

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
	§	
Plaintiff,	§	
v.	§	Case No. 5:12-CV-918
	§	
SUNRISE SOLAR CORPORATION,	§	
EDDIE D. AUSTIN, JR., and	§	
CAROLYN AUSTIN,	§	
	§	
Defendants.	§	

COMPLAINT

Plaintiff Securities and Exchange Commission (the “Commission”) alleges:

SUMMARY OF THE ACTION

1. Between July 25, 2008 and May 26, 2009, Sunrise Solar Corporation (“Sunrise” or the “Company”) issued numerous press releases, drafted or reviewed by its former Chairman and CEO Eddie D. Austin, Jr. (“Austin”), which contained materially false and misleading statements or omissions. The press releases falsely portrayed Sunrise as a thriving business operation, claiming that Sunrise had received contracts or was in advanced negotiations to provide solar power to numerous international businesses that, if completed, could generate more than \$160 million in revenue. These claims were false.

2. Sunrise also made materially false and misleading statements and omissions in two annual reports filed with the Commission. Specifically, Sunrise filed a Form 10-KSB and Form 10-K that each failed to disclose, as required under Regulation S-K [17 C.F.R. § 229], that Austin had filed for bankruptcy in 2007, and omitted other material information.

3. Lastly, Carolyn Austin received Sunrise stock from an affiliate of the Company, and sold those shares for \$174,741.58, in violation of the registration provisions of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77].

JURISDICTION AND VENUE

4. The Commission brings this action under Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78u(d)]. The Commission seeks the imposition of civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

5. This Court has jurisdiction over this action under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Defendants have, directly and indirectly, made use of the means or instruments of transportation and communication, and the means or instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business described in this Complaint.

6. Venue is proper under Section 27 of the Exchange Act [15 U.S.C. § 78aa] and Section 22 of the Securities Act [15 U.S.C. § 77v], because the transactions, acts, practices and courses of business described below occurred within the Western District of Texas.

STATEMENT OF FACTS

Defendants

7. **Sunrise Solar Corporation** (“Sunrise” or “the Company”), formerly known as Systems Management Solutions, Inc. (“SMS”), was a Nevada corporation before its charter was revoked in November 2010. Sunrise was headquartered in San Antonio, Texas and purports to

be engaged in the solar power business. Sunrise is quoted on the OTC Markets Group with the ticker symbol SSLR.PK and its shares are registered under Section 12(g) of the Exchange Act.

8. **Eddie D. Austin, Jr.** (“Austin”), age 61, resides in Houston, Texas. On January 18, 2008, Austin became Sunrise’s Chairman, CEO, and Principal Accounting Officer. Austin was a registered representative with Thomson McKinnon Securities, Inc. from 1979 to 1983, and A.G. Edwards & Sons, Inc. from 1983 to 1985. In 1986, the New York Stock Exchange censured and barred Austin from association with any member or member organization for five years for, among other things, placing transactions in customer accounts without authorization and issuing checks with insufficient funds to pay for his own securities transactions. He became licensed as an attorney in Louisiana in 1990. In May 2011, Austin resigned his bar license in lieu of disciplinary action against him by the Louisiana State Bar for, among other things, allegedly converting client funds to his own use.

9. **Carolyn Austin**, age 56, is the wife of Austin. She resides in Houston, Texas and Lake Charles, Louisiana. Carolyn Austin is the sole owner and member of Calex, LLC (“Calex”), a company through which she received and sold Sunrise stock.

FACTUAL ALLEGATIONS

A. Background

10. In or around January 2008, Austin purchased a controlling interest in SMS from its majority shareholder. SMS was a publicly-traded company involved in the biofuels business. This change in control was not reported with the Commission on a Form 8-K.

11. On May 5, 2008, SMS changed its name to Sunrise and announced that it was entering the solar power business. At or around this time, Austin became the Chairman, Chief Executive Officer, and Principal Accounting Officer of Sunrise.

12. Once Austin became the CEO of Sunrise, he failed to file a Form 3 with the Commission to disclose his beneficial ownership of Sunrise stock.

13. Sunrise's reports filed with the Commission disclose that none of its officers or employees had any experience in the solar power business. To date, Sunrise has never made a profit or generated revenue from the solar power business.

B. Press Releases

14. Between July 25, 2008 and May 26, 2009, Sunrise issued at least 49 press releases. Although many of the releases disclosed mundane corporate events, several made claims about existing contracts or the status of pending contract prospects. Austin drafted most, if not all, of those press releases, and he reviewed, approved, and had the ultimate and final authority on behalf of the Company to issue the releases. The allegations below describe four representative press releases that contain materially false and misleading statements or omissions

15. On January 7, 2009, Sunrise announced that it "has been selected to supply solar power resources to four major hospitals in Brazil." This claim was repeated in numerous additional press releases issued during 2009. However, this claim was false. Sunrise had not been selected to supply solar power for anyone in Brazil, had no contract with anyone in Brazil, and never received revenue related to supplying solar power to anyone in Brazil.

