

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-cv-60082-DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION)
)
Plaintiff,)
)
v.)
)
FREDERIC ELM f/k/a FREDERIC ELMALEH,)
<i>et al.</i>)
)
Defendants,)
and)
)
AMANDA ELM f/k/a AMANDA ELMALEH,)
)
Relief Defendant.)
_____)

**FINAL JUDGMENT SETTING DISGORGEMENT AND CIVIL PENALTIES
AS TO DEFENDANT FREDERIC ELM f/k/a FREDERIC ELMALEH**

The Securities and Exchange Commission having filed a Complaint, and Defendant Frederic Elm f/k/a Frederic Elmaleh (“Elm”) having: entered a general appearance; consented to the Court’s jurisdiction over him and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in Paragraph IV) (the “Final Consent”); previously consented to the Judgment as to Defendant Frederic Elm f/k/a Frederic Elmaleh (“Injunction Judgment”), which the Court entered on March 25, 2015 [DE 56]; waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment or the Injunction Judgment:

I.

DISGORGEMENT AND PREJUDGMENT INTEREST

IT IS ORDERED AND ADJUDGED that Elm is liable for disgorgement in the amount of \$4,681,867.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$154,301.00 (including \$868,207.00

in disgorgement and \$28,614.00 in prejudgment interest for which he and Relief Defendant Amanda Elm f/k/a Amanda Elmaleh are jointly and severally liable) for a total of \$4,836,168.00. To date, Grisel Alonso, Esq., in her sole capacity as the Court-appointed receiver for Defendants Elm Tree Investment Advisors LLC, Elm Tree Investment Fund LP, Elm Tree 'e'conomy Fund LP, and Elm Tree Motion Opportunity LP (collectively, the "Receivership Entities"), has recovered investor funds belonging to the Receivership Entities that were transferred to third parties and has recovered and liquidated assets on behalf of the Receivership Entities that were purchased with investor funds. As set forth in the Final Judgment Setting Disgorgement as to Relief Defendant Amanda Elm f/k/a Amanda Elmaleh which the Court is entering concurrently with the instant Final Judgment, given that the receiver's recovery has resulted in proceeds on behalf of the Receivership Entities that exceed the amounts of disgorgement and prejudgment interest due and owing by Relief Defendant Amanda Elm f/k/a Amanda Elmaleh, and for which she and Elm are jointly and severally liable, said joint and several amounts are deemed satisfied upon entry of the instant Final Judgment and concurrent Final Judgment Setting Disgorgement as to Relief Defendant Amanda Elm f/k/a Amanda Elmaleh. Accordingly, upon entry of the instant Final Judgment, the balance owed by Elm on disgorgement is \$3,813,660.00 and the balance owed by Elm on prejudgment interest is \$125,687, for a total of \$3,939,347.

At the conclusion of the receivership, the Court will reduce the balance of the amounts of disgorgement and prejudgment interest for which Elm is liable under the instant Final Judgment by any additional recovery by the receiver of investor funds belonging to the Receivership Entities that were transferred to third parties and any additional recovery and liquidation by the receiver of assets on behalf of the Receivership Entities that were purchased with investor funds. To the extent the receiver's recovery does not exceed the balance of the amounts owed by Elm, Elm shall satisfy any such outstanding obligation under this Final Judgment within 14 days after the Court enters an Order discharging the Receiver.

Elm may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment also may be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Elm also may 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 (i) identifying the case title, civil action number, and name of this Court; (ii) identifying Elm as a defendant in this action; and (iii) specifying that payment is made pursuant to this Final Judgment.

Elm shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action:

Patrick R. Costello, Esq.
U.S. Securities & Exchange Commission
100 F Street N.E.
Washington, DC 20549-5985
costello@sec.gov

By making this payment, Elm relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to him. The Commission shall hold the funds and may propose a plan to distribute the funds subject to the Court's approval. The Court shall retain jurisdiction over the administration of any such distribution. If the Commission staff determines that the funds will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of an Order discharging the Receiver. Elm shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

II.

CIVIL PENALTY

IT IS ORDERED AND ADJUDGED that Elm is liable for a civil penalty in the amount of \$160,000 pursuant to Section 20(d) of the Securities Act of 1933, 15 U.S.C. § 77t(d); Section 21(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u(d); and Section 209(e) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-9(e). Elm shall make this payment within 14 days after entry of this Final Judgment.

Elm may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment also may be made directly from a

bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Elm also may 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

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III.

INCORPORATION OF CONSENT

IT IS FURTHER ORDERED AND ADJUDGED that the Final Consent filed herewith is incorporated with the same force and effect as if fully set forth herein, and that Elm shall comply with all of the undertakings and agreements set forth therein.

IV.

BANKRUPTCY NONDISCHARGEABILITY

IT IS FURTHER ORDERED AND ADJUDGED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Elm, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Elm under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Elm of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

V.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VI.

RULE 54(b) CERTIFICATION

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.

DONE AND ORDERED in Chambers in Fort Lauderdale, Florida, this 11th day of April, 2016.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies to:
Counsel of record