IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-vs-

Case No. A-03-CA-565-SS

WULF INTERNATIONAL LTD. and GEORGE R. WULF,

Defendants.

ORDER

BE IT REMEMBERED on the 16th day of July 2004, the Court called the above-styled cause for an evidentiary hearing on Plaintiff's Motion for Summary Judgment on Financial Relief Issues as to Defendant George R. Wulf [#14]. After considering the merits of the motion, the arguments at the hearing, the case file as a whole, and the applicable law, the Court granted the motion in open court and now confirms the same.

I. Undisputed Facts[1]

Defendant Wulf International Ltd. ("WIL") is a publicly held corporation headquartered in Austin, TX. From 1997 to 2003, WIL was attempting to develop housing for low-income persons in the Philippines and elsewhere. None of the housing was ever built. Defendant George R. Wulf ("Wulf") is a resident of Oak Point, Texas. Wulf founded WIL and was chairman of its board of

---

[1] The undisputed facts are taken from the complaint, which Defendant George R. Wulf agreed not to contest as part of his settlement.

23

directors from at least January 1, 2000 through December of 2002. He was also the president, chief executive officer, and chief financial officer of WIL from at least January of 2002 through December of 2002.

In April of 1998, WIL entered into a joint venture with the Southern Philippines Development Authority ("SPDA"), a corporation wholly owned by the Philippines government, to build one million houses for low-income persons in the Philippines. Under the terms of the joint venture agreement, WIL was required to obtain funding for the project. The project required the approval of at least five other governmental entities of the Philippines, the last of which granted approval in November of 2001. In February of 2002, WIL entered into a similar joint venture to build houses for low-income persons in Pakistan.

Between January 18, 2001 and April 2, 2002, WIL issued multiple press releases concerning these proposed housing projects. Wulf personally drafted five of the releases. WIL issued two releases in January and February of 2001, each of which was drafted or reviewed by Wulf, which stated the SPDA would issue $200 million of bonds, to be sold by major investment banks, to fund WIL's Philippines housing project. These statements were false because the SPDA and the Philippines government had not agreed to issue, and no investment banks had committed to underwrite, any such bonds.

WIL issued two releases in January and February of 2001, each of which was drafted by Wulf, stating the SPDA had "approved" the Philippines housing project. These statements were misleading because they failed to disclose the SPDA was merely the first of at least five governmental entities from which approval was required, and approval of the other such entities had not been obtained as of the dates of the releases.

WIL also issued a February 2001 release, which was drafted by Wulf. The release stated the proposed Philippines housing project would enable the WIL/SPDA joint venture to earn $565 million within ten years. This statement was misleading because it did not disclose WIL had not obtained funding for, and the Philippines government had not yet approved, the project. Further, the projected revenues in the release were false and misleading because they lacked any reasonable basis in fact.

In addition, WIL issued a June 2001 release stating the proposed Philippines housing project would enable WIL to earn $343 million within ten years. This statement was misleading because it did not disclose WIL had not obtained necessary approvals or funding for the project, and because it lacked any reasonable basis in fact.

WIL issued releases in January of 2002 and April of 2002, which stated a Malaysian group of companies and another entity had agreed to provide WIL with between $200 million and $500 million to fund WIL's housing projects. These statements were misleading because they did not disclose these entities were not obligated to provide any funding unless WIL obtained a guarantee or other security from a government or bank. WIL never obtained either a guarantee or a security. The later of these releases was drafted by Wulf.

On the dates of four of the releases, the closing price of WIL stock increased between 30% and 61% over the average closing price for the previous ten trading days, averaging a 42% increase. Following the issuance of five of the releases, the trading volume of WIL stock increased between 81% and 1,584% over the average trading volume for the previous ten trading days, averaging a 654% increase.

Between January 23, 2001 and February 16, 2001, Wulf caused Integra International Inc. ("Integra"), a privately held entity for which Wulf serves as president and chairman of the board of directors, to sell 300,000 shares of WIL stock for profits of approximately $44,896.44.

II. Procedural Background

Plaintiff Securities and Exchange Commission ("SEC") brought this enforcement action against Wulf and WIL seeking permanent injunctive relief, and with respect to Wulf, disgorgement of all ill-gotten gains or benefits plus prejudgment interest, a civil monetary penalty, and both an officer and director and a penny stock bar. Wulf and WIL previously consented to a partial settlement of the case.

