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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

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CLERK U.S. DISTRICT COURT
TAMPA, FLORIDA

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,**

Plaintiff,

Case No. **8:02-CV-666-T-17EAJ**

vs.

SEBASTIAN CORRIERE,

Defendant,

**MARIA ROSE CORRIERE a/k/a/
MARIA ROSA GAROFALO,
QUANTUM EQUITIES, INC., and
THE KINGS FELLOWSHIP, INC.**

Relief Defendants.

_____ /

ORDER

This cause is before the Court on Plaintiff, United States Securities and Exchange Commissions' (Commission), Motion for Final Judgment of Permanent Injunction and Other Relief by Default, filed July 25, 2003 (Doc. No. 127) and response thereto, filed August 19, 2003 (Doc. No. 129).

I. Procedural History

Plaintiff, the Commission, brought this action against Defendant, Sebastian Corriere (Corriere), and Relief Defendants on April 18, 2002 (Doc. No. 1). In the complaint, the Commission alleged that since at least January 2001, Corriere raised approximately \$2.9 million through the sale of fictitious "prime bank" securities. The Commission also alleged that Corriere had participated in the fraudulent offering and selling of participation interest in two non-existent high-yield trading programs. Additionally, the Commission alleged that Corriere admitted that at least one of the programs was a scam; however, the Commission alleged that Corriere continues to solicit

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new investors for these non-existent trading programs. The Commission brought this action to stop Corriere's fraudulent offer and sale of non-existent trading programs, and it sought a temporary restraining order and preliminary and permanent relief enjoining Corriere from future violations of the federal securities law, as well as, an asset freeze against Corriere and the relief defendants (Doc. No. 1). The Court granted a preliminary injunction, as well as, freezing the assets of the defendants. After striking the defendants' answer, on January 22, 2003, the Clerk entered a default against Corriere and the Relief Defendants (Doc. No. 68). On July 25, 2003, the Commission filed the current Motion for Final Judgment on Permanent Injunction and other relief by Default (Doc. No. 127), and Corriere filed his response on August 19, 2003 (Doc. No. 129).

II. Discussion

The Commission is seeking to have the court enter judgment as follows:

A. Requested Order Number One

An order enjoining Corriere and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this order by personal service or otherwise from, directly or indirectly:

1. making use of any means of instruments or transportation or communication in interstate commerce or of the mails, to sell securities through the use or medium of any prospectus or otherwise unless and until a registration statement is in effect with the commission as to such securities;
2. carrying or causing to be carried securities through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or for delivery after sale, unless and until a registration statement is in effect with the Commission as to such securities; 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, securities unless and until a registration statement has been filed with the Commission as to such securities, or while the registration statement is the subject of a refusal or stop order under any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. §77(h)];

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in violation of Sections 5(a) and 5(c) of the Securities Act of 1933, [15 U.S.C. §§77(e) and 77(e)(c)].

B. Requested Order Number Two

An order enjoining Corriere and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this order by personal service or otherwise from, directly or indirectly:

1. employing any device, scheme or artifice to defraud;
 2. obtaining money or property by means of any untrue statement of material fact or 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
 3. 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 Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act, [15 U.S.C. §§ 77(q)(a)(1), 77(q)(2) and 77(q)(a)(3)].

C. Requested Order Number Three

An order permanently enjoining Corriere and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this order by personal service or otherwise from, directly or indirectly, in connection with the purchase or sale of securities, by the use of any means or instrumentality of interstate commerce or by the use 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 statements made, in the light of the circumstances under which they 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
- in violation of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §78j(b)] and rule 10b-5 promulgated thereunder [17 C.F.R. 240.10b-5].

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D. Requested Order Number Four

An order finding Defendant Sebastian Corriere jointly and severally liable with Relief Defendants for disgorgement and requiring him to disgorge ill-gotten gains in the amount of \$30,000.00, and prejudgment interest in the amount of \$5,107.13, for a total of \$35,107.13.

E. Requested Order Number Five

An order requiring Relief Defendants Maria Rosa Corriere, Quantum Equities, Inc. (QEI), and The Kings Fellowship, Inc. (Fellowship), to pay disgorgement of ill-gotten gains in the amount of \$13,009.57, \$15,990.43, and \$1,000.00, and prejudgment interest in the amount of \$1,891.69, \$2,722.17, and \$170.24, for a total of \$14,901.26, \$18,712.60, and \$1,170.24, respectively.

F. Requested Order Number Six

An order imposing civil penalties against Defendant Sebastian Corriere in the amount of \$110,000.00 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)].

