

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.	Case No. 1:14-civ-11858-NMG)
)
TELEXFREE, INC.,)
TELEXFREE, LLC,)
JAMES M. MERRILL,)
CARLOS N. WANZELER,)
STEVEN M. LABRIOLA,)
JOSEPH H. CRAFT,)
SANDERLEY RODRIGUES DE VASCONCELOS,)
SANTIAGO DE LA ROSA,)
RANDY CROSBY and)
FAITH R. SLOAN,)
)
Defendants,)
)
and)
)
TELEXFREE FINANCIAL, INC.,)
TELEXELECTRIC, LLLP and)
TELEX MOBILE HOLDINGS, INC.,)
)
Relief Defendants.)
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FINAL JUDGMENT AS TO DEFENDANT STEVEN M. LABRIOLA

The Securities and Exchange Commission having filed a Complaint and Defendant Steven M. Labriola (“Labriola” or “Defendant”) having entered a general appearance; consented to the Court’s jurisdiction over himself and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment; and Defendant having admitted to the facts set forth in Annex A to the Consent of Steven M. Labriola (the “Consent”); and the Consent and Annex A being hereby incorporated by reference with the same force and effect as if fully set forth herein.

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is 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 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; 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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant’s officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. §77e] 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) 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 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].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant is enjoined from offering, operating, or participating in any marketing or sales program in which a participant is compensated or promised compensation solely or primarily (1) for inducing another person to become a participant in the program, or (2) if such induced person induces another to become a participant in the program.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$89,805, representing profits gained as a result of the conduct alleged in the Second Amended Complaint, together with pre-judgment interest thereon in the amount of \$9158, for a total disgorgement obligation of \$98,963. Based on the sworn representations in

Defendant's Statement of Financial Condition dated February 6, 2017, and other documents and information submitted to the Commission, however, the Court is not ordering him to pay a civil penalty, and payment of all but \$25,453.57 of the disgorgement and prejudgment interest thereon is waived subject to the remainder of this section and sections VI, VII, and VIII below. NMG

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Steven Labriola as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information 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.

The Commission shall hold the funds (collectively, the "Fund") and may propose a plan to distribute the Fund subject to the Court's approval. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund

will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The determination not to impose a civil penalty and to waive payment of all but \$4,726 of the disgorgement and pre-judgment interest is contingent upon the accuracy and completeness of Defendant's Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Defendant's representations to the Commission concerning ~~her~~ ^{his} assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant, petition the Court for an order requiring Defendant to pay the unpaid portion of the disgorgement, pre-judgment and post-judgment interest thereon, and the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of the Consent or this Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense. Defendant shall also pay post-judgment interest on any delinquent amounts pursuant to

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28 U.S.C. § 1961.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, within 30 days of entry of this Final Judgment, Middlesex Savings Bank, N.A. (“Middlesex Savings”) shall transfer to the Commission in partial satisfaction of Defendant’s obligation to pay all funds currently held by Account Nos. XXXXX726, XXXXX8479, XXXX6379, and XXXX5365, which are currently subject to an asset freeze instituted pursuant to Paragraph III.B. of the May 9, 2014 Consent Order as to Steven Labriola (ECF 103.). Middlesex Savings shall transmit these funds to the Commission using any of the payment methods detailed in Section V. above. Upon the completed transfer of these funds to the Commission, Defendant will remain liable, for the payment of the remaining amounts due. After transferring the funds to the Commission, Middlesex Savings shall immediately lift any hold or freeze instituted pursuant to the Temporary Restraining Order that currently restrains any funds or other assets in the name, for the direct or indirect benefit, or under the direct or indirect control of Defendant or over which Defendant exercises actual or apparent investment or other authority, in whatever form such assets may presently exist and wherever located.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, within 30 days of entry of this Final Judgment, Capital One. (“Capital One”) shall transfer to the Commission in partial satisfaction of Defendant’s obligation to pay, all funds currently held by Account No.xxxxxxx6331-01 which is currently subject to an asset freeze instituted pursuant to Paragraph III.B. of the May 9, 2014 Consent Order as to Steven Labriola (ECF 103.) Capital One shall transmit these funds to the Commission using any of the payment methods detailed in

Section V. above. Upon the completed transfer of these funds to the Commission, Defendant will remain liable, or the payment of the remaining amounts due. After transferring the funds to the Commission, Capital One shall immediately lift any hold or freeze instituted pursuant to the Temporary Restraining Order that currently restrains any funds or other assets in the name, for the direct or indirect benefit, or under the direct or indirect control of Defendant or over which Defendant exercises actual or apparent investment or other authority, in whatever form such assets may presently exist and wherever located.

VIII

Labriola shall pay the total of disgorgement due of \$ 20,727.26 (net of monies transferred by financial institutions as reflected in paragraphs VI and VII) in 20 installment payments installments to the Commission according to the following schedule: Defendant shall satisfy this obligation in 21 installment payments according to the following schedule: 1) \$1,036.37 within 90 days of final judgment; 2) \$1,036.37 within 180 days of final judgment; 3) \$1,036.37 within 270 days of final judgment; 4) \$1,036.37 within 360 days of final judgment; 5) \$1,036.37 within 450 days of final judgment; 6) \$1,036.37 within 540 days of final judgment; 7) \$1,036.37 within 630 days of final judgment; 8) \$1,036.37 within 720 days of final judgment; 9) \$1,036.37 within 810 days of final judgment; 10) \$1,036.37 within 900 days of final judgment; 11) \$1,036.37 within 990 days of final judgment; 13) \$1,036.37 within 1080 days of final judgment; 13) \$1,036.37 within 1170 days of final judgment; 14) \$1,036.37 within 1260 days of final judgment; 15) \$1,036.37 within 1350 days of final judgment; 16) \$1,036.37 within 1440 days of final judgment; 17) \$1,036.37 within 1530 days of final judgment; 18) \$1,036.37 within 1620 days of final judgment; 19) \$1,036.37 within 1710 days of final judgment; and 20) \$1,036.37 within 1825 days of final judgment. Payments shall be deemed made on the date they are received by the Commission and shall be applied first to post judgment interest, which accrues

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pursuant to 28 U.S.C. § 1961 on any unpaid amounts due after 14 days of the entry of Final Judgment. Prior to making the final payment set forth herein, Labriola shall contact the staff of the Commission for the amount due for the final payment.

If Labriola fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Final Judgment, including post-judgment interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Court

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Steven Labriola of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

X.

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 Judgment.

XI.

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.

Dated: July 13, 2017



JUDGE NATHANIEL M. GORTON
UNITED STATES DISTRICT JUDGE