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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:95-CV-122-BR-1

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
JEROME C. PINCKNEY, RICHARD L.)
ARNOLD, DONALD E. ELDER,)
FERNANDO CRUZ, SHAUN K. R.)
MAXWELL, ANTHONY BUKOVICH and)
SIX CAPITAL CORPORATION,)
)
Defendants.)

O R D E R

This matter came on for trial before the Court, without a jury, in Wilmington, North Carolina, on 20 October 1997, as to defendants Anthony Bukovich ("Bukovich") and Six Capital Corporation ("Six Capital"). Representing plaintiff ("SEC") were Edward G. Sullivan and Peter J. Luiso. Bukovich was present throughout the trial, appearing pro-se.¹

I. Background

This matter involves the alleged fraudulent offering of prime bank securities in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a), in two related schemes. In the first scheme, occurring from April 1994 through May 1994, the SEC contends that defendants Pinckney, Arnold, Elder, Cruz, and

¹ It should be noted that Bukovich and Six Capital were initially represented by local and lead counsel, both of whom withdrew with defendants' consent on 11 July 1997 and 8 October 1997, respectively.

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Maxwell engaged in deceptive practices in seeking a minimum investment of \$10 million. As will be shown below, the particulars of this scheme are no longer at issue.

The second scheme, lasting from late August 1994 through September 1994, allegedly involved defendants Elder, Cruz, Bukovich, and Six Capital. In pursuing this second scheme, these defendants allegedly employed deception in seeking a minimum investment of \$870,000 in an offering involving fraudulent prime bank securities. During the course of this offering to prospective investor Justin Gasarch ("Gasarch"), Bukovich and Six Capital allegedly made numerous misrepresentations and false statements. In response, Bukovich and Six Capital maintain that they were merely involved in the process of negotiating consulting contracts and never engaged in an offering of securities or held themselves out as brokers, traders, or experts in securities transactions.

Prior to this trial, issues pertinent to several of the defendants have been resolved. Specifically, a permanent injunction has been issued with respect to defendants Arnold, Cruz, Elder, and Maxwell. Only the issue of civil penalties against Cruz, Elder, and Maxwell remains as to those four defendants. Furthermore, the SEC has voluntarily dismissed all claims against defendant Pinckney with prejudice.

Consequently, the only claims at issue in this trial relate to whether Bukovich and Six Capital engaged in conduct violative of Section 17(a) of the Securities Act of 1933, 15 U.S.C.

§ 77q(a). The SEC seeks both a permanent injunction and civil penalties.

II. Findings of Facts

Based on the facts stipulated to by the parties in the pretrial order and the evidence found credible by the court, the court finds the following facts:

- 1) Plaintiff is an agency of the United States Government.
- 2) Defendant Bukovich is a citizen of the United States and a resident of Hillsborough County, Florida.
- 3) Defendant Six Capital is a corporation organized under the laws of the State of Florida with its principal place of business situated in Hillsborough County, Florida.
- 4) Bukovich is president and controlling shareholder of Six Capital.
- 5) In conjunction with the offering of fraudulent, nonexistent prime bank securities, Bukovich and Six Capital made numerous misrepresentations including untrue assertions to prospective investors that they had sold prime bank instruments in the past.
- 6) Bukovich and Six Capital were involved in an offering to investor Justin Gasarch which was conducted in complicity with defendants Cruz and Elder.

- 7) Cruz outlined the prime bank securities trading program to representatives of Gasarch and received Gasarch's letter of intent with verification of funds.
- 8) Thereafter, Bukovich and Six Capital forwarded the proposed contract outlining the trading program to Gasarch.
- 9) Bukovich's and Six Capital's trading program involved trading in supposed "bank guarantees" issued by the top 15 banks in western Europe.
- 10) The guarantees were ostensibly issued in denominations of \$1 million, bore no interest and matured in one year.
- 11) To enter the program, Gasarch would be required to provide a minimum investment of \$870,000, of which all but \$100,000 would be deposited in an account at the transaction bank (the trading account) with the remaining \$100,000 deposited in a securities account at Merrill Lynch.
- 12) It was represented that:
 - (a) both accounts would remain solely in the investor's name, thus providing safety; and
 - (b) most of the money in the investor's bank account would be used to purchase a \$1 million face amount bank guarantee purchased at 75% of face value, which would in turn be resold immediately to

Merrill Lynch (or a buyer provided by them) at a marked-up price (92.5%), thus generating profits in each trade.

