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U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. TRAFFIC MONSOON, LLC and CHARLES SCOVILLE, Defendant.	MEMORANDUM DECISION AND ORDER GRANTING MOTION FOR DEFAULT JUDGMENT AGAINST CHARLES SCOVILLE Case No. 2:16-cv-000832-JNP District Judge Jill N. Parrish

Before the court is a motion for a default judgment against Charles Scoville. ECF No. 243. The Securities and Exchange Commission (SEC) requests three forms of relief: (1) injunctive relief, (2) disgorgement of profits and prejudgment interest, and (3) a civil penalty. Having reviewed the complaint, the SEC's motion, and the evidence presented by the SEC, the court GRANTS the motion for a default judgment against Scoville.

A certificate of default has been entered against Scoville. The court, therefore, accepts the facts pled in the complaint as true. *See United States v. Craighead*, 176 F. App'x 922, 924 (10th Cir. 2006) (unpublished). The court also considers the extensive evidence presented in the preliminary injunction hearing as well as the exhibits attached to the SEC's motion for a default judgment in determining whether it is entitled to the injunctive and monetary relief requested. *See* FED. R. CIV. P. 55(b)(2); *Action S.A. v. Marc Rich & Co.*, 951 F.2d 504, 508 (2d Cir. 1991). In light of these established facts and the evidence before the court, the court will address each of the three categories of relief requested by the SEC in turn.

I. INJUNCTIVE RELIEF

The operative complaint notified Scoville that the SEC sought a permanent injunction commanding Scoville and his servants not to engage in the AdPack scheme at the heart of this case. "An injunction based on the violation of securities laws is appropriate if the SEC demonstrates a reasonable and substantial likelihood that the defendant, if not enjoined, will violate securities laws in the future." *S.E.C. v. Pros Int'l, Inc.*, 994 F.2d 767, 769 (10th Cir. 1993). "Determination of the likelihood of future violations requires analysis of several factors, such as the seriousness of the violation, the degree of scienter, whether defendant's occupation will present opportunities for future violations and whether defendant has recognized his wrongful conduct and gives sincere assurances against future violations." *Id.*

There is a reasonable and substantial likelihood that Scoville, if not enjoined, will violate securities laws in the future. Scoville's violations were very serious, resulting in tens of millions of dollars of losses to victims across the globe. He has also engineered similar schemes in the past, demonstrating a propensity for creating online Ponzi schemes. But the factor that weighs most heavily in favor of injunctive relief is the absence of any recognition on the part of Scoville that his conduct was illegal. In the preliminary injunction proceedings, Scoville consistently argued that his actions were legal and not a Ponzi scheme. He argued for the return of all or part of the funds seized by the court so that he could perpetuate the AdPack scheme. And in a letter that Scoville recently sent to the court, it is apparent that he is convinced that he has done nothing wrong. [Docket 235]. In the absence of any recognition of the illegal nature of his conduct and without any assurances against future violations, the court concludes that injunctive relief is warranted.

The court has reviewed the complaint to determine the scope of the injunction requested in that document and finds that Scoville was on notice that the SEC sought an injunction prohibiting him from engaging in the AdPack scheme described in the complaint and similar schemes. Accordingly, the SEC is entitled to the following injunction:

> Charles Scoville is hereby prohibited from soliciting, accepting, or depositing any monies obtained from actual or prospective investors, individuals, customers, companies, or entities for Traffic Monsoon or a business model substantially similar to Traffic Monsoon's sale of AdPacks. Furthermore, Charles Scoville's agents, servants, employees, attorneys, and other parties in active concert with Charles Scoville, when acting in such capacities, are prohibited from soliciting, accepting, or depositing any monies obtained from actual or prospective investors, individuals, customers, companies, or entities for Traffic Monsoon or a business model substantially similar to Traffic Monsoon's sale of AdPacks.

II. DISGORGEMENT OF PROFITS AND PREJUDGMENT INTEREST

"[A] disgorgement award that does not exceed a wrongdoer's net profits and is awarded for victims is equitable relief permissible under § 78u(d)(5)." *Liu v. S.E.C.*, 140 S. Ct. 1936, 1940 (2020). "Disgorgement is by nature an equitable remedy as to which a trial court is vested with broad discretionary powers." *S.E.C. v. Maxxon, Inc.*, 465 F.3d 1174, 1179 (10th Cir. 2006) (citation omitted). But a defendant should only be required to disgorge profits that are "causally connected to the [securities] violation." *Id.* (citation omitted).