As to Defendant WIL, the settlement resolved all issues in the case. As to Defendant Wulf, the previously filed partial settlement resolved the complaint on its merits as well as the SEC's claims against Wulf for injunctive relief, an officer and director bar and a penny stock bar. The Court's final judgment as to those issues was entered on February 27, 2004.

Under the terms of the previously filed settlement, the Court retained jurisdiction for purposes of determining whether disgorgement and prejudgment interest thereon are appropriate against Wulf, and whether civil penalties will be assessed against Wulf pursuant to § 21(d)(3) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78u(d)(3). Final J. as to Def. George R. Wulf [#12] at 3. Under the terms of the consent filed by Wulf as part of the settlement, in connection with any hearing to determine the propriety and amount of any financial relief, Wulf relinquished any claim he is not liable for the payment of such financial relief because he did not violate one or more of the provisions of the Exchange Act, and rules thereunder, as alleged in the complaint. *Id.*

The SEC now moves for summary judgment on the remaining relief issues. In his response to the motion for summary judgment, Wulf improperly attempts to litigate the underlying facts of the case. As stated above, Wulf waived any contest to the underlying merits of the case in his consent. Accordingly, these portions of his response will not be considered. Furthermore, Wulf was not a credible witness at the evidentiary hearing because his testimony and his prior statements to the SEC were inconsistent and lacked the ring of truth.

III. Analysis

A. Summary Judgment Standard

Summary judgment may be granted if the moving party shows there is no genuine issue of material fact, and it is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). In deciding summary judgment, the Court construes all facts and inferences in the light most favorable to the nonmoving party. *Hart v. O'Brien*, 127 F.3d 424, 435 (5th Cir. 1997). The standard for determining whether to grant summary judgment "is not merely whether there is a sufficient factual dispute to permit the case to go forward, but whether a rational trier of fact could find for the nonmoving party based upon the record evidence before the court." *James v. Sadler*, 909 F.2d 834, 837 (5th Cir. 1990).

Both parties bear burdens of producing evidence in the summary judgment process. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). First, "[t]he moving party must show that, if the evidentiary material of record were reduced to admissible evidence in court, it would be insufficient to permit the nonmoving party to carry its burden of proof." *Hart*, 127 F.3d at 435. The nonmoving party must then "set forth specific facts showing a genuine issue for trial and may not rest upon the mere allegations or denials of its pleadings." *Id.* However, "[n]either 'conclusory allegations' nor

'unsubstantiated assertions' will satisfy the non-movant's burden." *Wallace v. Texas Tech Univ.*, 80 F.3d 1042, 1047 (5th Cir. 1996).

B. Disgorgement

The SEC moves the Court to order disgorgement and prejudgment interest from Wulf based on profits received through Integra's sales of WIL stock. Wulf arranged for Integra to receive 300,000 shares of WIL[2] while the false and misleading press releases written or reviewed by Wulf were being disseminated,[3] and to sell those shares in open market transactions into the resulting inflated market. Pl.'s Mot. for Summ. J. at 6; Gov't Evidentiary Hr'g Ex. 3. As a result, public investors who had been misled by the press releases, purchased the fraudulently overpriced shares, generating ill-gotten gains to Integra and its part owner, Wulf.

The broad powers of the federal courts have frequently been invoked in the context of SEC enforcement actions to prevent securities violators from enjoying the fruits of their misconduct. *Securities & Exch. Comm'n v. Blatt*, 583 F.2d 1325, 1335 (5th Cir 1978). Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations unprofitable. *Hateley v. Sec. & Exch. Comm'n*, 8 F.3d 653, 655 (9th Cir. 1993). It is within the Court's equitable discretion to assess prejudgment interest on disgorgement liability to deprive wrongdoers of the unjust benefit of what would otherwise amount to an interest-free loan. *Blatt*, 583 F.2d at 1335.

As demonstrated by the affidavit of Jeffrey R. Thomas ("Thomas"), the amount of profits obtained by Integra through these sales was $44,896.44. Pl.'s Mot. for Summ. J. at 8, Jeffrey R.