16. The January 7, 2009 press release spurred several days of rising share prices and increased trading volume. On Tuesday, January 6, 2009, the day before this press release, Sunrise stock closed at \$.39 on volume of 285,997 shares traded. Following the press release, by Friday, January 9, its shares had doubled in price, and the stock closed at \$.80 on volume of 641,660 shares traded.

17. In the morning of January 12, 2009, Sunrise announced that funds had been “placed in escrow” for a project to supply solar power to a U.S. biodiesel plant. This statement was false. Sunrise did not have a contract to supply power to a U.S. biodiesel plant, and at no time did Sunrise place funds into escrow related to a project to supply power to a U.S. biodiesel plant.

18. Following the issuance of this press release on January 12, the daily trading volume in Sunrise stock more than doubled to 1,362,582 shares, up from 641,660 shares the prior trading day, and Sunrise stock closed at a price of \$1.11. The stock reached an intraday high of \$1.43, up from a prior close of \$.80.

19. On January 26, 2009, Sunrise announced that it had “accepted” the opportunity to provide solar power resources to two large hospitals in Mexico. This claim was repeated in several other press releases issued by Sunrise in 2009. This claim was false. At no time did Sunrise have a contract, or accept an offer, to provide solar power or solar power resources to any hospitals in Mexico.

20. On March 27, 2009, Sunrise issued a press release stating, among other things, that it anticipated “final contracts will be signed within 60 days” to convert four Canadian hospitals to solar power, with a budget of US \$75 million. This statement was false. At that time, none of the four hospitals listed in the press release had any plans to convert to solar power, and at no point did representatives for any of the hospitals engage in negotiations with Sunrise or anyone else to convert to solar power.

C. Commission Filings

21. On October 4, 2007, three months before Austin became the Chairman and CEO of Sunrise, Austin filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. The Chapter 11 proceeding was converted to Chapter 7 on November 7, 2007.

22. Item 401(f) of Regulation S-K [17 C.F.R. § 229.401(k)] requires an issuer to disclose certain legal proceedings that are “material to an evaluation of the ability or integrity of any director...or executive officer” that occurred in the prior five years, including petitions filed under the federal bankruptcy laws.

23. Sunrise, however, failed to disclose Austin’s bankruptcy in its Form 10-KSB filed on May 15, 2008 and its Form 10-K filed on April 15, 2009, each of which was signed and certified by Austin.

24. The May 15, 2008 Form 10-KSB and the April 15, 2009 Form 10-K also contain biographical information that describes Austin as having a “successful multi-dimensional law practice.” However, the biographical information failed to disclose that Austin filed for bankruptcy in 2007. The bankruptcy filing stayed a lawsuit against Austin by former law firm clients of Austin claiming that Austin had misappropriated or could not account for about \$1.2 million that they had entrusted with him.

25. The allegations in the lawsuit above, and Austin’s election to declare bankruptcy, directly reflect on Austin’s ability and integrity, and make the reference to Austin’s “successful” law practice materially misleading.

D. Sale of Sunrise Stock

26. On May 15, 2008 Sunrise issued two million restricted shares of common stock - 500,000 shares to Austin and 1.5 million shares to four entities owned and controlled by John Thomas Cloud (“Cloud”).

27. Austin did not file with the Commission a Form 4 to disclose and report his beneficial ownership of these shares.

28. The 1.5 million shares issued to Cloud constituted 24.4% of Sunrise’s outstanding shares. By virtue of his ownership of these and other Sunrise shares, Cloud was an affiliate of the Company.

29. On October 31, 2008, Cloud transferred 300,000 shares to a brokerage account in the name of Calex. Calex was owned and controlled by Carolyn Austin.

30. Carolyn Austin immediately began selling the Sunrise stock out of the Calex account. Between October 2008 and February 2009, Carolyn Austin sold the 300,000 shares into the public market in 283 transactions for proceeds of \$174,471.

E. Delinquent Filing of Commission Reports

31. Sunrise has not made a required periodic filing with the Commission since filing a Form 10-Q for the period ended March 31, 2009. Sunrise is delinquent in filing Forms 10-Q for the quarters ended June 30 and September 30, 2009, March 31, June 30, and September 30, 2010, March 31, June 30, and September 30, 2011, and March 31 and June 30, 2012. Sunrise is delinquent in filing Forms 10-K for the years ended December 31, 2009, 2010, and 2011.

