

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 03-21654-CIV-GOLD/SIMONTON

FILED by *[Signature]* D.C.
JAN 14 2005
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

LUIS GIRO,

Defendant.

**CLOSED
CIVIL
CASE**

AMENDED DEFAULT FINAL JUDGMENT AS TO DEFENDANT LUIS GIRO

THIS CAUSE came on before the Court upon Plaintiff Securities and Exchange Commission's Motion for Entry of Amended Default Final Judgment of Permanent Injunction and Other Relief Against Defendant Luis Giro [DE # 14]. The Securities and Exchange Commission ("SEC") commenced this action against Defendant Luis Giro ("Giro") seeking a permanent injunction to restrain and enjoin Giro from violating Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a); Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. § 240.10b-5; Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2) and 77q(a)(3); Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. § 80b-6; and aiding and abetting violations of Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. § 80b-6. The Commission also requests disgorgement, prejudgment interest thereon and civil penalties against Giro. Giro has not plead or otherwise defended against the SEC's Complaint.

On April 29, 2004, this Court entered Default Final Judgment as to Defendant Luis Giro [DE # 13]. SEC now moves to have the Court enter a corrected default judgment pursuant to

154

Federal Rule of Civil Procedure 60(a). Rule 60(a) allows the Court to correct clerical mistakes in judgments or orders either *sua sponte* or upon motion by a party. Specifically, SEC asks this Court to enter a corrected Default Final Judgment which corrects the amount Giro is disgorged. I find that the Court has jurisdiction over Defendant Louis Giro, the subject matter of this action and being fully advised in the premises, it is **ORDERED AND ADJUDGED** that:

1. Plaintiff Securities and Exchange Commission's Motion for Entry of Amended Default Final Judgment of Permanent Injunction and Other Relief Against Defendant Luis Giro [DE # 14] is GRANTED.

2. Defendant Louis Giro, who was duly served by substituted service, is in DEFAULT and it is:

I.

ORDERED AND ADJUDGED that Giro and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit 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

- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

ORDERED AND ADJUDGED that Giro, his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

ORDERED AND ADJUDGED that Giro, his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment are permanently restrained and enjoined from violating Section 206(1) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-6] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; or

(b) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon clients.

IV.

ORDERED AND ADJUDGED that Giro, his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment are permanently restrained and enjoined from violating Section 206(2) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-6] in the purchase or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

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

(b) to make untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon clients.

V.

ORDERED AND ADJUDGED that Giro and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment are permanently restrained and enjoined from aiding and

abetting any violation of Section 206(1) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-6] by knowingly providing substantial assistance to an investment adviser who in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
- or
- (b) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon clients.

VI.

ORDERED AND ADJUDGED that Giro, his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment are permanently restrained and enjoined from aiding and abetting any violation of Section 206(2) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-6] by knowingly providing substantial assistance to an investment adviser who in the purchase or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon clients.

VII.

ORDERED AND ADJUDGED that Giro is liable for disgorgement of \$ 1.995 million, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$ 31,670.63, for a total of \$2,026.670.63. Defendant shall satisfy this obligation by paying \$2,026.670.63 within ten business days. The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after ten days following entry of this Final Judgment. In response to any such civil contempt motion by the Commission, the defendant may assert any legally permissible defense.

Payments under this paragraph shall be made to the Clerk of this Court, together with a cover letter identifying Luis Giro as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of each such payment and letter to the SEC's counsel in this action. Defendant relinquishes all legal and equitable right, title, and interest in such payments, and no part of the funds shall be returned to Defendant. The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS"). These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the CRIS until further order of the Court. In accordance with the

guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The SEC may propose a plan to distribute the Fund subject to the Court's approval.

ORDERED AND ADJUDGED that Giro shall pay a civil penalty in the amount of \$120,000 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78(d)(3) and Section 217 of the Advisers Act, 15 U.S.C. § 80b-17. Defendant shall make this payment within ten (10) business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Luis Giro as defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment.

IX.

ORDERED AND ADJUDGED that the Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated this 14 day of Jan, 2005.



ALAN GOLD
UNITED STATES DISTRICT JUDGE

Copies furnished to:

U.S. Magistrate Judge Simonton

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