

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

SECURITIES AND EXCHANGE	§
COMMISSION	§
	§
Plaintiff,	§
	§
v.	§
	§
MILLENNIUM BANK, UNITED TRUST	§
OF SWITZERLAND S.A., UT OF S, LLC,	§
MILLENNIUM FINANCIAL GROUP,	§
WILLIAM J. WISE, d/b/a STERLING	§
ADMINISTRATION, d/b/a STERLING	§
INVESTMENT SERVICES, d/b/a	§
MILLENNIUM AVIATION, KRISTI M.	§
HOEGEL, a/k/a KRISTI M. CHRISTOPHER	§
, a/k/a BESSY LU, JACQUELINE S.	§
HOEGEL, a/k/a JACQUILINE S. HOEGEL,	§
a/k/a JACKIE S. HOEGEL, PHILIPPE	§
ANGELONI, and BRIJESH CHOPRA,	§
	§
Defendants,	§
	§
and	§
	§
UNITED T OF S, LLC, STERLING I.S., LLC,	§
MATRIX ADMINISTRATION, LLC,	§
JASMINE ADMINISTRATION, LLC, LYNN	§
P. WISE, DARUL C. HOEGEL, RYAN D.	§
HOEGEL, and LAURIE H. WALTON	§
	§
Relief Defenants	§

FINAL JUDGMENT BY DEFAULT AGAINST DEFENDANT WISE

This matter came before the Court on Plaintiff’s Motion for Default Judgment Against Defendant Wise, individually and doing business as Sterling Administration, Sterling Investment Services, and Millennium Aviation (collectively, “Defendant”). The Court, having considered all of the pleadings and evidence in the record, is of the opinion that Plaintiff’s Motion should be

GRANTED. See Order granting Plt.'s Mot. Default J., ECF No. 174.

The Court, having considered all of the pleadings, records, and proceedings herein, enters the following findings of fact and conclusions of law:

1. The Commission's Complaint was filed on March 29, 2009.
2. Wise was served with the Summons and Complaint on October 23, 2009 in a manner authorized by the Court. The Commission caused the affidavit of service to be filed with this Court on November 12, 2009. [Doc. No. 109.]
3. Wise is not an infant or an incompetent person, nor is he currently serving in the United States military. Wise is not eligible for relief under the Soldiers' and Sailors' Civil Relief Act of 1940 [50 U.S.C. Appendix, § 501 *et seq.*].
4. Wise has not filed an answer to the Commission's Complaint or other required pleading, nor has he taken any action indicating an intent to defend this suit.
5. The United States District Clerk entered a default against Wise on December 1, 2009. [Doc. No. 113.]
6. The Commission is entitled to entry of a final judgment of permanent injunction against Wise for violating Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77e(a), (c), and 15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5].
7. The district court has broad discretion not only in determining whether or not to order disgorgement but also in calculating the amount to be disgorged. Disgorgement need only be a reasonable approximation of profits causally connected to the violation.
8. The Commission has met its burden of presenting evidence reasonably approximating

the amount of ill-gotten gains.

9. The appropriate amount of disgorgement to be assessed against Defendant Wise is the total amount of illicit profits or ill-gotten gains he received from his illicit activity. According to the Court-appointed Receiver's accounting of illicit profits based upon Defendant's records produced in this matter and upon which the Commission relies, Wise received \$70 million in ill-gotten gains.

10. The IRS underpayment of federal income tax rate as set forth in 26 U.S.C. § 6621(a)(2) is appropriate for calculating prejudgment interest in SEC enforcement actions such as this one. That rate of interest reflects what it would have cost to borrow the money from the government and therefore reasonably approximates one of the benefits the defendant derived from its fraud.

11. The Commission is entitled to an Order requiring Wise to disgorge \$70 million, plus prejudgment interest in the amount of \$5,424,722.03, for a total amount of \$75,424,722.03, representing the proceeds of Wise's illegal activity as pled by the Commission.

