

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
	:	
Plaintiff,	:	
	:	Case No. C2-03-CV-326
v.	:	
	:	
	:	JUDGE ALGENON L. MARBLEY
SIERRA BROKERAGE SERVICES INC., ET AL.,	:	
	:	Magistrate Judge Abel
	:	
Defendants	:	

ORDER & OPINION

I. BACKGROUND

The matter is now before the Court on Plaintiff Securities and Exchange Commission’s (“SEC”) Motion to Set Monetary Relief Against Ke Luo (“Luo”), Michael Markow (“Markow”), Jeffrey Richardson (“Richardson”), and Yongzhi Yang (“Yang”) (Doc. 270). On March 31, 2009, this Court entered an Opinion and Order granting the SEC’s motion for partial summary judgment (Doc. 124). This Court found Luo, Markow, and Yang liable for violating the registration and reporting provisions of the federal securities laws and ordered disgorgement and prejudgment interest against them. Prior to the summary judgment ruling, Richardson settled with the SEC, and this Court entered a judgment against Richardson that left the issue of disgorgement, prejudgment interest, and civil penalty to be decided upon motion by the SEC (Doc. 255). The SEC filed a Motion to Set Monetary Relief Against Luo, Markow, Richardson, and Yang on July 23, 2010 (Doc. 270). Luo, Markow, and Yang did not contest this Motion. Richardson filed a sealed Reply the SEC’s Motion to Set Monetary Relief on September 13, 2010 in which he argued his indigent status should exempt his compliance with the SEC’s

Proposed Judgment (Doc. 278). Thus, because only Richardson challenged the SEC's Motion, his judgment alone is the matter currently before the Court.

II. LEGAL STANDARD

Security laws confer general equity powers upon district courts. *See SEC v. Texas Gulf Sulphur Co.*, 446 F.2d 1301, 1307 (2d Cir.), *cert. denied*, 404 U.S. 1005 (1971). Disgorgement of illegally derived funds is a remedy within these equitable powers. *See* Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] *and* Section 27 of 15 U.S.C § 78aa. "Once the equity jurisdiction of the district court has been properly invoked by a showing of a securities law violation, the court possesses the necessary power to fashion an appropriate remedy." *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1103 (2d Cir. 1972). Disgorgement is one such remedy. *See SEC v. Midwest Investments, Inc.*, 1996 WL 229783, at *7 (6th Cir. 1996), *cert. denied*, 520 U.S. 1165 (1997). In particular, courts have found disgorgement to be an appropriate remedy in SEC enforcement actions involving registration violations. *See SEC v. Calvo*, 378 F.3d 1211 (11th Cir. 2004) Courts' equitable discretion in cases involving federal securities law violations also includes an ability to award prejudgment interest. *See SEC v. Falbo*, 14 F. Supp2d 508, 528 (S.D.N.Y. 1998).

III. LAW AND ANALYSIS

In its March 31, 2009 Order, this Court found that Richardson sold unregistered shares without an applicable exemption, which denied investors financial information that a registration statement would have contained (Doc. 222, p. 51). Based on these violations, the SEC requests that this Court find Richardson liable for \$92, 927 in disgorgement and \$71, 868 in prejudgment interest. In addition, the SEC seeks a third-tier civil penalty of \$250,000 because Richardson's

conduct involved “fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement [and] directly or indirectly resulted in substantial losses to other persons and he is a recidivist securities law violator. 15 U.S.C. §77t(d) and 15 U.S.C. §78u(d)(3).

Richardson does not dispute that he was unjustly enriched by the securities fraud he perpetrated or that his conduct involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. He does, however, claim that his indigent status prevents his paying the disgorgement, prejudgment interest, and the civil penalty. A party who invokes the defense of indigency has the burden of establishing his inability to pay. *Donovan v. Sovereign Sec., Ltd.*, 726 F.2d 55, 59 (2d Cir. 1984); *SEC v. Huffman*, 996 F.2d 800, 803 (5th Cir. 1993) In support of his indigency defense, Richardson presented several pieces of documentation related to his extensive health costs to prove that his indigency prevents him from complying with the SEC’s proposed judgment. This Court, however, does not find that Richardson’s indigency is sufficiently precarious to overcome the deterrent effect of his paying the disgorgement, prejudgment interest, or civil penalty the SEC proposes. Thus, the Court exercises its discretion to find that Richardson must disgorge the value he gained from his wrongdoing as well as pay both the prejudgment interest and the civil penalty.

IV. CONCLUSION

Based on the reasons set forth above, the Court, therefore, **GRANTS** the SEC’s Proposed Final Judgment as to Defendant Jeffrey A. Richardson and orders Richardson to pay \$92,927 in disgorgement, \$71,868 in prejudgment interest, and the civil penalty of \$250,000.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
United States District Court Judge

DATE: December 17, 2010