

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GENE C. GEIGER,
CHARLES F. KIRBY

Defendants.

COMPLAINT FOR AN ORDER ENFORCING COMMISSION ORDER

- 1) Plaintiff, the Securities and Exchange Commission ("Commission"), alleges for its complaint as follows:

SUMMARY

- 2) Gene C. Geiger and Charles F. Kirby have failed to pay the civil money penalties and disgorgement ordered by the Commission in, *In the Matter of Charles F. Kirby and Gene C. Geiger*, 2003 SEC LEXIS 46, (Administrative Proceeding File No. 3-9602 issued on January 9, 2003 (the "Commission Order") (Exhibit A).
- 3) The Commission now seeks an order requiring Gene C. Geiger and Charles F. Kirby to comply with the Commission Order pursuant to Section 21(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(e)].

JURISDICTION AND VENUE

- 4) The Commission brings this action pursuant to Section 21(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(e)] for an order of this Court commanding defendants to comply with the Commission Order.
- 5) Venue lies in this Court pursuant to 28 U.S.C. 1391(b)(1). Defendants reside in this judicial district.

DEFENDANTS

- 6) Defendant Geiger resides in Parker, Colorado.
- 7) Defendant Kirby resides in Littleton, Colorado.

FACTS

- 8) After litigation before an Administrative Law Judge defendants filed an appeal to the Commission. On January 9, 2003, the Commission issued an Order, *In the Matter of Charles F. Kirby and Gene C. Geiger*, 2003 SEC LEXIS 46, (Administrative Proceeding File No. 3-9602 (the "Commission Order") (Exhibit A). The Commission found that defendants committed violations of the securities laws, and among other things, ordered defendants to pay the following sums within sixty days: A) defendant Geiger to pay disgorgement of \$14,109.21 plus prejudgment interest which plaintiff calculates as of the date of the filing of this complaint to total \$10,995.48 and a civil penalty of \$300,000; B) defendant Kirby to pay disgorgement of \$31,352.60 plus prejudgment interest which plaintiff calculates as of the date of the filing of this compliant to total \$30,389.55 and a civil penalty of \$200,000.
- 9) The Commission Order was upheld on appeal. *Geiger v. SEC*, 363 F.3d 481 (D.C. Cir. 2004).

- 10) Although Defendants were required to pay the disgorgement, prejudgment interest, and penalty as required by the Commission Order sixty (60) days after the Court of Appeals decision on April 9, 2004, they have not done so.
- 11) By reason of the foregoing, defendants Geiger and Kirby are in violation of the Commission Order against them.

PRAYER FOR RELIEF

Wherefore, the commission respectfully requests that the Court:

I.

Find that the Defendant has violated the Commission Order.

II.

Issue an Order pursuant to pursuant to Section 21(e) of the Securities Exchange Act of 1934 directing defendants to comply with the Commission Order and pay the disgorgement, prejudgment interest, and civil penalty required therein.

III.

Grant such other relief as this Court may deem just or appropriate.

Dated: November 30, 2004.

Respectfully submitted,

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