

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
ENTERED

MAY 29 2003

Michael N. Milby, Clerk of Court

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

G. CHRISTOPHER SCOGGIN,

Defendant.

Civil Action  
H-02-3119

**FINDINGS, ORDER AND FINAL JUDGMENT GRANTING  
PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S REQUEST  
FOR CIVIL MONEY PENALTY AGAINST DEFENDANT  
G. CHRISTOPHER SCOGGIN**

On April 4, 2003, this Court entered an order granting the default motion of the Plaintiff Securities and Exchange Commission ("Commission"): (1) prohibiting defendant G. Christopher Scoggin ("Scoggin") from violating the anti-fraud provisions of the federal securities laws; (2) ordering Scoggin to disgorge all ill-gotten gains and to pay prejudgment interest; and (3) ordering Scoggin to pay the maximum civil money penalty in an amount to be determined by the Court after submission of a recommendation by the Commission. In its order, the Court

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directed the Commission to submit for the Court's consideration a proposed order setting forth the proper amount of maximum civil penalties.

After consultation with the Commission, counsel for the Commission has proposed that Scoggin pay a civil penalty of \$1,430,000. The Commission has advised the Court that it believes the amount is appropriate for Scoggin in the circumstances, because of the egregious nature of his conduct, lack of remorse and flaunting of this Court's proceedings.

The Court being fully advised in the premises, having read the Commission's Memoranda of Law and other submissions to the Court, and there being no just reason for delay,

**THE COURT HEREBY FINDS AS FOLLOWS:**

**FACTS ESTABLISHING LIABILITY FOR CIVIL MONEY PENALTIES**

1. On April 4, 2003, this Court entered an order granting the default motion of the Plaintiff Securities and Exchange Commission's ("Commission"): (1) prohibiting defendant Scoggin from violating the anti-fraud provisions of the federal securities laws; (2) ordering Scoggin to disgorge all ill-gotten gains and to pay prejudgment interest; and (3) ordering Scoggin to pay the maximum civil money penalty in an amount to be determined by the Court after submission of a recommendation by the Commission.

2. The Commission has now submitted its recommendation that a civil money penalty in the amount of \$1,430,000 be assessed against Scoggin.

3. The defendant Scoggin is young and capable of earning a sufficient living to pay a portion of his future income towards disgorgement and the civil money penalties.

4. As this Court has found in its Order of April 4, 2003, Scoggin made repeated false representations that his stock picks appearing in his newsletter and website were the result of "independent and diligent analysis." Scoggin failed to disclose that his stock picks were derived solely from his undisclosed financial and other contractual obligations to the companies whose stocks he touted, rather than from any independent analysis. As a result, Scoggin purposefully misled investors. Scoggin also engaged in illegal "scalping" in two stocks featured in his material promoting stocks. That is, he advised his readers to buy two different stocks he was "independently" analyzing, with the undisclosed intent to begin selling - - and actual sale of - - his own positions in those stocks.

5. The defendant has contemptuously ignored this proceeding and has shown no remorse for his actions. Scoggin has evaded repeated attempts of service of process in this action. As a result, the Court granted the Commission: (i) an extension of time to serve Scoggin; and (ii) leave to serve Scoggin by publication.

After the service of process by publication, the publication period expired and Scoggin failed to answer or otherwise respond to the Complaint.

6. Defendant Scoggin profited in the amount of \$531,454.62 from his fraudulent conduct. (Guido Decl. ¶ 7, and Exhibit 3 thereto).

### **CONCLUSIONS OF LAW**

1. When determining the appropriate civil penalty to impose under Section 20(d)(2) of the Securities Act, 15 U.S.C. §77t(d)(2), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. §78u(d)(3), the Court examines: (1) the egregiousness of violations, (2) the isolated or repeated nature of the violations, and (3) the degree of scienter involved. *SEC v. Brethen*, 1992 U.S. Dist. LEXIS 20665 at \*104 (S.D. Ohio 1992); *See also SEC v. Deyon*, 977 F. Supp. 510, 519 (D. Me. 1997), *aff'd*, 201 F.3d 428 (1<sup>st</sup> Cir. 1998); *SEC v. Custable*, 1996 U.S. Dist. LEXIS 19321 at \*13-14 (N.D. Ill. Dec.17, 1996), *aff'd*, 132 F.3d 36 (7<sup>th</sup> Cir. 1997). Where the defendant's conduct involves fraud and deliberate disregard of the federal securities laws and resulted in substantial losses or creates the risk of substantial losses, the Court is authorized to impose a third tier civil money penalty of the greater of \$10,000 per violation (the amount authorized at the time of the violations) or the amount of the benefit the defendant received from his fraudulent activity. Section 20(d)(2) of the Securities Act, 15 U.S.C. §77t(d)(2), Section 21(d)(3) of the Exchange Act, 15 U.S.C. §78u(d)(3), and 17 C.F.R. § 201.1002).

In this case, Scoggin issued eleven false newsletters and scalped two stocks he was recommending to be purchased for a total of at least thirteen separate violations of the federal securities laws. Thus, the maximum penalty in this case should be \$1,430,000, \$110,000 per violation times the thirteen violations. *See, SEC v. Kenton Capital, Ltd.*, 64 F. Supp. 2d 1 (D.D.C. 1998) (\$1.2 million penalty based on twelve defrauded investors); *SEC v. Milan Capital Group, Inc.*, 2001 U.S. Dist. LEXIS 11804 (S.D.N.Y. 2001) (\$10 million penalty for offering fraud).

2. In this case, in which the defendant's conduct involved fraud and deliberate disregard of the federal securities laws and resulted in substantial losses, the Court has concluded that the amount requested by the Commission, that the defendant pay a \$1,430,000 civil money penalty, is appropriate. A civil penalty of this amount will impose a sufficient deterrence to Scoggin and other persons who may be tempted to commit fraud in the future.

**THEREFORE,**

**I.**

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT**

defendant Scoggin shall pay a civil money penalty of \$1,430,000.

**II.**

**IT IS FURTHER ORDERED THAT** there being no just cause for delay, the Clerk of the Court is directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Order and Judgment of Civil Money Penalties against defendant forthwith and without further notice.

**SO ORDERED.**

Dated:

MAY 28, 2003



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UNITED STATES DISTRICT JUDGE