---

[2] Gov't Evidentiary Hr'g Ex. 1 at 147-48.

[3] Gov't Evidentiary Hr'g Ex. 4.

Thomas Decl. ("Thomas Decl.") at 2. As set forth by Thomas in his declaration, the amount of prejudgment interest on Integra's trading profits is $9,007.90.[4] *Id.*, Thomas Decl. at 3. Accordingly, Wulf is ordered to pay disgorgement and prejudgment interest of $53,904.34.

C. Civil Penalty

Section 21(d)(3)(B) of the Exchange Act authorizes the SEC to seek, and the Court to impose, a third-tier penalty[5] of $120,000.00 if the defendant's violation (1) "involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement" and (2) "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons."[6] Wulf misled the investigating public through the dissemination of false and misleading press releases. As demonstrated by the market's reaction to the press releases, both in terms of increased prices and volume, Wulf created a significant risk of loss to investors. On the dates of four

---

[4] Thomas calculated interest on the disgorgement amount of $44,896.44 for the time period February 28, 2001 to May 1, 2004, applying the Internal Revenue Service rate of interest on tax underpayments. Pl.'s Mot. for Summ. J. at 8, Thomas Decl. at 3. The rate established by the Internal Revenue Service for tax underpayment is an appropriate rate for prejudgment interest, because it reasonably approximates the unjust benefit of the use of the money. *Securities & Exch. Comm'n v. First Jersey Sec.*, 101 F.3d 1450, 1476 (2d Cir. 1996).

[5] The statute, as amended by 17 C.F.R. § 201.1002, sets forth three tiers of civil penalties. The first tier allows a penalty of up to $6,500.00 for each violation of the securities laws. The second tier provides a penalty of up to $60,000.00 per violation if the violation "involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement." 15 U.S.C. § 78u-2.

[6] The factors to be considered in assessing whether a civil penalty is in the public interest under § 21B are stated as follows:

> (1) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) the harm to other persons resulting either directly or indirectly from such act or omission; (3) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior; (4) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in section 78o(b)(4)(B) of this title; (5) the need to deter such person and other persons from committing such acts or omissions; and (6) such other matters as justice may require.

15 U.S.C. § 78u-2.

of the releases, the closing price of WIL stock increased between 30% and 61% over the average closing price for the previous ten trading days, averaging a 42% increase. Following the issuance of five of the releases, the trading volume of WIL stock increased between 81% and 1,584% over the average trading volume for the previous ten trading days, averaging a 654% increase.

Wulf benefitted personally from this artificially inflated market demand by causing an affiliated company to dump its stock on public investors in order to capture these fraudulently created profits. Wulf was previously enjoined from antifraud violations, and his recidivism further warrants a third-tier penalty.[7] Accordingly, a third-tier penalty of $120,000.00 is imposed against Wulf. *Securities & Exch. Comm'n v. Enters. Solutions, Inc.*, 142 F. Supp.2d 561 (S.D.N.Y. 2001) (third-tier penalties imposed against controlling person of company that issued false press releases); *Securities & Exch. Comm'n v. Poirier*, 140 F.Supp.2d 1033 (D. Ariz. 2001) (third-tier penalties imposed upon controlling persons of company operating classic "pump and dump" scheme, wherein false statements are pumped into the market and stock is dumped on innocent investors at inflated values before the false information can be discovered and the stock price drops).

IV. Conclusion

In accordance with the foregoing:

IT IS ORDERED that Plaintiff's Motion for Summary Judgment on Financial Relief Issues as to Defendant George R. Wulf [#14] is GRANTED;

[7] In 1984, Wulf consented to an order permanently enjoining him from violating § 17(a) of the Securities Act of 1933 and §§ 10(b) and 13(d) of the Exchange Act and Rules 10b-5, 10b-9, and 13d-1 thereunder.

IT IS FURTHER ORDERED that Defendant George R. Wulf is ordered to pay disgorgement and prejudgment interest of $53,904.34, and a statutory penalty of $120,000.00; and

IT IS FINALLY ORDERED that any and all remaining pending motions are DISMISSED AS MOOT.

SIGNED this the 20th day of July 2004.

Sam Sparks

SAM SPARKS
UNITED STATES DISTRICT JUDGE