

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 13-23115-CIV-MARTINEZ-GOODMAN

SECURITIES AND EXCHANGE
COMMISSION,
Plaintiff,

vs.

BERNARD H. BUTTS, JR., *et al.*,
Defendants,

**ORDER OF FINAL JUDGMENT AS TO BERNARD H. BUTTS, JR., BERNARD H.
BUTTS JR. PA, BUTTS HOLDING CORPORATION AND MARGARET A. HERING**

THIS CAUSE came before the Court on the unopposed motion of Plaintiff Securities and Exchange Commission (“SEC”) and consents of Defendant Bernard H. Butts, Jr. (“Butts”), and Relief Defendants Bernard H. Butts Jr. PA (“Butts PA”), Butts Holding Corporation (“Butts Holding”) (collectively the “Butts Defendants”) and Margaret A. Hering (“Hering”) for entry of a Final Judgment permanently enjoining Mr. Butts from future violations of the federal securities laws, ordering Mr. Butts, Butts PA, and Butts Holding jointly and severally to pay disgorgement and prejudgment interest, ordering Mr. Butts to pay civil penalties; and ordering Ms. Hering to pay disgorgement and prejudgment interest. (D.E. No. 97). The SEC filed its complaint on August 29, 2013, (D.E. No. 1). The Butts Defendants and Ms. Hering were served with the summonses and complaint on September 3, 2013. (D.E. Nos. 24, 25, 26, 27). They have entered a general appearance; consented to the Court’s jurisdiction over them and the subject matter of this action; consented to the entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment.

The Court finds based on the consents of the Butts Defendants and Ms. Hering that it has personal jurisdiction over these defendants and subject matter jurisdiction over this action. There is good cause to grant the request for entry of the permanent injunction and final judgment. Accordingly, the motion (D.E. No. 97) is **GRANTED**.

1. IT IS ORDERED, ADJUDGED, AND DECREED that Defendant Bernard H. Butts, Jr., and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive notice of this Final 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, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) To employ any device, scheme, or artifice to defraud;
- (b) To make any untrue statement of a material fact or 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 either orally or in writing, concerning (i) any investment strategy or investment in securities, (ii) any investment in securities trading programs, (iii) the safety and security of any investment, (iv) the use of investor's funds or proceeds, (v) the compensation or commission to be received related to the offer or sale of securities, (vi) the success of any prime bank instrument trading program, or (vii) the risk involved in investing in a securities offering; or
- (c) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant Bernard H. Butts, Jr., and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive notice of this Final Judgment by personal service or otherwise, and each of them, are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 ("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 the 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 the light of the circumstances under which they were made, not misleading either orally or in writing, concerning (i) any investment strategy or investment in securities, (ii) any investment in securities trading programs, (iii) the safety and security of any investment, (iv) the use of investor's funds or proceeds, (v) the compensation or commission to be received related to the offer or sale of securities, (vi) the success of any prime bank instrument trading program, or (vii) the risk involved in investing in a securities offering; 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.

3. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant Bernard H. Butts, Jr., and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive notice of this Final Judgment by personal service or otherwise, and each of them, are permanently restrained and enjoined from violating Section 5 of the Securities Act, 15 U.S.C. § 77e, 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 securities through the use or medium of any prospectus or otherwise;

(b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; 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, any securities, unless a registration statement is filed with the Commission as to such securities, or while a 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.

4. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant Bernard H. Butts, Jr., and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive notice of this Final Judgment by personal service or otherwise, are permanently restrained and enjoined from violating, directly or indirectly, Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1), while engaged in the business of effecting transactions in the securities for their accounts or the account of others, making use of the means or instruments of transportation or communication in interstate commerce or of the mails to effect transactions in or to induce or attempt to induce the purchase or sale of, securities, without registration with the Commission as a broker-dealer.