FIRST CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

32. Paragraphs 1 through 31 are realleged and incorporated by reference.

33. Defendants Sunrise and Austin, directly or indirectly, singly or in concert with others, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices, and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

34. As a part of and in furtherance of their scheme, Defendants Sunrise and Austin, directly and indirectly, prepared, disseminated or used press releases and other public statements, and filed reports with the Commission, which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

35. Defendants Sunrise and Austin made the misrepresentations and omissions knowingly or with gross recklessness in disregard of the truth.

36. For these reasons, Defendants Sunrise and Austin violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF

Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-11 Thereunder

37. Paragraphs 1 through 31 are realleged and incorporated by reference.

38. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1 and 13a-11 thereunder [17 C.F.R. §§ 240.13a-1 and 240.13a-11], require issuers of registered securities to file with the Commission factually accurate annual and current reports. Exchange Act Rule 12b-20 [17 C.F.R. § 240.12b-20] further provides that, in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

39. By engaging in the conduct alleged above, Defendant Sunrise violated, and unless enjoined will continue to violate, Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-11 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-11].

40. While an officer and director of Sunrise, Defendant Austin aided and abetted and caused the violations by Sunrise of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-11 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-11], and unless enjoined will continue to aid and abet violations of these provisions.

THIRD CLAIM FOR RELIEF

Violations of Section 16(a) of the Exchange Act and Rules 16a-2 and 16a-3 thereunder

41. Paragraphs 1 through 31 are realleged and incorporated by reference.

42. Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rules 16a-2 and 16a-3 thereunder [17 C.F.R. §§ 240.16a-2 and 240.16a-3] require, among other things, persons who are officers or directors of an issuer of securities registered under the Exchange Act to timely file accurate Forms 3 and 4 with the Commission disclosing information about their holdings and trading in the issuer's securities.

43. Based on the conduct alleged above, Defendant Austin violated Section 16(a) of the Exchange Act and Rules 16a-2 and 16a-3 thereunder, and unless enjoined, will continue to violate these provisions.

FOURTH CLAIM FOR RELIEF

Violations of Rule 13a-14 of the Exchange Act

44. Paragraphs 1 through 31 are realleged and incorporated by reference.

45. Based on the conduct alleged above, Defendant Austin, as Chief Executive Officer of Sunrise, signed false certifications for Sunrise's 2007 Form 10-KSB, filed on May 15, 2008, and Sunrise's 2008 Form 10-K, filed on April 15, 2009. When Austin signed and certified these annual reports, he knew that they contained untrue statements of material fact, or omitted to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading.

46. For these reasons, Defendant Austin violated Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14], adopted under Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)].

FIFTH CLAIM FOR RELIEF

Violations of Section 5(a) and 5(c) of the Securities Act

47. Paragraphs 1 through 31 are realleged and incorporated by reference.

48. Defendant Carolyn Austin, directly or indirectly, singly or in concert with others, has been offering to sell, selling and delivering after sale, certain securities, and has been, directly and indirectly: (a) making use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, through the use of written contracts, offering documents and otherwise; (b) carrying and causing to be carried through the mails and in interstate commerce by the means and instruments of transportation,

such securities for the purpose of sale and for delivery after sale; and (c) making use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

49. No registration statements were ever filed with the Commission or otherwise in effect with respect to these transactions, nor were any registration exemptions available to Defendant Carolyn Austin.

50. By reason of the foregoing, Defendant Carolyn Austin violated and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

RELIEF REQUESTED

For these reasons, the Commission respectfully requests that the Court enter a judgment:

- (a) Permanently enjoining Sunrise from violating Sections 10(b) and 13(a) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, and 13a-11 thereunder;
- (b) Permanently enjoining Austin from violating Sections 10(b) and 16(a) of the Exchange Act and Rules 10b-5, 13a-14, 16a-2, and 16a-3 thereunder, and from aiding and abetting violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-11 thereunder;
- (c) Permanently enjoining Carolyn Austin from violating Section 5 of the Securities Act;
- (d) Permanently barring Austin, under Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], from acting as an officer or director of any public company;
- (e) Permanently barring Austin, under Section 21(d)(6) of the Exchange Act [15 U.S.C. § 78u(d)(6)], from participating in any offering of a penny stock, including acting as a

promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock or inducing or attempting to induce the purchase or sale of any penny stock;

(f) Ordering Carolyn Austin to pay \$174,471 in disgorgement plus prejudgment interest of \$22,982;

(g) Ordering Austin to pay a \$40,000 penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

(h) Granting such further relief as this Court may deem just and proper.

Dated: September 28, 2012

Respectfully submitted,

/s/ Jason C. Rodgers

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