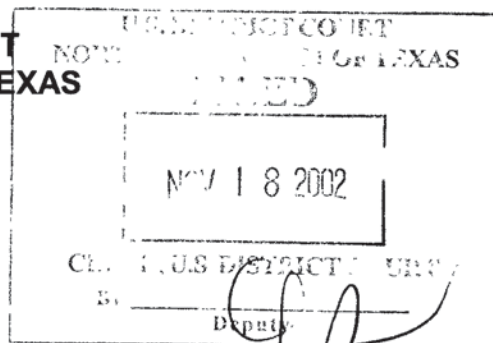


ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

Civil Action No.
3-01CV1975-P

THE BALANCER COMPANY, INC.,
MARK MICLETTE and TONI BONAR MICLETTE

Defendants.



**AMENDED FINAL JUDGMENT BY DEFAULT AS TO
DEFENDANTS THE BALANCER COMPANY, INC.,
MARK MICLETTE AND TONI BONAR MICLETTE**

This Court having considered the pleadings and declarations on file herein makes the following findings of fact and conclusions of law:

1. The Commission's Complaint against The Balancer Company, Inc. ("Balancer"), Mark Miclette ("M. Miclette") and Toni Bonar Miclette ("T. Miclette") was filed on October 3, 2001.
2. Balancer was served with the Summons and Complaint on October 5, 2001. M. Miclette and T. Miclette were served with the Summons and Complaint on November 16, 2001. The Commission caused the affidavits of service to be filed with this Court on December 18, 2001.
3. Each of the Defendants failed to file an answer to the Commission's Complaint, nor have they otherwise appeared before this Court to defend in this cause.
4. On January 4, 2002, the Court entered a Final Judgment by Default as to Balancer Company, Inc., Mark Miclette and Toni Bonar Miclette.

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5. The allegations in the Commission's Complaint as to Balancer, M. Miclette and T. Miclette's conduct and activities are, as to them, deemed admitted.

6. The Commission is entitled to entry of a final judgment of permanent injunction as to Balancer, M. Miclette and T. Miclette for violating Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5].

7. The Commission is entitled to an order requiring the Defendants to file with the Court and serve upon Plaintiff Commission, an accounting, under oath, of (1) all monies and other assets they received, directly or indirectly, from investors in the securities described in the Commission's Complaint; (2) all assets in which the Defendants have a beneficial interest, directly or indirectly, wherever they may be located and by whomever they are being held; and (3) all accounts with any financial institution or securities brokerage firm maintained in any of their names or for their benefit on or after January 1, 1999.

8. The Commission is entitled to an order pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] barring M. Miclette and T. Miclette from acting as officers or directors of any issuer that has a class of securities registered pursuant to section 12 of the Exchange Act or that is required to file reports pursuant to section 15(d) of the Exchange Act.

9. The Commission is entitled to an order requiring Defendants, jointly and severally, to disgorge the principal sum of \$634,980, plus prejudgment interest on that amount equal to \$136,573.

10. The Commission is also entitled to an order imposing a third-tier civil penalty of \$550,000 against Balancer and \$120,000 each against M. Miclette and T. Miclette pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

On the basis of the foregoing findings of fact and conclusions of law,

IT IS THEREFORE ORDERED:

I.

A. Defendants Balancer, M. Miclette, and T. Miclette, their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this final judgment by personal service or otherwise, and each of them, are restrained and enjoined from:

B. Violating Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §77q(a)], by directly or indirectly, 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 the use of the mails: (1) employing any device, scheme or artifice to defraud; or (2) obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statement(s) made, in the light of the circumstances under which they were made, not misleading; or (3) engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser.

C. Violating Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], by directly or indirectly, in the use of any means or instruments of

interstate commerce, of the mails or of any facility of any national securities exchange, using or employing in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered any manipulative or deceptive device or contrivance in contravention or a rule or regulation prescribed by the Securities and Exchange Commission.

D. Violating Rule 10b-5 of the Securities and Exchange Commission [17 C.F.R. § 240.10b-5], by directly or indirectly, in the use of any means or instruments of interstate commerce, of the mails or of any facility of any national securities exchange: (1) employing any device, scheme or artifice to defraud; (2) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement(s) made, in the light of the circumstances under which were made, not misleading; or (3) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

E. Violating Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. § 77e(a) and (c)], by directly or indirectly, (a) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell a security through the use or medium of any prospectus or otherwise; or (b) carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, a security for the purpose of sale or for delivery after a sale, unless a registration statement is in effect as to that security; or (3) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security unless

a registration statement has been filed with the Securities and Exchange Commission as to that security or while the registration statement is the subject of a refusal order or a stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

II.