G. Requested Order Number Seven

An order that this Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, the purpose of implementing and carrying out the terms of all orders and decrees which may be entered herein, enforcement of this Order, and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

H. Requested Order Number Eight

Such further relief as the Court may deem appropriate.

III. Discussion

A. Default Judgment

Federal Rule of Civil Procedure 55(b)(2) allows a court to enter judgment and possibly set damages. A default judgment is appropriate where there is a “willful or bad faith failure to obey a discovery order.” See Malautea v. Suzuki Motor Co., Ltd., 987 F.2d 1536, 1542 (11th Cir. 1993). Additionally, where the defendants have failed to file

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an answer, a district court can order a default judgment on the basis of a well-pleaded complaint and affidavits. See Southern General Ins. Co. v. O'Keefe, 275 F. Supp. 107, 109 (D.Md. 1967). An evidentiary hearing is not necessary for a district court to establish damages for a default judgment where the Court is presented with "definite figures in the documentary evidence or in detailed affidavits" which are an adequate substitute for live testimony. See Dundee Cement Co. v. Howard Pipe & Concrete Products, Inc., 722 F.2d 1319, 1323 (7th Cir. 1983).

Corriere is in default after his repeated refusal to comply with Court orders (Doc. No. 68). On January 21, 2003, this Court entered an order granting the Commission's December 11, 2002 motion for sanctions against Corriere, striking Corriere's answer, and directing the Clerk to enter a default against him (Doc. No. 67). The December 11, 2002 motion was brought because of Corriere's repeated failure to comply with several orders of this Court, and it compelled Corriere to participate in a discovery conference as required by Rule 26(f) of the Fed.R.Civ.P and Local Rule 3.05(c)(2)(b) for the Middle District of Florida (Doc. No. 62). The Commission repeatedly attempted to confer with Corriere to conduct a discovery conference and complete a case management report, and on December 11, 2002 it filed a motion for sanctions (Doc. No. 62), which the Court later granted (Doc. No. 67). On January 22, 2003, the Clerk entered a default against Corriere (Doc. No. 68).

As for the Relief Defendants, the Commission filed a motion for default against the Relief Defendants for failure to answer, or otherwise respond to the complaint (Doc. No. 40), and on August 7, 2002, the Clerk entered a default against Relief Defendants, Maria Corriere, QEI, and Fellowship. As QEI and Kings Fellowships are corporations, they can only appear through an attorney, and no attorney has filed an answer or otherwise appeared on behalf of QEI or Kings Fellowship; therefore, they are properly in default. See Rowland v. California Men's Colony, 506 U.S. 194, 202 (1993). Additionally, Maria Corriere has not answered or otherwise appeared *pro se*, nor has an attorney appeared on her behalf. Therefore, all of the Relief Defendants failed to answer the complaint or otherwise defend themselves, so they are properly in default.

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B. Permanent Injunction

A permanent injunction is the primary statutory remedy for violations of the federal securities laws. Once a violation of the federal securities laws is established, a permanent injunction against future violations should be granted if the defendant's past conduct indicates there is reasonable likelihood of future violations. See SEC v. First City Financial Corp., Ltd., 890 F.2d 1215 (D.C. Cir. 1989) (per curiam); Sec v. Zale Corp., 650 F.2d 718, 720 (5th Cir. 1981). In determining whether there is a reasonable likelihood of future violations, a court must look at the "totality of the circumstances surrounding the defendant and his violations." SEC v. Holschuh, 694 F.2d 130, 144 (7th Cir. 1982). It is well established that "the existence of past violations is highly suggestive of the likelihood of future violations." SEC v. Management Dynamics, 515 F.2d 801, 807 (2d Cir. 1975). Factors to be considered in determining the likelihood of future violations include: (1) the egregiousness of the defendant's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the defendant's assurances against future violations; (5) the defendant's recognition of the wrongful nature of his conduct; and (6) the likelihood that the defendant's occupation will present opportunities for future violation. SEC v. Blatt, 583 F.2d 1325, 1334 (5th Cir. 1978), citing SEC v. Universal Major Industries Corp., 546 F.2d 1044, 1048 (2d Cir. 1976). By discussing each one of the six elements separately, it is apparent that the likelihood of future violations by Corriere is substantial.

