and abetting any violation of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-3 thereunder [17 C.F.R. §§ 275.206(4)-3] by knowingly or recklessly providing substantial assistance to an investment adviser required to be registered under Section 203 of the Advisers Act [15 U.S.C. § 80b-3] that, by use of the mails or any means or instrumentality of interstate commerce, pays a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities

and fails to comply with the provisions in Rule 206(4)-3. It is further

ORDERED, 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) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a). It is further

V. ORDERED Defendant is permanently restrained and enjoined from aiding and abetting any violation of 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 knowingly or recklessly providing substantial assistance to an investment adviser registered or required to be registered under Section 203 of the Advisers Act [15 U.S.C. § 80b-3] that, by use of the mails or any means or instrumentality of interstate commerce, provides investment advice to clients and fails to do the following:

- (a) adopt and implement written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Act and the rules that the Commission has adopted under the Act;
- (b) review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to Section 206(4) of the Advisers Act and the effectiveness of their implementation; and
- (c) designate an individual (who is a supervised person) responsible for administering the policies and procedures that the investment adviser adopts under paragraph (a) of this section. It is further

ORDERED, 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) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a). It is further

**VI.** ORDERED Defendant is liable for disgorgement of \$386,647, representing net profits gained as a result of the conduct alleged in the complaint, together with prejudgment interest thereon in the amount of \$64,338, and a civil penalty in the amount of \$390,094 pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)]. Defendant shall satisfy this obligation by paying \$841,079 to the Securities and Exchange Commission within 30 days after entry of this Final Judgment.

Defendant 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 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; Douglas E. Elstun as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

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

the funds shall be returned to Defendant.

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. Defendant shall pay post judgment 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 the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. 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 whether any such Fair Fund distribution is made, 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, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty

Offset”). If the Court in any Related Investor Action grants such a Penalty Offset, Defendant 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, 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 Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the complaint in this action. It is further

**VII.** ORDERED the “Consent of Defendant Douglas E. Elstun,” attached to the motion for approval (Doc. #10-1) is incorporated herein with the same force and effect as if fully restated, and Defendant shall comply with all of the agreements set forth in the Consent. It is further

**VIII.** ORDERED, 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 Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant 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 Defendant 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). It is further

**IX.** ORDERED this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

DATE: August 31, 2021

/s/ Brian C. Wimes  
JUDGE BRIAN C. WIMES  
UNITED STATES DISTRICT COURT