

Edwin H. Nordlinger (EN-6258)
Deputy Regional Director
Attorney For Plaintiff
SECURITIES AND EXCHANGE COMMISSION
7 World Trade Center, 13th Floor
New York, New York 10048-1102
(212) 748-8038

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

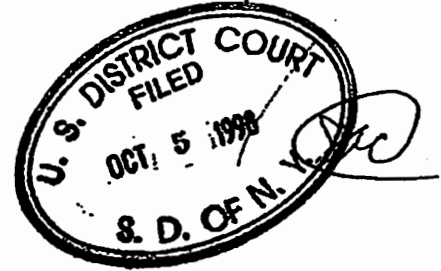
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

- against - :

CITY SERVICES CORP. and
JOSEPH BURGIO, :

Defendants. :



98 Civ. 1867 (RPP)

**FINAL JUDGMENT
BY DEFAULT
IMPOSING REMEDIES**

#98,2220

WHEREAS plaintiff Securities and Exchange Commission ("Commission") commenced this action for injunctive and other relief by the filing of a Summons and Complaint against defendants City Services Corp. ("City Services") and Joseph Burgio ("Burgio") on March 16, 1998; and

WHEREAS defendants City Services and Burgio failed to answer or otherwise defend or appear through counsel in this action as required by this Court; and

WHEREAS said default having been duly noted, this Court entered a default judgment against defendants City Services and Burgio on July 28, 1998; and

WHEREAS plaintiff Commission, pursuant to this Court's order dated August 4, 1998, submitted a motion for entry of a Final Judgment By Default Imposing Remedies against defendants City Services and Burgio in connection with the default judgment; and

WHEREAS the Court having considered the Memorandum of Law, the Declaration of Brian H. Fortune, Esq., and the attached exhibits in support of the entry of a Final Judgment By Default Imposing Remedies against defendants City Services and Burgio, and all other proceedings had herein.

THE COURT FINDS AS AGAINST DEFENDANTS CITY SERVICES AND BURGIO:

1. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77v(a), and Sections 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 77u(e) and 78aa.

2. Valid service of the Commission's Complaint in this action and of a valid Summons was effected upon defendants City Services and Burgio as of March 16, 1998 in compliance with Rule 4(e) of the Federal Rules of Civil Procedure.

3. Defendants City Services and Burgio, having failed to answer, plead or otherwise respond to the Complaint, have defaulted in this action under Rule 55 of the Federal Rules of Civil Procedure.

4. The default judgment entered on July 28, 1998 by the Clerk of the Court against defendants City Services and Burgio is hereby approved and ratified.

5. As a consequence of its default, defendants City Services and Burgio have admitted the allegations set forth in the Commission's Complaint.

NOW THEREFORE:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that City Services and Burgio be and hereby are permanently restrained and enjoined, singly or in concert, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, from:

- (A) employing any device, scheme, or artifice to defraud;
- (B) obtaining money or property by means of any untrue statement of a material fact or any omission 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) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser,

in violation of **Section 17(a)** of the Securities Act, 15 U.S.C. § 77q(a).

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that City Services and Burgio be and hereby are permanently restrained and enjoined, directly or indirectly, singly or in concert, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, from:

- (A) employing any device, scheme, or artifice to defraud;

- (B) making any untrue statement of a material fact or omitting to state 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) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Burgio be and hereby is permanently restrained and enjoined, directly or indirectly, singly or in concert, while acting as a broker, by use of the mails or any means or instrumentality of interstate commerce, from effecting transactions in, or inducing or attempting to induce the purchase or sale of, any security, by means of any manipulative, deceptive, or other fraudulent device or contrivance, including:

- (A) any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;
- (B) any untrue statement of material fact and any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or
- (C) acts designed to effect with or for the accounts of customers, transactions in, or to induce the purchase or sale by such customer of, the securities of an issuer controlled by, controlling, or under common control with Burgio, without disclosing to such customer the existence of such control,

in violation of **Section 15(c)(1)** of the Exchange Act, 15 U.S.C. § 78o(c)(1), and **Rules 15c1-2 and 15c1-5** thereunder, 17 C.F.R. §§ 240.15c1-2 and 240.15c1-5.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Burgio be and hereby is permanently restrained and enjoined, directly or indirectly, singly or in concert, from making use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) without registering as a broker or dealer in accordance with **Section 15(b)** of the Exchange Act, 15 U.S.C. § 78o(b), in violation of **Section 15(a)(1)** of the Exchange Act, 15 U.S.C. § 78o(a).

