

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

U.S. SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

PAUL G. MERKLINGER, and
ENCORE ASSOCIATED LEASING, LLC,

Defendants,

and

BRIAN J. MERKLINGER,

Relief Defendant.

CIVIL ACTION No. 2:08-cv-13184

Hon. Judge Gerald E. Rosen

Hon. Magistrate Judge Mona. K. Majzoub

**FINAL JUDGMENTS BY DEFAULT AS TO DEFENDANTS
PAUL G. MERKLINGER AND ENCORE ASSOCIATED LEASING, LLC
AND RELIEF DEFENDANT BRIAN J. MERKLINGER**

This matter comes before the Court on Plaintiff U.S. Securities and Exchange Commission's ("Commission") Motion for Final Judgments of Permanent Injunction and Other Relief by Default. The Court, having considered the memorandum in support of that motion and all of the evidence and the arguments of the parties, and being fully advised in the premises, hereby finds:

1. That this Court has jurisdiction over the subject matter of this case and Defendant Paul G. Merklinger ("Defendant Merklinger"), Defendant Encore Associated Leasing, LLC ("Defendant Encore Leasing"), and Relief Defendant Brian J. Merklinger ("Relief Defendant").

2. That Defendant Merklinger, Defendant Encore Leasing, and Relief Defendant failed to answer, plead, or otherwise defend the Complaint filed in this action. As a result, the well-pleaded allegations contained in the Complaint are deemed admitted and entry of default judgments is appropriate.

3. That Defendant Merklinger and Defendant Encore Leasing engaged in transactions, acts, practices and courses of business which constitute violations of the federal securities laws. Specifically, they have engaged in transactions, acts, practices and courses of business which constitute violations of Section 17(a)(1) of the Securities Act of 1933 (“Securities Act”) [17 U.S.C. § 77q(a)(1)], Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

4. That without an order permanently enjoining Defendant Merklinger and Defendant Encore Leasing from violating the securities laws set forth herein, there is a substantial likelihood that they will continue to violate the federal securities laws.

5. That it is necessary and appropriate for Defendant Merklinger and Defendant Encore Leasing to pay disgorgement, plus prejudgment interest, and Defendant Merklinger to pay civil penalties, in order to make their violations of the federal securities laws unprofitable and to deter future violations.

6. That it is necessary and appropriate for Relief Defendant to pay disgorgement, plus prejudgment interest, to deprive him of the ill-gotten gains he received as a result of Defendant Merklinger and Defendant Encore Leasing’s violations of the federal securities laws.

I.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Merklinger and Defendant Encore Leasing, and their agents, servants, employees,

attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of 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) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Merklinger and Defendant Encore Leasing, and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Merklinger and Defendant Encore Leasing are liable, jointly and severally, for disgorgement of \$7,225,000, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$1,427,531, for a total of \$8,652,531.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Merklinger shall pay a civil penalty in the amount of \$100,000.00, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Relief Defendant is liable for disgorgement of \$175,000, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$25,359, for a total of \$200,359.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Commission may enforce the Court's judgment for disgorgement, prejudgment interest and civil penalties by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. In response to any such civil contempt motion by the Commission, any defendant may assert any legally permissible defense. Payments under this paragraph shall be made to the Clerk of this Court, together with a cover letter identifying Defendant Merklinger, Defendant Encore Leasing, and Relief Defendant as a defendant or relief 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. Defendant Merklinger, Defendant Encore Leasing, and Relief Defendant shall simultaneously transmit photocopies of each such payment and letter to the Commission's counsel in this action. Defendant Merklinger, Defendant Encore Leasing, and Relief Defendant relinquish all legal and equitable right, title, and interest in such payments, and no part of the funds shall be returned to them. The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS") or any other type of interest bearing account that is utilized by the Court. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The

Commission may propose a plan to distribute the Fund subject to the Court's approval. Defendant Merklinger, Defendant Encore Leasing, and Relief Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

VII.

IT IS HEREBY FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Final Judgment.

VIII.

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.

Dated: July 30, 2010

s/Gerald E. Rosen
HONORABLE GERALD E. ROSEN
CHIEF JUDGE, U.S. DISTRICT COURT

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 2, 2010, by electronic and/or ordinary mail.

s/Ruth A. Gunther
Case Manager
(313) 234-5137