12. A civil monetary penalty against Wise under Section 20(d)(2)(C) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3)(B)(iii) of the Exchange Act [15 U.S.C. § 78u(d)], in the amount of \$120,000 is appropriate under the facts and circumstances of this case. These provisions authorizes third-tier penalties where the violations involve fraud, deceit, manipulation or deliberate or reckless disregard of a regulatory requirement and such violations directly or indirectly resulted in substantial losses or created a risk of losses to other persons. Wise's egregious conduct justifies the imposition of third-tier civil penalties here.

13. In this case, in light of the egregiousness of Wise's illegal activity, the repeated nature of his violations, and the high degree of *scienter* involved as alleged in the Complaint and established in the record of this case, among other factors, a third tier civil penalty in the amount of \$120,000 against Wise is appropriate.

14. Pursuant to the Fair Funds provision of Section 308 of the Sarbanes-Oxley Act of 2002, it is appropriate that the civil penalty be added to and become part of the disgorgement fund for the benefit of the victims of Wise's violations. The Court-appointed Receiver in this matter, Richard Roper, is charged with the responsibility of overseeing and distributing the recovered assets or disgorged funds for the benefit of the victims. Thus, any payment made by, or funds obtained from, Defendant Wise, may be deposited into the Receiver's account for the benefit of the victim/investors in this matter.

15. The Commission is entitled to an Order requiring Wise to repatriate to this Court's jurisdiction all assets derived from the illegal activity alleged by the Commission.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

I.

Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Final Default Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 5(a) and 5(c) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77e(a) and (c)] by, directly or indirectly, in the absence of any applicable exemption:

(a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;

(b) 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

Commission as to such security, or while the registration statement is the subject of a refusal order or 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 and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Final Default Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] 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 use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Final Default Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], directly or indirectly, in connection

with the purchase or sale of a security, by making use of any means or instrumentality of interstate commerce, of the mails or of any facility of any national securities exchange:

- (a) to use or employ any manipulative or deceptive device or contrivance;
- (b) to employ any device, scheme, or artifice to defraud;
- (c) to make any untrue statement of a material fact or to omit 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; and/or
- (d) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IV.

It is HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$70 million, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$5,424,722.03, and a civil penalty in the amount of \$120,000 pursuant to Section 20(d)(2)(C) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3)(B)(iii) of the Exchange Act [15 U.S.C. § 78u(d)]. Defendant shall satisfy this obligation by paying \$75,544,722.03 within 14 days after entry of this Final Default Judgment to the Clerk of this Court, together with a cover letter identifying Wise as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Default Judgment. Defendant shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System (“CRIS”) or any other type of interest bearing account that is utilized by the Court. These funds, together with any interest and income earned thereon (collectively, the “Fund”), shall be held in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States.

The Commission may by motion propose a plan to distribute the Fund subject to the Court’s approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant’s payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant’s payment of a civil penalty in this action (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a “Related

Investor Action” means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

V.

The Court’s Order dated April 3, 2009 [ECF No. 24] (“Asset Freeze Order”), entered a Preliminary Injunction Against Wise and, among other things, continued the asset freeze as to any and all payments or expenditures of funds in the actual or constructive possession of Defendant or his officers, agents, employees, servants, attorneys, and all persons in active concert or participation with him, in whatever form such assets may presently exist and wherever located. (Asset Freeze Order at ¶ IV.) The Asset Freeze Order remains in full force and effect, except that the Asset Freeze Order is modified to permit Wise, his officers, agents, servants, employees, attorneys, and those persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, to transfer any and all funds held pursuant to the Asset Freeze Order to the Court-appointed Receiver in this matter, Richard Roper, Thompson and Knight, LLP, 1722 Routh Street, Suite 1500, Dallas, TX 75201, to satisfy, in full or in part, Defendant’s disgorgement obligation.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Wise shall, within 14 days of this Final Judgment, repatriate to this Court’s jurisdiction all assets derived from the illegal activity alleged by the Commission.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Default Judgment.

VIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Default Judgment forthwith and without further notice.

SO ORDERED this **15th** day of **March, 2011**.


Reed O'Connor
UNITED STATES DISTRICT JUDGE