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that City Services and Burgio, jointly and severally, shall disgorge a total of \$1,057,659.92 consisting of: (1) the sum of \$1,014,605 representing City Services' and Burgio's profits from transactions in the securities of City Services during the period December 1, 1997 through March 10, 1998; plus (2) the sum of \$43,054.92 in prejudgment interest thereon, calculated through July 31, 1998. Payment shall be made in the manner specified in decretal Paragraph VII.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Burgio shall pay \$ 5000.00 to the Treasury of the United States ("Treasury") as a civil penalty pursuant to **Section 20(d)** of the Securities Act, 15 U.S.C. § 77t(d), and **Section 21(d)(3)**

of the Exchange Act, 15 U.S.C. § 78u(d)(3). This penalty shall be paid within five (5) business days of the entry of this Final Judgment. Payment shall be made in the manner specified in decretal Paragraph VIII.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the monies to be paid pursuant to decretal Paragraph V of this Final Judgment shall be paid in the following manner:

- (1) Such monies shall be paid into the registry of the Court within 30 days from the date of entry of this Final Judgment by certified check or money order drawn to the order of "Clerk, United States District Court, S.D.N.Y.," whereupon the Clerk of this Court, or the financial Deputy Clerk, is hereby directed to deposit said check or money order into an account for this case with the Court Registry Investment System ("C.R.I.S. Account"), administered through the United States District Court for the Southern District of New York.
- (2) Simultaneously with making any payment pursuant to subparagraph (1) above, City Services or Burgio shall transmit copies of any certified checks or money orders, front and back, as well as any accompanying correspondence, to Carmen J. Lawrence, Regional Director, United States Securities and Exchange Commission, Northeast Regional Office, Seven World Trade Center, New York, New York 10048, Attn.: Brian H. Fortune, Esq., under cover of a letter that identifies the name and civil action number of this litigation, the name of this Court, and the

Commission case number "NY-6459." The cover letter also shall identify how much of the payment is disgorgement; how much is prejudgment interest; and, as appropriate, how much is postjudgment interest.

- (3) Funds in the C.R.I.S. Account shall be held until further order of the Court, and shall be disbursed in accordance with a plan of distribution to be submitted by the Commission and approved by the Court. In no event shall any portion of the C.R.I.S. Account be returned to City Services or Burgio, or their agents, successors or assigns.
- (4) Interest earned on the C.R.I.S. Account shall be credited to the C.R.I.S. Account and shall thereafter be treated in the same manner as principal.
- (5) In the event that all or any portion of the C.R.I.S. Account remains after disbursement of any funds pursuant to subparagraph (3) above, the remainder shall be disbursed to the Treasury. Any payment to the Treasury under this subparagraph (5) shall be payable to the Comptroller of the Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549, and transmitted to the Comptroller of the Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549, under cover of a letter that identifies the defendant, the name and civil action number of this litigation, and the court in which it was brought. In no event shall any portion of the C.R.I.S. Account be returned to City Services or Burgio, or their agents, successors or assigns.
- (6) Prior to making any disbursements from the C.R.I.S. Account, the Custodian of the C.R.I.S. Account is directed to deduct from the income

on the investment a fee, equal to ten percent (10%) of the income earned, but not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office so held and without further order of the Court.

- (7) Copies of this Final Judgment shall be served by the Commission on the Clerk of the Court or his financial Deputy Clerk.

Pursuant to Rule 71 of the Federal Rules of Civil Procedure, this order of disgorgement is made in favor of investors as alleged in the Complaint, as well as the Commission, and those persons, and each of them, may enforce obedience to this order of disgorgement by the same process as if they were parties hereto.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the monies to be paid to the Treasury pursuant to decretal Paragraph VI of this Final Judgment shall be paid by postal money order, certified check, bank cashier's check or bank money order, payable to the order of the United States Securities and Exchange Commission. The payment shall be transmitted to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312, under cover of a letter identifying the name and civil action number of this litigation, the court in which it was brought, and that the payment is a civil penalty under Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. A copy of the cover letter and payment shall be simultaneously transmitted to Carmen J. Lawrence, Esq., Regional Director, Securities and Exchange Commission, 7 World Trade Center, New York, New York 10048, Attn: Brian H. Fortune, Esq.

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all of the funds held in a City Services account at Manufacturers and Traders Trust Company, One M&T Plaza, Buffalo, New York 14203 ("M&T Bank"), account number 11000911281450, that are subject to the Preliminary Injunction and Other Equitable Relief by Consent Against City Services Corp. and Joseph Burgio entered by the Court on March 27, 1998, shall be paid into the C.R.I.S. Account in the following manner:

- (1) upon service of this Order on M&T Bank, M&T Bank shall issue a certified check drawn on City Services's account, for the full amount contained therein, payable to the order of "Clerk, United States District Court, S.D.N.Y.;"
- (2) whereupon the Clerk of this Court, or the financial Deputy Clerk, is hereby directed to deposit said check into the C.R.I.S. Account; and
- (3) whereupon the total amount to be paid pursuant to decretal Paragraph V will be reduced by the amount of such check.

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Commission may effect service of this Final Judgment, and all other papers in this action, upon City Services or Burgio by sending a copy to City Services or Burgio or M. David Sayid, Esq., their attorney in this action, by facsimile, first-class mail or overnight express delivery.

XI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Final Judgment is binding upon City Services and Burgio, their agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure.

XII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for all purposes, including the implementation and enforcement of the terms and conditions of this Final Judgment.

XIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, there being no just reason for delay, the Clerk of the Court is hereby directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure to enter this Final Judgment forthwith.

SO ORDERED:

Dated: New York, New York

October 2 1998


UNITED STATES DISTRICT JUDGE

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON 10-5-98