Here, Scoville reported $2,426,749 in business income on his 2015 tax return. Because the Traffic Monsoon AdPack scheme is the only plausible source for this business income, the court finds that this sum is a " 'reasonable approximation' of illegal profits" derived from this scheme. *Id.* (citation omitted).

District courts also have discretion to award prejudgment interest on a disgorgement award. *S.E.C. v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1476 (2d Cir. 1996). Courts have approved the use

of the IRS underpayment rate for calculating the amount of prejudgment interest. *Id.* at 1467–68. The court finds that an award of prejudgment interest is appropriate here to prevent Scoville from receiving the benefit of what amounts to a "free loan procured as a result of illegal activity." *See S.E.C. v. Moran*, 944 F. Supp. 286, 295 (S.D.N.Y. 1996).

The SEC has calculated the prejudgment interest on the $2,426,749 in illegal profits to be $110,893.93.[1] The court adds this amount to the disgorgement award for a total award of $2,537,642.93. In accordance with the Supreme Court's recent decision in *Liu*, the court orders that any amounts collected on the disgorgement award first be used for victim compensation. 140 S. Ct. at 1940.

III. CIVIL PENALTY

Congress has authorized courts "to impose, upon a proper showing, a civil penalty to be paid by the person who" violates either the Securities Act or the Exchange Act. 15 U.S.C. §§ 77t(d)(1), 78u(d)(3)(A). "The amount of the penalty shall be determined by the court in light of the facts and circumstances." *Id.* §§ 77t(d)(2)(A), 78u(d)(3)(B)(i). But the amount of a civil penalty is capped by statute according to a three-tiered system. For individuals, the maximum penalty permitted is: (1) $5,000 per violation or the gross amount of pecuniary gain at the first tier, (2) $50,000 per violation or the gross amount of pecuniary gain at the second tier, and (3) $100,000 per violation or the gross amount of pecuniary gain at the third tier. *Id.* §§ 77t(d)(2), 78u(d)(3)(B).[2]

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[1] The SEC calculated interest until June 30, 2016, about a month before this court authorized the seizure of Scoville's bank accounts.

[2] The per-violation amounts are adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act. *See* 17 C.F.R. § 201.1001(b). Because the court elects not to impose a per-violation penalty, there is no need to determine the precise cap for years when the violations occurred.

The SEC argues that Scoville's violations are egregious enough to warrant a third-tier civil penalty cap. But it is otherwise agnostic as to the amount of the civil penalty that should be assessed in this case, leaving it to the court to determine the proper amount of the penalty.

It is unnecessary to determine which of the three penalty tiers is appropriate in this case because the court finds that pecuniary gain, rather than a per-violation penalty, is the proper measure of the civil penalty here. A penalty based upon the gross amount of pecuniary gain is permitted at all three tiers. Considering the facts and circumstances of this case, the court determines that the pecuniary gain proven by the SEC is the proper amount of a civil penalty. Accordingly, the court orders that Scoville be assessed a civil penalty in the amount of $2,426,749.

IV. RULE 54(b)

Finally, the SEC requests that the default judgment against Scoville be entered as a final judgment under Rule 54(b) of the Federal Rules of Civil Procedure. This rule provides that "the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." FED. R. CIV. P. 54(b).

The court determines that there is no just reason to delay entry of a final judgment against Scoville. This order disposes of all claims against Scoville. And because the other defendant in this case is a business entity controlled by a receiver appointed by this court, there is little chance of piecemeal appeals in this case. Accordingly, a final judgment on the claims against Scoville is appropriate here.

CONCLUSION

The court GRANTS the SEC's motion for a default judgment against Charles Scoville. The SEC is entitled to a final judgment against Scoville awarding injunctive relief, a disgorgement award in the amount of $2,537,642.93, and a civil penalty in the amount of $2,426,749.

DATED January 5, 2021.

BY THE COURT

Jill N. Parrish
United States District Court Judge