

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

-vs-

Case No. 6:09-cv-1674-Orl-35DAB

MICHAEL A. RIVERS, ARKR TRUST LLC,

Defendants.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court. The issues have been heard and a decision has been rendered.

I.

**PERMANENT INJUNCTION AS TO SECTION 10(b) OF THE SECURITIES
EXCHANGE ACT OF 1934 AND EXCHANGE ACT RULE 10b-5**

IT IS ORDERED AND ADJUDGED that Rivers, his agents, servants, employees, attorneys, representatives, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5 [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.

II.

**PERMANENT INJUNCTION AS TO SECTION 13(b)(5)
OF THE EXCHANGE ACT AND RULE 13b2-1**

IT IS FURTHER ORDERED AND ADJUDGED that Rivers, his agents, servants, representatives, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise, are permanently restrained and enjoined from violating Section 13(b)(5) of the Exchange Act, 15 U.S.C. § 78m(b)(5), and Exchange Act Rule 13b2-1, 17 C.F.R. §240.13b2-1, by knowingly circumventing a system of internal accounting controls, knowingly failing to implement a system of internal accounting controls, or knowingly falsifying books, records, or accounts subject to Section 13(b)(2) of the Exchange Act, 15 U.S.C. § 78m(b)(2).

III.

PERMANENT INJUNCTION AS TO EXCHANGE ACT RULE 13b2-2

IT IS FURTHER ORDERED AND ADJUDGED that Rivers, his agents, servants, representatives, employees, and attorneys, and all persons in active concert or

participation with them who receive actual notice of this Judgment by personal service or otherwise, are permanently restrained and enjoined from violating Exchange Act Rule 13b2-2, 17 C.F.R. § 240.13b2-2, by making or causing to be made materially false or misleading statements or omitting to state, or causing another person to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which such statements are made, not misleading, to an accountant in connection with an audit, review, or examination or the filing of reports required to be filed with the Commission.

IV.

PERMANENT INJUNCTION AS TO EXCHANGE ACT RULE 13a-14

IT IS FURTHER ORDERED AND ADJUDGED that Rivers, his agents, servants, representatives, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise, are permanently restrained and enjoined from violating Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-14, by falsely certifying in periodic reports filed with the Commission that to the best of their knowledge, there are in the reports no untrue statements of material fact or omissions of material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

V.

PERMANENT INJUNCTION AGAINST AIDING AND ABETTING VIOLATIONS OF EXCHANGE ACT SECTIONS 13(a) AND RULES 12b-20, 13a-1, 13a-11 AND 13a-13

IT IS FURTHER ORDERED AND ADJUDGED that Rivers, his agents, servants, representatives, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise, are permanently restrained and enjoined from aiding and abetting any violation of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13, by knowingly providing substantial assistance to an issuer in filing reports with the Commission: that contain any untrue statement of material fact; that omit to state any material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; that fail to accurately and fairly reflect financial information; or that fail to include the information expressly required to be included in a statement or report.

VI.

PERMANENT INJUNCTION AGAINST AIDING AND ABETTING VIOLATIONS
OF EXCHANGE ACT SECTIONS 13(b)(2)(A) AND 13(b)(2)(B)

IT IS FURTHER ORDERED AND ADJUDGED that Rivers, his agents, servants, representatives, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise, are permanently restrained and enjoined from aiding and abetting any violation of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B), by knowingly providing substantial assistance to an issuer in failing to make and keep books, records and accounts that, in reasonable detail, accurately and fairly reflect the issuer's transactions and disposition of assets, or knowingly providing

substantial assistance to an issuer in failing to devise and maintain a system of reasonable internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statement in accordance with Generally Accepted Accounting Principles or any other criteria applicable to such statements.

VII.

OFFICER AND DIRECTOR BAR

IT IS FURTHER ORDERED AND ADJUDGED that, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), Rivers is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

VIII.

DISGORGEMENT AND CIVIL PENALTY

IT IS FURTHER ORDERED AND ADJUDGED that upon motion of the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains and/or a civil penalty pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Rivers will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Rivers may not challenge the validity of the Consent or this Judgment; (c) solely for the

purposes of such motion, the allegations of the Complaint shall be accepted as true by the Court; and (d) to the extent permitted by law the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

IX.

INCORPORATION OF RIVERS' CONSENT

IT IS FURTHER ORDERED AND ADJUDGED that the Consent of Rivers is incorporated herein with the same force and effect as if fully set forth herein, and that Rivers shall comply with all of the undertakings and agreements set forth therein.

X.

RETENTION OF JURISDICTION

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

Date: March 1, 2011

SHERYL L. LOESCH, CLERK

s/R. Olsen, Deputy Clerk

1. **Appealable Orders:** Courts of Appeals have jurisdiction conferred and strictly limited by statute:
 - (a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291:** Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” Pitney Bowes, Inc. V. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge’s report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).
 - (b) **In cases involving multiple parties or multiple claims,** a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys’ fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy’s Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).
 - (c) **Appeals pursuant to 28 U.S.C. Section 1292(a):** Appeals are permitted from orders “granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions...” and from “[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed.” Interlocutory appeals from orders denying temporary restraining orders are not permitted.
 - (d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court’s denial of a motion for certification is not itself appealable.
 - (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen V. Beneficial Indus. Loan Corp., 337 U.S. 541,546,69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass’n v. Blythe Eastman Paine Webber, Inc., 890 F. 2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).
2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:
 - (a) **Fed.R.App.P. 4(a)(1):** A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.
 - (b) **Fed.R.App.P. 4(a)(3):** “If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.”
 - (c) **Fed.R.App.P.4(a)(4):** If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.
 - (d) **Fed.R.App.P.4(a)(5) and 4(a)(6):** Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.
 - (e) **Fed.R.App.P.4(c):** If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution’s internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.
3. **Format of the notice of appeal:** Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant
4. **Effect of a notice of appeal:** A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).