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95-00

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
SEP 15 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

SECURITIES AND EXCHANGE COMMISSION :

PLAINTIFF,

vs.

HEARTSOFT, INC., BENJAMIN P. SHELL and
JIMMY BUTLER

DEFENDANT.

00CV0766B (M)

No.

ENTERED ON DOCKET
DATE **SEP 15 2000**

**AGREED FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF AS TO BENJAMIN P. SHELL.**

This matter came before this Court on the application of plaintiff Securities and Exchange Commission ("Commission") by consent of defendant Benjamin P. Shell ("Shell"), for issuance of this Final Judgment in this action, providing the relief set out herein.

Shell has provided this Court with a Stipulation and Consent ("Consent") in which, inter alia, he 1) acknowledges and admits the in personam jurisdiction of this Court over him, and the subject matter jurisdiction of this Court over the cause of action claimed by the Commission herein; 2) waives entry of findings of fact and conclusions of law under rule 52, Fed. Rules Civ. Proc., 28 U.S.C.A., with respect to the entry of this Order; and 3) consents, for purposes of this action only, to the entry of this Final Judgment, without admitting or denying any of the allegations of the Commission's Complaint in this matter and without admitting or denying any violation of the federal securities laws, except as to jurisdiction, as set forth herein.

It appears this Court has in personam jurisdiction over Shell, and subject matter jurisdiction over the cause of action claimed by the Commission; that no further notice or hearing is required

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prior to entry of this Final Judgment and there is no just reason for delay; and the Court has been fully advised of the premises for entry of this Final Judgment.

IT IS THEREFORE ORDERED:

I.

Shell and his agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined, in the absence of any applicable exemption, directly or indirectly:

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

(b) carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or for delivery after sale, the securities of any issuer, unless and until a registration statement is in effect as to such securities; 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 the securities of any issuer, unless and until a registration statement has been filed with the Commission as to such securities, or while a registration statement as to such securities is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding of examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

II.

Shell and his agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined, in the offer or sale of a security, from violating section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], by making 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, or
- b.) to obtain money or property by means of any untrue statement of a material fact or any omission 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 transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

Shell and his agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined from violating section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Commission Rule 10b-5 [17 C.F.R. § 240.10b-5], directly or indirectly, in connection with the purchase or sale of securities, by making use of any means or instrumentalities 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 devices, schemes and artifices to defraud;
- c.) to make untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- d.) to engage in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons, in connection with the purchase and sale of securities.

IV.

Shell and his agents, servants, employees, attorneys-in-fact and all other persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating or aiding and abetting violations of section 13(a) of the Exchange Act [15 U.S.C. 78m(a)], and Commission Rules 13a-1 and 13a-13 [17 C.F.R. § § 240.13a-1 and 240.13a-13], directly or indirectly,

(a) by knowingly circumventing or knowingly failing to file with the Commission, reasonably current information and documents required to be included in or filed with an application or registration statement filed pursuant to section 12 of the Exchange Act; or

(b) by knowingly circumventing or knowingly failing to file with the Commission, such required annual reports described in section 13(a)(2) of the Exchange Act [15 U.S.C. 78m(a)(2)].

V.

Shell shall pay disgorgement in the amount of \$96,402.99, representing his gains of \$89,647.39 from the conduct alleged in the Complaint, plus pre-judgment interest thereon in the amount of \$6,755.60.

VI.

Shell shall pay a civil penalty of \$50,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Shell shall, within 60 days of the entry of this Order, pay the full amount of disgorgement, prejudgment interest thereon and civil penalty, totaling \$146,402.99 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Shell as a defendant in this civil action, and the docket number hereof, a copy of which cover letter and money order or check shall be sent to Harold F. Degenhardt, the District Administrator of the Fort Worth District Office, Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Fort Worth Texas 76102.

VII.

The Consent filed herein be, and the same is hereby, incorporated in this Final Judgment with the same force and effect as if fully set forth herein.

VIII.

This Court shall retain jurisdiction over this matter and over defendant Shell for purposes of enforcing the terms of this Final Judgment and for all other purposes.

IX.

This Final Judgment may be served upon defendant Shell in person or by mail either by the United States marshal, by the Clerk of the Court or by any member of the staff of the Commission.

X.

There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Agreed Final Judgment of Permanent Injunction and Other Equitable Relief as to Benjamin P. Shell pursuant to Rule 54 of the Federal Rules of Civil Procedure.

DATED and SIGNED this 15th day of Sept., 2000.

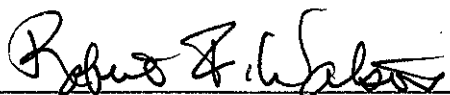

UNITED STATES DISTRICT JUDGE

AGREED AS TO FORM AND SUBSTANCE:

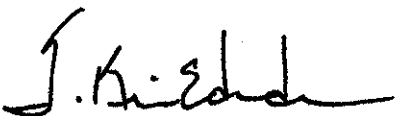


BENJAMIN P. SHELL

APPROVED AS TO FORM AND SUBSTANCE:



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