Defendant M. Miclette and C. Miclette are permanently enjoined and restrained from acting as a director or officer of any issuer having a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78J] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)],

III.

Balancer, M. Miclette and T. Miclette, jointly and severally, shall disgorge the amount of \$634,980 representing their unjust enrichment from the conduct alleged in the Complaint, plus prejudgment interest thereon in the amount of \$136,573. Within 30 days of the entry of this Amended Final Judgment, Defendants shall pay the disgorgement, plus prejudgment interest to the United States Treasury in the form of a cashiers check, certified check or postal money order made payable to the "Securities and Exchange Commission." The check or money order shall be hand-delivered or mailed to Spencer C. Barasch, Associate District Administrator, Securities and Exchange Commission, Fort Worth district Office, 801 Cherry Street, 19th Floor, Fort Worth, TX 76102 and submitted under cover of a letter that identifies Defendant, the caption and case number of this action, and the name of the Court. At such time as said monies are paid to the Commission, Defendants relinquish all legal and equitable right, title, and interest in those funds and no part of such monies shall

be returned to Defendants or their affiliates, heirs, successors, or assigns. The Commission may pursue through such means as are appropriate and necessary at law or equity to collect these funds from Defendants or their agents or assigns, including, but not by way of limitation, obtaining writs of execution or levy for real and personal property or funds, or pursuing collateral actions in this Court against persons holding funds or assets for or on behalf of Defendants.

IV.

Pursuant to Section 20(d) of the Securities Act of 1933 [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Securities Exchange Act of 1934 [15 U.S.C. § 78u(d)(3)], Balancer is ordered to pay a civil penalty of \$550,000, M. Miclette is ordered to pay a civil penalty of \$120,000 and T. Miclette is ordered to pay a civil penalty of \$120,000. Within 30 days of the entry of this Amended Final Judgment, Defendants shall pay the civil money penalties to the United States Treasury in the form of a cashiers check, certified check or postal money order made payable to the "Securities and Exchange Commission." The check or money order shall be hand-delivered or mailed to the Comptroller, Securities and Exchange Commission, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and submitted under cover of a letter that identifies Defendant, the caption and case number of this action, and the name of the Court. A copy of the cover letter and check shall be sent to Spencer C. Barasch, Associate District Administrator, Securities and Exchange Commission, Fort Worth District Office, 801 Cherry Street, 19th Floor, Fort Worth, TX 76102. At such time as said monies are paid to the Commission, Defendants relinquish all legal and equitable right, title, and interest in those funds and no part of such monies shall be returned to Defendants or their

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V.

Balancer, M. Miclette and T. Miclette, and each of them, shall, within twenty days of service of this Amended Final Judgment upon them, make an accounting (1) detailing all monies and other benefits which each received, directly and indirectly, as a result of the activities alleged in the Commission's complaint (including the date on which the monies or other benefit was received and the name, address and telephone number of the person paying the money or providing the benefit), (2) listing all current assets wherever they may be located and by whomever they are being held (including the name and address of the holder and the amount or value of the holdings) and (3) listing all accounts with any financial or brokerage institution maintained in the name of, on behalf of or for the benefit of the Defendants (including the name and address of the account holder and the account number) and the amount held in each account at any point during the period from January 1, 1999, through the date of the accounting.

VI.

This Court shall retain jurisdiction over this action for all purposes, including for purposes of entertaining any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court, including but not limited to setting disgorgement, and

prejudgment interest thereon, and all other relief requested by the Commission in its complaint.

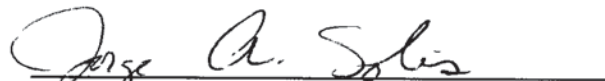
VII.

This Order may be served upon Balancer, M. Miclette, and T. Miclette in person, by electronic mail or by certified mail, either by the United States Marshal, the Clerk of the Court, or any member of the staff of the Securities and Exchange Commission.

VIII.

There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Order pursuant to Rules 54, 58 and 79 of the Federal Rules Civil Procedure.

SIGNED this 18th day of November, 2002



JORGE A. SOLIS
UNITED STATES DISTRICT COURT JUDGE