Corriere is accused of defrauding millions of dollars from investors through the sale of fictitious "prime bank" securities. Additionally, he allegedly told investors that their funds would be used in connection with the trading of medium term notes, and offered the investors returns of 100% of their investment per week, and assured them that their investment was "safe" and "risk-free" (Doc. No. 1). However, such funds were not used for any trading program, and Corriere even admitted that at least one of the programs for which he raised money was a scam. Corriere continued to solicit new investors for these non-existent programs, and at the time the Commission filed the complaint, he allegedly had approached numerous investors and potential investors,

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asking them for funds for various trading programs he is purporting to run in Africa. The Commission alleges that such fraudulent actions of Corriere, were repeated for a period of several years; therefore, such actions were not isolated. Corriere denies all accusations of fraud that the Commission brought against him but at this time liability has been established and the plaintiff's claim established without opposition.

The Commission alleged that Corriere acted deliberately or with a reckless disregard for the truth; therefore, it is inferred that Corriere had the scienter necessary to participate in these alleged fraudulent solicitations. Further, as stated above, the alleged fraudulent solicitations continued for a period of seven years, and allegedly still continue; therefore the sincerity of the defendant's assurances against future violations is lacking. Corriere denies all accusations of fraudulent conduct; therefore, he does not recognize the wrongful nature of his alleged conduct. Additionally, because the Commission alleged that Corriere is not known to have any other employment other than the alleged soliciting of investors for fraudulent trading programs, the likelihood that the defendant's occupation will present opportunities for future violations is high.

C. Disgorgement and Prejudgment Interest

Securities laws confer general equity powers upon the district courts. SEC v. Texas Gulf Sulphur Co., 446 F.2d 1301, 1307 (2d Cir. 1971), *cert denied*, 404 U.S. 1005 (1971). Once the equity power is properly invoked, the court can then "fashion an appropriate remedy." SEC v. Manor Nursing Center, Inc., 458 F.2d 1082, 1103 (2d Cir. 1972). One of the available remedies is an order of disgorgement against a defendant. Blatt, 583 F.2d at 1335; CFTC v. Sidoti, 178 F.3d 1132, 1137-1138 (11th Cir. 1999), *citing*, First City, 890 F.2d at 1231.

The deterrent effect of a Commission enforcement action would be greatly undermined if securities law violators were not required to disgorge ill-gotten gains. Manor Nursing Centers, 458 F.2d at 1104. Because of this, courts have found disgorgement to be an appropriate remedy in Commission enforcement actions involving fraudulent prime bank or bank trading programs. *See e.g.*, SEC v. Funding Resource Group, 2001 WL 406216 *2 (N.D. Tex. April 18, 2001); SEC v. Kenton Capital, Ltd., 69

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F.Supp.2d 1, 15 (D.D.C. 1998); SEC v. The Infinity Group Company, 993 F.Supp. 324, 331 (E.D. Penn. 1998); SEC v. Deyon, 977 F. Supp. 510, 519 (D. Maine 1997); SEC V. Gallard, 1997 WL 767570, at *5 (S.D.N.Y. Dec. 10, 1997). Disgorgement furthers the public interest by requiring a defendant to forfeit the amount by which he was unjustly enriched, and “the purpose of disgorgement is not to compensate the victims of the fraud, but to deprive the wrongdoer of his ill-gotten gains.” Blatt, 583 F.2d at 1335. The SEC seeks disgorgement of the \$30,000.00 Corriere received from George Anderton, an investor. Corriere told Mr. Anderton that he would invest the money in a trading program; however, Corriere used the funds to get cash and pay utility bills (Doc. No. 1). Corriere argues that he is not liable for the disgorgement of the \$30,000.00 because the money was his for a payment of funds due to him and his mother from an investment they made in Mr. Anderton’s company, E-Biz Company (Doc. No. 129). In his defense, Corriere submitted a photocopy of the money order, and on the photocopied paper, he claims Mr. Anderson signed it attesting to the following, “Ok to use these funds for setting up banking. Legal and other legal purposes. For anything.” The Court has no proof that this agreement actually took place, and that Mr. Anderton agreed that Corriere could use the \$30,000.00 “for anything,” including paying utility bills. Furthermore, in the deposition of Mr. Anderton, nothing is mentioned of this agreement, or that he gave Corriere permission to use the funds for non-trading purposes (Anderton Depo, Doc No. 13, tab O). Therefore, this Court holds that disgorgement of the \$30,000.00 given to Corriere by Mr. Anderton, is an appropriate remedy.