- 13) All facilitators of the investment stood to receive a percentage of the profits on each trade.
- 14) Bukovich and Six Capital, while investing nothing of their own, stood to receive 50% of the trading profits on each trade.
- 15) Bukovich made statements to Gasarch's professional representatives--namely his CPA and his attorney--about the proposals.
- 16) After Gasarch's letter of intent with his verification of funds was obtained, Bukovich and Six Capital presented the proposed contract to Gasarch (primarily through Gasarch's attorney Richard M. Salsburg).
- 17) The Bukovich/Six Capital proposed contract, dated 14 September 1994, provided that the parties to the agreement were to be Gasarch and Six Capital.
- 18) Bukovich and Six Capital made the following misrepresentations and false statements to Salsburg in furtherance of their effort to obtain to Gasarch's investment in the "bank guarantee" trading program:
 - (a) that Merrill Lynch was involved in the trading program;

(b) that the reason that \$100,000 must remain in the Merrill Lynch account to be opened in Gasarch's name was to provide "window dressing"--in that the amount remaining in the account would demonstrate to Merrill Lynch that Gasarch's money was legitimate;

(c) that Bukovich and Six Capital had extensive contacts with European banks who updated them daily and weekly with the availability of trading instruments;

(d) that Gasarch's funds must be kept on deposit for a minimum of four trading transactions;

(e) that Bukovich possessed extensive knowledge about the nature of the supposed trading program in "bank guarantee" instruments;

(f) that Bukovich had done previous deals in prime bank instruments; and

(g) that the investment in the "bank guarantee" program was a "clean, neat, safe, legitimate transaction."

- 19) Bukovich and Six Capital were, at the approximate time of their conduct in the Gasarch offering, actually engaged in a second unrelated offering of a fraudulent prime bank instrument (in the form of a "standby letter of credit") to Bok Pon of San Francisco, California.

- 20) Bukovich took on the role of an active salesman in the Pon offering.
- 21) Bukovich directed the San Francisco-based Pon to travel to a Boston suburb where Pon met a man known only as "Raymond."
- 21) Raymond was sent by Bukovich to guide Pon through the account opening and deposit at Fleet Bank in Medfield, Massachusetts.
- 22) Pon's deposit of \$750,000 was returned to him only because the bank returned the funds to him and unilaterally closed his account.
- 23) Bukovich faxed a limited power of attorney from Florida to Pon in Massachusetts, which Pon executed.
- 24) The instrument in the offering to Pon is a hybrid of a legitimate instrument, but in the form used in the Pon contract is non-existent and fraudulent.

III. Conclusions of Law

- A) Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), proscribes fraudulent conduct in the offer and sale of securities.
- B) Bukovich and Six Capital made false and misleading representations as part of an effort to entice investors to place their money in the trading of non-existent prime bank instruments.

- C) The misrepresentations made by Bukovich and Six Capital were material.
- D) The misrepresentations bore upon the legitimacy of the program, the return on investment, and the risk associated with the investment, all issues central to the decision-making process.
- E) The misrepresentations made by Bukovich and Six Capital were made with scienter.
- F) Scienter is demonstrated by, inter alia,
 - 1) Bukovich's suggestions to Pon that he was the person at the top of the organization offering the investment that supposedly generated enormous profit; and
 - 2) his misrepresentations, incredible on their face, about the safety of the investment, the return on investment, and the manner in which profits were to be generated.
- H) The alleged prime bank instruments offered to Gasarch and Pon fall within the definitions of the term "security" set forth in section 2(1) of the Securities Act.
- (I) There is a reasonable likelihood that, if not enjoined, Bukovich and Six Capital will engage in future violations of § 77q(a).

IV. Conclusion

Based on the above findings of fact and conclusions of law, it is hereby ADJUDGED, ORDERED, and DECREED that:

- 1) defendants Bukovich and Six Capital as well as their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service, facsimile transmission or otherwise, and each of them, be and hereby are permanently enjoined and restrained from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), by, directly or indirectly, through the use of any means or instrument of transportation and communication in interstate commerce, or of the mails,
 - a) employing any device, scheme, or artifice to defraud;
 - b) obtaining 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 light of the circumstances under which they were made, not misleading; or
 - c) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser, in the offer or sale of any security.

2) Pursuant to its discretion under § 77t(d), the court declines to impose a monetary penalty.

This 3 November 1997.

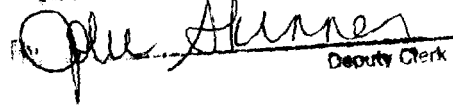


W. EARL BRITT
United States District Judge

sec/jep/sdn

I certify the foregoing to be a true
and correct copy of the original.

Clerk
United States District Court
Eastern District of North Carolina


Deputy Clerk