5. IT IS FURTHER ORDERED AND ADJUDGED that that the Defendant Bernard H. Butts, Jr., Butts PA, and Butts Holding are jointly and severally liable for disgorgement of

\$1,691,608.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$96,232.99, which together total \$1,787,840.99. The Butts Defendants shall satisfy their obligations by relinquishing all legal and equitable right, title, and interest in such funds, which they previously deposited into the registry of the Court pursuant to an Order dated October 9, 2013, (D. E. No. 61). No funds shall be returned to the defendants.

6. IT IS FURTHER ORDERED AND ADJUDGED that that the Defendants Bernard H. Butts, Jr. and Margaret Hering are jointly and severally liable for disgorgement of \$100,000.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$4,570.82, which together total \$104,570.82. Mr. Butts and Ms. Hering shall satisfy this obligation by relinquishing all legal and equitable right, title, and interest in such funds, which they previously deposited with the registry of the Court pursuant to an Order dated October 9, 2013, (D.E. No. 61). No funds shall be returned to the defendants.

7. IT IS FURTHER ORDERED AND ADJUDGED that the Defendant Bernard H. Butts, Jr., is liable for a civil penalty in the amount of \$2,059,284.19 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d). Mr. Butts shall satisfy this obligation, in part, by relinquishing all legal and equitable right, title, and interest in \$21,856.88, which were previously deposited with the registry of the Court under an Order dated October 9, 2013, (D.E. No. 61). Mr. Butts shall satisfy the balance of his obligation by relinquishing all legal and equitable right, title, and interest in \$2,037,427.31, which was seized from accounts of the Butts Defendants on or about August 28, 2013, by the Secret Service and deposited with the United States Department of the Treasury; and authorizing the United States Department of

the Treasury to transfer of those funds for deposit into the registry of this Court. No part of the funds shall be returned to the defendants.

8. IT IS FURTHER ORDERED AND ADJUDGED that the United States Department of Treasury shall transfer \$2,037,427.31, which was seized from the accounts of the Butts Defendants, to the Clerk of the Court within 14 days of entry of this Final Judgment for deposit into an interest-bearing account with the Court Registry Investment System ("CRIS") or such other interest-bearing account that is utilized by the Court. The United States Department of Treasury will provide a letter to counsel for the Securities and Exchange Commission identifying the case title, civil action number and name of this Court, Bernard H. Butts Jr. and the Butts Defendants as defendants in this action, and specify that payment is made pursuant to this Final Judgment.

9. IT IS FURTHER ORDERED AND ADJUDGED that the asset freeze entered against the Butts Defendants and Ms. Hering on August 30, 2013 (D.E. No. 19), which was modified on October 9, 2013 (D.E. No. 61), is hereby vacated.

10. IT IS FURTHER ORDERED AND ADJUDGED that the funds, which were previously deposited by the Butts Defendants and Ms. Hering into the registry of the Court pursuant to an Order dated October 9, 2013, and the funds transferred into the registry of the Court by the United States Department of Treasury pursuant to paragraph 8 of this Order, together with any interest and income earned thereon (collectively, the "Fair Fund"), will be held in an 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 Investor 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 SEC may propose a plan to

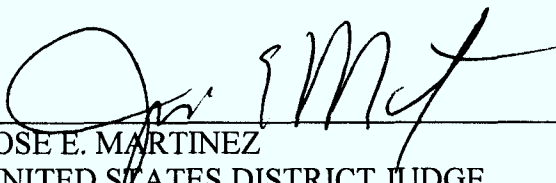
distribute the Fair Fund subject to the Court's approval. Such a plan may provide that the Fair Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246(a). The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the SEC's staff determines that the Fair Fund will not be distributed, the SEC shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

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 Butts shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant Butts' 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 Butts' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant Butts shall, within 30 days after entry of a final order granting the Penalty Offset, notify the SEC'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 SEC 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, exclusive of any claims procedure instituted in this civil case on behalf of investors by the SEC.

11. The defendants shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

12. 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 Judgment forthwith and without further notice.

DONE AND ORDERED in Chambers at Miami, Florida, this 10 day of July, 2014.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Goodman
All Counsel of Record