

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES SECURITIES AND)
EXCHANGE COMMISSION,)
)
Plaintiff,)

Case No. 4:20-00327-CV-RK

v.)

PHILLIP HUDNALL, TODD ESH,)
BIRDDOG BUSINESS GROUP LLC,)
BIRDDOG OIL EQUIPMENT, LLC, DUC)
"DOUG" NGUYEN, BRIAN)
HUDNALL, DONDON LLC, KANSAS)
OIL RESERVES LLC, KANSAS OIL)
RESERVES 2 LLC, PHARYN)
RESOURCES LLC,)
)
Defendants.)

FINAL JUDGMENT AS TO DEFENDANT TODD ESH

This matter comes before the Court on Plaintiff U.S. Securities and Exchange Commission's ("SEC") Motion for Civil Penalties and Entry of Final Judgment Against Defendant Todd Esh ("Defendant Esh"). On May 20, 2020, pursuant to his consent, the Court Ordered, among other things, that Defendant Esh be permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities and Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5] and Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] and further Ordered that Defendant Esh shall pay disgorgement of ill-gotten gains, prejudgment interest thereon and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77 t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78 u(d)(3)] upon a Motion by the Commission to determine the amounts of disgorgement, prejudgment interest and civil penalty. Defendant Esh has Offered his signed Consent (attached as Exhibit A) to a Proposed Final Judgment which, if approved by the Court, will completely resolve this matter as to him by ordering the following monetary relief.

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Esh is liable for disgorgement of \$24,000, representing net profits gained as a result of the conduct alleged in

the Complaint, together with prejudgment interest thereon in the amount of \$810, and a civil penalty in the amount of \$54,000 pursuant to pursuant Section 20(d) of the Securities Act [15 U.S.C. § 77 t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78 u(d)(3)]. Defendant Esh shall satisfy this obligation by paying \$78,810 to the Securities and Exchange Commission pursuant to the terms of the payment schedule set forth in paragraph II below after entry of this Final Judgment.

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; Defendant Todd Esh's name 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 may enforce the Court's judgment for disgorgement and prejudgment interest by using all collection procedures authorized by law, including, but not limited to, moving for civil contempt at any time after 30 days following entry of this Final Judgment.

The Commission may enforce the Court's judgment for penalties by the use of all collection procedures authorized by law, including the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.*, and moving for civil contempt for the violation of any Court orders issued in this action. Defendant shall pay post judgment interest on any amounts due after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961. The Commission shall hold the

funds, together with any interest and income earned thereon (collectively, the “Fund”), pending further order of the Court.

The Commission may 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. The Court shall retain jurisdiction over the administration of any distribution of the Fund and the Fund may only be disbursed pursuant to an Order of the Court.

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 Esh 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 Esh’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.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Esh shall pay the total of disgorgement and prejudgment interest due of \$24,810 to the Securities and Exchange Commission within 30 days. Defendant Esh shall further pay the penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77 t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78 u(d)(3)] of \$54,000 in three equal installments of \$18,000. The first installment will be due within 14 days of the entry of the proposed Final Judgment; the second payment will be due within 180 days of the entry of the proposed Final Judgment; and the third, and last payment, will be due within 364 days of the entry of the proposed 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 pursuant to 28 U.S.C. § 1961 on any unpaid amounts due after 30 days of the entry of Final Judgment. Prior to making the final payment set forth herein, Defendant Esh shall contact the staff of the Commission for the amount due for the final payment.

If Defendant Esh 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.

III.

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.

IV.

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.

IT IS SO ORDERED.

s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

DATED: February 4, 2021