The Commission also wants the remedy of disgorgement to apply to the Relief Defendants. The Commission wants the Relief Defendants, Maria Corriere, QEI and Fellowship to pay disgorgement of ill-gotten gains in the amount of \$13,009.57, \$15, 990.43, and \$1,000.00, respectively (Doc. No. 127). Although no wrongdoing is alleged against the Relief Defendants, the Commission contends that this Court can order disgorgement against those parties if it established that the Relief Defendants possess illegally obtained profits and have no legitimate claim to them. SEC v. Cherif, 933 F.2d 403, 414 n. 11 (7th Cir. 1991). The Commission argues that Corriere should be jointly

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and severally liable with the Relief Defendants for the \$30,000.00. Joint and several liability is appropriate between defendants who act collectively or defendants who were controlling or controlled persons. Hateley v. SEC, 8 F.3d 653, 656 (9th Cir.). Courts have held that joint and several liability is appropriate when two or more individuals or entities collaborate or have close relationships in engaging in the illegal conduct. SEC v. First Jersey Securities, Inc., 101 F.3d 1450, 1475 (2d Cir. 1996), *cert denied*, 522 U.S. 812, 118 (1997). The Commission contends that because Corriere acted collectively and maintained close relationships with all of the Relief Defendants, such actions make him and the Relief Defendants joint and severally liable (Doc. No. 128). Furthermore, because Corriere endorsed checks and executed wire transfers from both QEI and Fellowship's bank accounts, used his mother's bank accounts for these types of schemes, as he did in soliciting investors for the \$124 million dollar trading program in Africa, and because he maintained joint bank accounts with his mother, Corriere should be jointly and severally liable for any transfer to any Relief Defendants. The Court agrees that the Relief Defendants and Corriere are joint and severally liable.

The Commission also requests that this Court order Corriere and the Relief Defendants to pay prejudgment interest on the amount of disgorgement they owe. "An award of prejudgment interest in a case involving violations of the federal securities laws within the equitable discretion of the district court to be exercised according to considerations of fairness." Chris Craft Industries, Inc. v. Piper Aircraft Corp., 516 F.2d 172, 191 (2d Cir. 1975). Further, when "deciding whether to award prejudgment interest, the full compensation of victims is of primary concern." SEC v. Milan Capital Group, Inc., 2000 WL 1688761, at *10 (S.D.N.Y. Nov. 9, 2000). It appears that the Commission is requesting such prejudgment interest to set off the loss in the event that the Commission does not recover funds from Corriere or the Relief Defendants (Doc. No. 128). This is evidenced by the fact that the Commission is seeking to recover \$30,000.00 plus prejudgment interest in the amount of \$5, 107.13 from Corriere, and \$30,000.00 plus prejudgment interest in the amounts of \$2,722.17, \$170.24, and \$1, 891.69, from QEI, Kings Fellowship, and Maria Corriere, respectively; therefore, the total amount is above

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\$30,000.00. However, the Commission stated that it would offset those funds against the disgorgement amount and prejudgment interest amount from the appropriate party or parties, if the Commission were able to recover any funds from the Relief Defendants or Corriere. The Court finds that such prejudgment interest shall be assessed against Corriere and the Relief Defendants, as the Commission might not be able to recover the ill-gotten funds. However, such prejudgment interest will be offset against any funds that are recovered.

D. Civil Penalties

Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act authorize the Commission to seek civil penalties against violators of the securities laws. Once again, the assessment of civil penalties serve to deter violations of the law. SEC v. Coates, 137 F.Supp.2d 413, 428-429 (S.D.N.Y. 2001). Under the Securities Act and Exchange Act there is a three-tier system for assessing civil penalties. A “first tier” penalty may be imposed in an amount “determined by the court in light of the facts and circumstances.” 15 U.S.C. §77t(d)(2)(A); 15 U.S.C. §78(d)(3)(B)(i). A “second tier” penalty may be imposed where a defendant’s violation “involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.” Id. §77t(d)(2)(B); §78u(d)(3)(B)(ii). A “third tier” penalty may be imposed where (1) the defendant’s violation “involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement:” and (2) the defendant’s “violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.” Id. §77(d)(2)(C); §78u(d)(3)(iii). The maximum amount for a “third tier” civil penalty was raised to \$110,000 by 17 C.F.R. §200.1001 for violations occurring after December 9, 1996 and before February 2, 2001.

The Commission is asking for a “third tier” penalty in the amount of \$110,000.00 (Doc. No. 128). Corriere’s alleged schemes involved fraud and deceit causing investors to invest over 3.59 million from January 2001 through early February 2001. The Commission alleged that Corriere misrepresented to investors that these high yield trading programs existed, that investors would receive substantial guaranteed returns, and

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that these trading programs were safe; furthermore, he misrepresented to investors that he had previously completed similar trading programs, and knew prior to soliciting investors that these trading programs appeared to be a scam (Doc. No. 128). Corriere's alleged fraud resulted in loss to investors over \$2 million. The Court finds that because the schemes involved fraud and deceit that resulted in substantial loss to investors, a "third tier" civil penalty in the amount of \$110,000.00 is appropriate.

