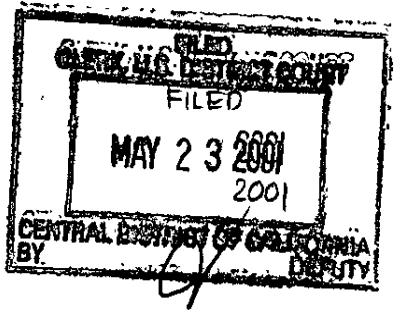


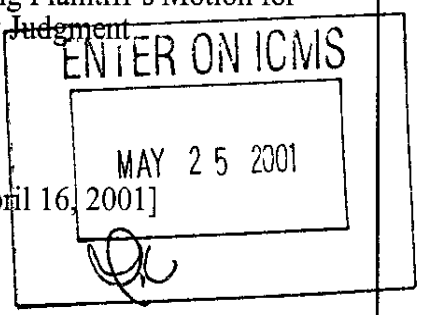
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SECURITIES & EXCHANGE COMMISSION,) No. CV 99-13139 CBM (AJWx)
Plaintiff)
vs.) **ORDER** Granting Plaintiff's Motion for
Partial Summary Judgment
ARASH AZIZ-GOLSHANI, HOOTAN)
MELAMED, ALLEN DERZAKHARIAN,)
Defendants) [Motion filed April 16, 2001]



The matter before the Court, the Honorable Consuelo B. Marshall, United States District Judge presiding, is Plaintiff's Motion for Partial Summary Judgment Against Arash Aziz-Golshani. The Court deemed the matter submitted without oral argument on April 25, 2001. Upon consideration of the papers submitted, the Court grants Plaintiff's Motion for Partial Summary Judgment.

JURISDICTION

This action is before the Court pursuant to 15 U.S.C. §§ 77t(b), 77(d)(1), 77v(a), 15 U.S.C. §§ 78u(d)(3), 78u(e), 78aa and 28 U.S.C. § 1331.

BACKGROUND & PROCEDURAL HISTORY

Plaintiff Securities & Exchange Commission ("Plaintiff" or "SEC") filed this action on December 15, 1999, against Defendants Allen Derzakarian, Hootan Melamed and Arash Aziz-

80

1 Golshani. The gravamen of Plaintiff's Amended Complaint is that Defendants operated a fraudulent
2 scheme, whereby Defendants purchased stocks at low prices, disseminated false information about
3 such stocks to manipulate their prices, then sold their stocks at a profit. Plaintiff filed an Ex Parte
4 Application for a Temporary Restraining Order, which was granted on December 15, 1999.

5 The United States Attorney's Office indicted Mr. Aziz-Golshani for securities fraud and
6 conspiracy on January 4, 2000. The United States alleged that Mr. Aziz-Golshani engaged in a
7 fraudulent scheme to manipulate the price of NEI Webworld, Inc. ("NEIW") stock to his benefit by
8 posting false messages about NEIW stock on the Internet. Uncontroverted Facts ¶ 2. Mr. Aziz-
9 Golshani entered a guilty plea to both counts of the indictment on March 15, 2000. *Id.* at ¶ 6.

10 Defendant Aziz-Golshani filed an Answer to the Amended Complaint on July 14, 2000.
11 Defendants Melamed and Derzakarian consented to the issuance of a permanent injunction and
12 disgorgement of profits on January 22, 2001.

13 Plaintiff filed a Motion for Partial Summary Judgment against Mr. Aziz-Golshani on April
14 16, 2001. Mr. Aziz-Golshani filed a "Memorandum" Regarding Plaintiff's Motion for Partial
15 Summary Judgment on May 7, 2001. Plaintiff filed a timely Reply on May 14, 2001.

16 DISCUSSION

17 Plaintiff argues that Mr. Aziz-Golshani violated federal securities law and should disgorge
18 all illegally gained profits, including prejudgment interest. Plaintiff further contends that the Court
19 should issue a permanent injunction against Mr. Aziz-Golshani. Plaintiff requests a disgorgement
20 of \$152,742.50 plus a civil penalty in the amount of \$152,742.50.

21 Mr. Aziz-Golshani consents to the granting of Plaintiff's Motion and the imposition of an
22 injunction. Mr. Aziz-Golshani further consents to an order requiring him to disgorge unlawful
23 trading profits, except to the extent such disgorgement and any additional civil penalty are not
24 "coextensive" with the amount Defendant was ordered to pay in restitution in the criminal action.

25 Federal Rule of Civil Procedure 56(c) provides for summary judgment against a party when
26 "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the
27 affidavits, if any, show that there is *no genuine issue as to any material fact* and that the moving
28 party is *entitled to a judgment as a matter of law.*" FED. R. CIV. P. 56(c) (emphasis added). A party

1 seeking summary judgment bears the initial burden of informing the court of the basis for its motion
2 and of identifying those portions of the pleadings and discovery responses which demonstrate the
3 absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If
4 the moving party meets its initial burden, the nonmoving party must then set forth, by affidavit or
5 as otherwise provided in Rule 56, "specific facts showing that there is a genuine issue for trial."
6 FED. R. CIV. P. 56(e); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

7 The SEC has the authority to seek the imposition of a civil penalty against a person who has
8 violated the federal securities laws. 15 U.S.C. § 78u-1(a)(1). "The amount of the penalty . . . shall
9 be determined by the court in light of the facts and circumstances, but shall not exceed three times
10 the profit gained . . ." 15 U.S.C. § 78u-1(a)(2). Imposing a civil penalty does not preclude the
11 imposition of criminal penalties. *See* 15 U.S.C. § 78u-1(a)(3) (A civil action "may be brought in
12 addition to any other actions that the Commission or the Attorney General are entitled to bring.").

13 The civil penalty requested by the SEC does not exceed the amount authorized by statute.
14 Mr. Aziz-Golshani states that he was ordered, in the related criminal action, to pay restitution in the
15 amount of \$566,433, for which he is jointly and severally liable with his co-defendant, Mr. Hootan
16 Melamed. Def.'s Memorandum, Ex. 1. The fact that Mr. Aziz-Golshani was ordered to pay
17 restitution in the related criminal action does not preclude Plaintiff from seeking disgorgement and
18 a civil penalty in this action.

19 CONCLUSION

20 Based on the foregoing, the Court **GRANTS** Plaintiff's Motion for Partial Summary
21 Judgment against Mr. Aziz-Golshani. Mr. Aziz-Golshani shall disgorge illegal profits in the amount
22 of \$152,742.50. The amount of illegal profits disgorged by Mr. Aziz-Golshani shall be reduced by
23 the amount of restitution actually paid by Mr. Aziz-Golshani in the related criminal matter.
24 Furthermore, Mr. Aziz-Golshani shall pay a civil penalty in the amount of \$152,742.50.

25
26 **SO ORDERED.**

27 **DATE:** May 2³, 2001

28 
CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE