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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16-5156 September Term, 2016
1:11-cv-00895-JEB
Filed On: January 31, 2017

Securities and Exchange Commission,
Appellee

v.

e-Smart Technologies, Inc., et al.,
Appellees

Mary A. Grace,
Appellant

Consolidated with 16-5157

BEFORE: Garland, Chief Judge, and
Henderson, Rogers, Tatel,
Brown, Griffith, Kavanaugh,
Srinivasan, Millett, Pillard,
and Wilkins, Circuit Judges

O R D E R

Upon consideration of the corrected petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16-5156 September Term, 2016

1:11-cv-00895-JEB

Filed On: November 7, 2016

Securities and Exchange Commission,
Appellee

v.

e-Smart Technologies, Inc., et al.,
Appellees

Mary A. Grace,
Appellant

Consolidated with 16-5157

BEFORE: Rogers, Srinivasan, and

Wilkins, Circuit Judges

ORDER

Upon consideration of the motion to dismiss in part and for partial summary affirmance, the opposition thereto, the reply, and the Rule 28(j) letters, it is

ORDERED that the motion be granted. The district court's January 14, 2016 order was final and appealable, see 28 U.S.C. § 1291; Cincinnati Ins. Co. v. All Plumbing, Inc., 812 F.3d 153, 156 (D.C. Cir. 2016), and the notice of appeal was untimely as to that order because it was filed more than 60 days after entry of the order, see Fed. R. App. 4(a)(1)(B). Appellants' motion for sanctions did not toll the time to file a notice of appeal. See Fed. R. App. P. 4(a)(4). The notice of appeal was timely as to the orders denying the motions for sanctions and reconsideration, but summary affirmance of those orders is warranted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). The district court did not abuse

discretion in denying the motions for sanctions and reconsideration. See Giles v. Transit Emps. Fed. Credit Union, 794 F.3d 1, 14-15 (D.C. Cir. 2015); Lucas v. Duncan, 574 F.3d 772, 775 (D.C. Cir. 2009); Ark Initiative v. Tidwell, 749 F.3d 1071, 1075 (D.C. Cir. 2014).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

Civil Action No. 11-895 (JEB)

E-SMART TECHNOLOGIES, INC., et al.,

Defendants.

ORDER

As set forth in the accompanying Memorandum Opinion and the Court's Memorandum Opinion of October 13, 2015, see ECF Nos. 785 and 786, the Court ORDERS that:

1. Plaintiff's request to permanently enjoin Defendants from violating the securities laws is GRANTED as follows:

   a. E-Smart Technologies, Inc., is hereby permanently enjoined from violating Securities Act sections 5(a) and (c) and Exchange Act sections 10(b), 13(a), 13(b)(2)(A) and (B) and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13;

   b. Mary A. Grace is hereby permanently enjoined from violating Securities Act sections 5(a) and (c) and Exchange Act sections 10(b) and 16(a) along with Rules 10b-5 and 16a-3, and from aiding or abetting violations of Exchange Act sections 13(a), 13(b)(2)(A) & (B) & Rules 12b-20, 13a-1, 13a-11, and 13a-13;

   c. Tamio Saito is hereby permanently enjoined from violating Exchange Act sections 10(b) and 16(a) and Rules 10b-5 and 16a-3; and

d. IVI Smart Technologies, Inc., and Intermarket Ventures, Inc., are hereby permanently enjoined from violating Securities Act sections 5(a) and (c);

2. Plaintiff's request for an injunction barring Defendants Grace and Saito from serving as officers and directors of securities issuers is GRANTED as follows:

a. Grace is hereby enjoined from serving as an officer or director for 10 years from the date of this Order; and

b. Saito is hereby enjoined from serving as an officer or director for 5 years from the date of this Order;

3. Plaintiff's request for an injunction barring Defendants Grace and Saito from participating in an offering of penny-stock is GRANTED as follows:

a. Grace is hereby barred from participating in any penny-stock offering

for 10 years from the date of this Order; and

b. Saito is hereby barred from participating in any penny-stock offering for 5 years from the date of this Order;

4. Plaintiff's request for disgorgement and prejudgment interest against Saito is DENIED;

5. Plaintiff's request for disgorgement and prejudgment interest against e-Smart, IVI, Intermarket, and Grace is GRANTED as follows:

a. E-Smart, IVI, Intermarket, and Grace are jointly and severally liable for disgorging $15,117,286 relating to their Securities Act Section 5 violation (comprising $11,310,256 principal and $3,807,030 interest);

b. E-Smart must disgorge $6,269,186 relating to its two Exchange Act violations (comprising $5,043,444 principal and $1,225,742 interest); and

c. Grace is, on account of her single Exchange Act violation, jointly and severally liable with e-Smart for disgorging $329,386 of the $6,269,186 total disgorgement figure (comprising $264,985 principal and $64,401 interest);

6. Plaintiff's request for third-tier civil penalties is GRANTED as follows:

a. E-Smart shall pay $1,950,000;
b. IVI shall pay $650,000;
c. Intermarket shall pay $650,000;
d. Saito shall pay $130,000; and
e. Grace shall pay $2,000,000;

7. Plaintiff's request that it be permitted to later move for establishment of a Fair Fund is GRANTED; and

8. Plaintiff's [811] Motion to Seal is GRANTED, the documents having already been filed under seal pursuant to Plaintiff's Motion for Summary Judgment, ECF No. 324, Attachment Nos. 13 & 15.

IT IS SO ORDERED.

/s/ James E. Boasberg
JAMES E. BOASBERG
United States District Judge

Date: January 14, 2016

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

Civil Action No. 11-895 (JEB)

E-SMART TECHNOLOGIES, INC., et al.,

Defendants.

ORDER

As set forth in the accompanying Memorandum Opinion, the Court ORDERS that:

1. Plaintiff's request to permanently enjoin Defendants from violating the securities laws is GRANTED as follows:

a. E-Smart will be permanently enjoined from violating Securities Act sections 5(a) and (c) and Exchange Act sections 10(b), 13(a), 13(b)(2)(A) and (B) and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13;

b. Grace will be permanently enjoined from violating Securities Act sections 5(a) and (c) and Exchange Act sections 10(b) and 16(a) along with Rules 10b-5 and 16a-3, and will be enjoined from aiding or abetting violations of Exchange Act sections 13(a), 13(b)(2)(A) and (B) and Rules 12b-20, 13a-1, 13a-11, and 13a-13;

c. Saito will be permanently enjoined from violating Exchange Act sections 10(b) and 16(a) and Rules 10b-5 and 16a-3; and

d. IVI will be permanently enjoined from violating Securities Act sections 5(a) and (c)

e. Intermarket will be permanently enjoined from violating Securities Act sections 5(a) and (c);

2. Plaintiff's request for an injunction barring Defendants Grace and Saito from serving as officers and directors of securities issuers is GRANTED as follows:

a. Grace will be enjoined from serving as an officer or director for 10 years; and

b. Saito will be enjoined from serving as an officer or director for 5 years;

3. Plaintiff's request for an injunction barring Defendants Grace and Saito from participating in an offering of penny-stock is

GRANTED as follows:

a. Grace will be barred from participating in any penny-stock offering for 10 years; and

b. Saito will be barred from participating in any penny-stock offering for 5 years;

4. Plaintiff's request for disgorgement and prejudgment interest against Saito is DENIED, and its request for disgorgement and interest against all other Defendants is DENIED WITHOUT PREJUDICE;

5. The Court ORDERS that Plaintiff shall, by October 27, 2015, file supplemental briefing, not to exceed 15 pages, to address deficiencies identified by the Court in the accompanying Memorandum Opinion:

a. Plaintiff shall substantiate or revise its disgorgement figure pertaining to e-Smart's, Grace's, IVI's, and Intermarket's violations of Securities Act sections 5(a) and (c);

b. Plaintiff shall revise its disgorgement figure pertaining to Grace's violations of Exchange Act section 10(b) and Rule 10b-5; and

c. Plaintiff shall revise its request for prejudgment interest accordingly;

6. The Court ORDERS that Defendant Grace shall, by November 17, 2015, file any Opposition to the SEC's modified disgorgement request, which shall not exceed 15 pages and shall include any evidence showing that the sum against her is reasonably capable of apportionment, and, if so, how it should be apportioned;

7. Plaintiff's request for third-tier civil penalties is GRANTED as follows:

a. E-Smart will be ordered to pay $1,950,000;

b. IVI will be ordered to pay $650,000;

c. Intermarket will be ordered to pay $650,000;

d. Saito will be ordered to pay $130,000; &

e. No penalties are presently assessed against Grace; the Court will, in a subsequent Order, determine the quantum of civil penalties to be awarded against her after reviewing the parties' supplemental submissions;

8. Plaintiff's request that it be permitted to later move for establishment of a Fair Fund is GRANTED; and

9. After considering and rendering a decision upon the parties' supplemental filings, the Court will incorporate this Order into a Final Judgment that will be an appealable final decision in this case.

IT IS SO ORDERED.

/s/ James E. Boasberg
JAMES E. BOASBERG
United States District Judge

Date: September 28, 2015

Additional material from this filing is available in the Clerk's Office.