E. Other Relief the Court Deems Appropriate

At this time, the Court does not find any other relief, which it deems appropriate. Accordingly it is

ORDERED that Plaintiffs' Motion for Final Judgment of Permanent Injunction and Other Relief by Default (Doc. No. 127) be **GRANTED** and the judgment is entered against the Defendant as follows:

1. Order Number One

An order enjoining Corriere and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this order by personal service or otherwise from, directly or indirectly:

- a. making use of any means of instruments or transportation or communication in interstate commerce or of the mails, to sell securities through the use or medium of any prospectus or otherwise unless and until a registration statement is in effect with the commission as so such securities;
- b. carrying or causing to be carried securities through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or for delivery after sale, unless and until a registration statement is in effect with the Commission as to such securities; or
- c. 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, securities unless and until a registration statement has been filed with the Commission as to such securities, or while the registration statement is the subject of a refusal or stop order under any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. §77(h)];

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in violation of Sections 5(a) and 5(c) of the Securities Act of 1933, [15 U.S.C. §§77(e) and 77(e)(c)].

2. Order Number Two

An order enjoining Corriere and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this order by personal service or otherwise from, directly or indirectly:

- a. employing any device, scheme or artifice to defraud;
- b. obtaining money or property by means of any untrue statement of material fact or 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 Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act, [15 U.S.C. §§ 77(q)(a)(1), 77(q)(2) and 77(q)(a)(3)].

3. Order Number Three

An order permanently enjoining Corriere and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this order by personal service or otherwise from, directly or indirectly, in connection with the purchase or sale of securities, by the use of any means or instrumentality of interstate commerce or by the use of the mails, or of any facility of any national securities exchange:

- 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 the 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 Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §78j(b)] and rule 10b-5 promulgated thereunder [17 C.F.R. 240.10b-5].

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4. Order Number Four

An order finding Defendant Sebastian Corriere jointly and severally liable with Relief Defendants for disgorgement and requiring him to disgorge ill-gotten gains in the amount of \$30,000.00, and prejudgment interest in the amount of \$5,107.13, for a total of \$35,107.13.

5. Order Number Five

An order requiring Relief Defendants Maria Rosa Corriere, Quantum Equities, Inc. (QEI), and The Kings Fellowship, Inc. (Fellowship), to pay disgorgement of ill-gotten gains in the amount of \$13,009.57, \$15,990.43, and \$1,000.00, and prejudgment interest in the amount of \$1,891.69, \$2,722.17, and \$170.24, for a total of \$14,901.26, \$18,712.60, and \$1,170.24, respectively.

6. Order Number Six

An order imposing civil penalties against Defendant Sebastian Corriere in the amount of \$110,000.00 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)].

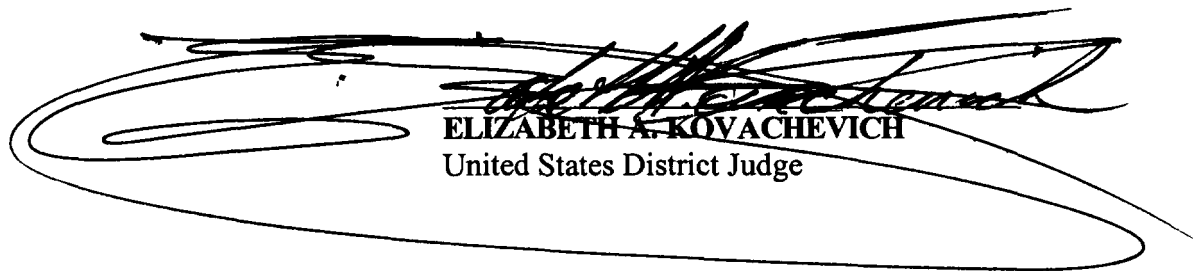
7. Order Number Seven

An order that this Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, the purpose of implementing and carrying out the terms of all orders and decrees which may be entered herein, enforcement of this Order, and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

Further, the Clerk of Court is directed to close this case.

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DONE and **ORDERED** in Chambers, in Tampa, Florida this 3rd day of
November 2003.



ELIZABETH A. KOVACHEVICH
United States District Judge

Copies to: All parties and counsel of record

F I L E C O P Y

Date Printed: 11/03/2003

Notice sent to:

CA

✓
— Joseph M. Mannon, Esq.
Securities & Exchange Commission
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