

1/1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
CLERKS OFFICE

2004 MAY 24 P 4: 02

U.S. DISTRICT COURT
DISTRICT OF MASS.

Civ. A. No. 02-11244 EFH

SECURITIES AND EXCHANGE COMMISSION, :
:
Plaintiff, :
:
v. :
:
BRUCE HILL and :
GRAHAM MARSHALL, :
:
Defendants. :

~~PROPOSED~~ ^{E.F.H.} FINAL JUDGMENT OF DEFAULT
AGAINST GRAHAM MARSHALL

WHEREAS, on June 21, 2002, Plaintiff Securities and Exchange Commission ("SEC") commenced this action by filing a Complaint against, among others, defendant Graham Marshall, and on November 19, 2002, filed an Amended Complaint ("Complaint") against, among others, defendant Marshall;

WHEREAS, in accordance with Rule 4(h)(1) of the Federal Rules of Civil Procedure, the SEC served a copy of the summons and complaint on Marshall on October 16, 2002;

WHEREAS, Marshall failed to defend this action;

WHEREAS, the Court accepts as true the factual allegations in the Complaint against Marshall, who has defaulted, and finds:

1. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act of 1933 ("Securities Act"), [15 U.S.C. § 77v(a)], and Sections 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), [15 U.S.C. §§ 78u(e) and 78aa].
2. Marshall employed the means or instrumentalities of interstate commerce, the

mails, or facilities of national securities exchanges to engage in the conduct alleged in the Complaint.

3. Through the conduct alleged in the Complaint, Marshall violated Section 17(a) of the Securities Act, [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act, [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder, [17 C.F.R. § 240.10b-5].

4. Through the conduct alleged in the Complaint, Marshall aided and abetted Inso's violations of Sections 13(a) and 13(b)(2)(a) of the Exchange Act, [15 U.S.C. §§ 78m(a), 78m(b)(2)(A)], and Rules 12b-20 and 13a-1 thereunder; [17 C.F.R. §§ 240.12b-20, 240.13a-1].

5. Through the conduct alleged in the Complaint, Marshall violated Section 13(b)(5) of the Exchange Act, [15 U.S.C. § 78m(b)(5)], and Rule 13b2-1 thereunder, [17 C.F.R. § 240.13b2-1].

6. Through the conduct alleged in the Complaint, Marshall improperly avoided losses of \$238,365. The use of interest rates established quarterly by the Internal Revenue Service for money owed to the United States Treasury is reasonable. Accordingly, prejudgment interest on the disgorgement amount of \$238,365 entered herein against Marshall totals \$107,320.95.

WHEREAS, the SEC has applied, pursuant to Rules 37(d) and 55(b)(2) of the Federal Rules of Civil Procedure for the entry of this Final Judgment by Default, and the Court having considered the SEC's motion for a default judgment, and all the pleadings and evidence submitted in support thereof; and being fully advised in the premises;

NOW THEREFORE, BASED ON THE FOREGOING:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the SEC's motion for entry of this Final Judgment by Default against Defendant Graham Marshall is **GRANTED** and the Clerk is hereby directed to enter Defendant Graham Marshall's default.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Marshall and his agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment be and hereby are permanently enjoined and restrained, directly or indirectly, singly or in concert, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, from:

- (1) employing any device, scheme, or artifice to defraud;
- (2) obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
or
- (3) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser,

in violation of Section 17(a) of the Securities Act, [15 U.S.C. § 77q(a)].

III.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Marshall and his agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment be and hereby are permanently enjoined and restrained from, directly or indirectly, singly or in concert, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange:

- (1) employing any device, scheme, or artifice to defraud;
- (2) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading; and
- (3) engaging in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person,

in violation of Section 10(b) of the Exchange Act, [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder, [17 C.F.R. § 240.10b-5].

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Marshall and his agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment be and hereby are permanently enjoined and restrained from, directly or indirectly, singly or in concert, aiding and abetting any violation of Sections 13(a) and 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A)] and Rules 13a-13 and 12b-20 thereunder [17 C.F.R. §§ 240.13a-13 and

240.12b-20] by knowingly providing substantial assistance to an issuer of securities registered under Section 12 of the Exchange Act [15 U.S.C. § 78l] that fails to file, in accordance with such rules and regulations as the SEC prescribes as necessary or appropriate, such information and documents as the SEC requires to keep reasonably current the 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 such annual and quarterly reports as the SEC prescribes, including, but not limited to, quarterly reports on Form 10-Q as prescribed by Rule 13a-13 [17 C.F.R. § 240.13a-13], or that fails to include, in addition to the information expressly required to be included in any statement or report filed pursuant to Section 13(a) of the Exchange Act, [15 U.S.C. § 78m(a)], such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, or that fails to make and keep books, records, and accountings, which, in reasonable detail, accurately reflect the transactions and dispositions of the assets of the issuer.

V.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Marshall and his agents, servants, employees, attorneys, successors or assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment be and hereby are permanently enjoined and restrained from, directly or indirectly, knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying, or causing to be falsified, any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act, [15 U.S.C. § 78m(b)(2)], in violation of Section 13(b)(5) of the Exchange Act, [15 U.S.C. § 78m(b)(5)], and Rule 13b2-1 thereunder, [17 C.F.R. § 240.13b2-1].

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Marshall shall pay disgorgement in the amount of \$238,365, representing his ill-gotten gains from the conduct alleged in this proceeding, plus prejudgment interest thereon in the amount of \$107,320.95, for a total disgorgement amount of \$345,685.95. Payment shall be made within thirty days of entry of this judgment to the Registry of the Court, by cashier's check, certified check, or U.S. postal money order, made payable to "Clerk, United States District Court", under cover of a letter that identifies Marshall as the defendant, the name and number of this action and the name of this Court, with a copy to SEC counsel at the SEC's Boston District Office located at Tremont Street, Suite 600, Boston, MA 02108. The disgorged funds and prejudgment interest shall be held by the Registry of this Court in an interest bearing account pending further order of the Court.

VII.

IT IS FURTHER ORDERED THAT Marshall shall pay a civil money penalty in the amount of \$ 25,000 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)]. Marshall shall make this payment within ten (10) business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Marshall as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment.

VIII.

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

IX.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, implementing and enforcing the terms and conditions of this Final Judgment.

X.

IT IS FURTHER ORDERED that the Court expressly determines that there is no just reason for delay in the entry of this Final Judgment. The Clerk of the Court is hereby directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure to enter this Final Judgment forthwith.

XI.

IT IS FURTHER ORDERED that pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, this Final Judgment is binding upon Marshall, his agents, servants, employeess, partners, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

Dated:

June 9, 2004


UNITED STATES DISTRICT JUDGE