

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	CIVIL ACTION NO.
Plaintiff,	:	1:12-CV-04028-SCJ
	:	
v.	:	
	:	
BILLY WAYNE MCCLINTOCK	:	
individually and d/b/a MSC	:	
HOLDINGS; DIANNE	:	
ALEXANDER; MSC HOLDINGS	:	
USA, LLC; MSC HOLDINGS,	:	
INC.; and MSC GA HOLDINGS,	:	
LLC,	:	
	:	
Defendants.	:	

**ORDER**

This matter appears before the Court on Plaintiff’s Briefs in Response to this Court’s September 15, 2015 Order (Doc. No. [63]) regarding civil penalties against Defendants Billy McClintock and Dianne Alexander. See Doc. Nos. [64]; [65]. For the following reasons, Defendants are **ORDERED** to pay \$300,000 each in civil penalties.

The Securities and Exchange Commission brought the instant civil enforcement action against Defendants Billy McClintock and Dianne Alexander for their actions in jointly operating a “prime-bank” Ponzi scheme. See generally

Doc. No. [63]. Defendants consented to the Court's entry of permanent injunction and other relief against them. See Doc. Nos. [9]; [10]; [11]; [12]. As part of that consent, Defendants agreed that civil penalties "shall be determined by the Court upon motion of the Commission." Doc. Nos. [9], p. 2, ¶ 3; [10], pp. 2-3, ¶ 3. In Plaintiff's memorandum of law in support of its motion for summary judgment, Plaintiff requested "that this Court order Alexander and McClintock to each pay a statutory civil penalty in an amount determined by the Court to be appropriate." Doc. No. [46-1], p. 20. In granting Plaintiff's request, the Court ordered Plaintiff to submit "separate, written briefs with the proposed final amount of civil penalties as to each Defendant and the reasons therefor." Doc. No. [63], p. 14. Plaintiff submitted its briefs, and no party has responded. See Doc. Nos. [64]; [65].

Section 20(d) of the Securities Act of 1933 ("Securities Act") and Section 21(d)(3) of the Securities Exchange Act of 1934 ("Exchange Act") – with nearly identical language – allow the SEC to seek civil penalties imposed by the Court.

The Exchange Act provides:

Whenever it shall appear to the Commission that any persons has violated any provision of this chapter, [or] the rules or regulations thereunder, . . . the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil

penalty to be paid by the person who committed such violation.

15 U.S.C. § 78u(d)(3)(A) (2012).<sup>1</sup> To determine the amount of the penalty, the Act outlines three tiers based on the nature of the violation. Under the first tier, “[f]or *each violation*, the amount of the penalty shall not exceed the greater of (I) \$5,000 for a natural person or \$50,000 for any other person.” § 78u(d)(3)(B)(i) (emphasis added). The second tier goes further: “Notwithstanding clause (i), the amount of penalty for *each such violation* shall not exceed the greater of (I) \$50,000 for a natural person or \$250,000 for any other person . . . if the violation described in subparagraph (A) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.” § 78u(d)(3)(B)(ii) (emphasis added). For the third tier, the Act states:

Notwithstanding clauses (i) and (ii), the amount of penalty for *each such violation* shall not exceed the greater of (I) \$100,000 for a natural person or \$500,000 for any other person . . . if – (aa) the violation described in subparagraph (A) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and (bb) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

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<sup>1</sup> Due to the nearly identical language of the relevant statutes, only the Exchange Act will be quoted to avoid redundancy.

§ 78u(d)(3)(B)(iii) (emphasis added).

“Civil penalties are intended to punish the individual wrongdoer and to deter him and others from future securities violations.” SEC v. Monterosso, 756 F.3d 1326, 1338 (11th Cir. 2010). The “Commission need only make ‘a proper showing’ that a violation has occurred and a penalty is warranted.” SEC v. Warren, 534 F.3d 1368, 1370 (11th Cir. 2008). Although the statute leaves the amount to be imposed to the discretion of the district judge, “courts consider numerous factors, including the egregiousness of the violation, the isolated or repeated nature of the violations, the degree of scienter involved, whether the defendant concealed his trading, and the deterrent effect given the defendant’s financial worth.” Miller, 744 F. Supp. 2d at 1344; see also SEC v. Sargent, 329 F.3d 34, 42 (1st Cir. 2003). The Act also authorizes penalties for “each violation,” so “courts are empowered to multiply the statutory penalty amount by the number of statutes the defendant violated, and many do.” Miller, 744 F. Supp. 2d at 1345.

The Court previously found that, at the very least, Defendants’ violations of the Securities Act and the Exchange Act place them in the third tier for civil penalties. Doc. No. [63], p. 14. Through their Consents, they admitted that their violations involved fraud or deceit. Id. The fraudulent offering of securities in the nonexistent “Trust” resulted in substantial losses and created a significant risk

of substantial losses to investors. Id. Defendants operated their scheme from 2004 until 2012, and raised at least \$15 million from more than 220 investors. Id. In light of the longevity of the fraud, the number of investors defrauded, and the substantial losses incurred, Defendants are squarely within the third tier of civil penalties. Id.

Plaintiff requests \$300,000 in civil penalties for each Defendant. “This penalty represents the maximum third tier penalty, multiplied by [their] respective violations that required scienter and/or a ‘knowing’ violation; i.e., Sections 17(a) of the Securities Act . . . and Section 10(b) of the . . . Exchange Act.” Doc. Nos. [64], p. 3; [65], p. 3. Although the maximum penalty for each third-tier violation is \$100,000 for a natural person, this amount is adjusted periodically for the cost of living. See 17 C.F.R. § 201.1004 (2009). In 2009, the maximum increased to \$150,000. See 17 C.F.R. Pt. 201, Subpt. E, Tbl. IV. Because Defendants operated their Ponzi scheme from 2004 until 2012, Plaintiff used the 2009 adjusted figure. Plaintiff could have asked for \$150,000 for each violation, and then multiplied that amount by 220 for the number of victims defrauded, but Plaintiff chose not to do so. Instead, Plaintiff merely requests \$300,000 per Defendant for two violations each.

The Miller and Sargent factors also render this a reasonable request. First, the violations were egregious. Defendant McClintock created and perpetrated this scheme (Doc. No. [65], p. 8), and Defendant Alexander held a leadership position in the organization and “brought more than 200 people into the scam, profiting personally from each victim.” Doc. No. [64], p. 8. Together, they collected over \$15 million, a significant sum. Doc. No. [63], p. 3. Second, Defendants operated the scheme for eight years and defrauded over 220 victims. Id. The longevity and repeated nature of the violations cut against Defendants. Third, Defendants possessed a high degree of scienter. Defendant McClintock created the scheme, so he clearly knew that the “Trust” was nonexistent. Defendant Alexander perpetrated the scheme by obtaining new investors while receiving a five-percent management fee. Id. She received another five-percent fee if a downline investor referred a new investor. Id. Alexander repeated the story McClintock told her, and knew or should have known that the scheme was based on a nonexistent “Trust.” See id. at 2. Fourth, Defendants concealed their actions. A Ponzi scheme, by its very nature, is “aimed at concealing the absence of a profit-generating enterprise by giving the illusion that such an enterprise exists.” Doc. Nos. [64], p. 9; [65], p. 9.

Finally, Plaintiff lacks information about Defendants' financial worth. Doc. Nos. [64], p. 9; [65], p. 9. However, it appears that Defendants may have little ability to pay a substantial penalty; they are seventy-three years old and not believed to be wealthy. Doc. Nos. [64], p. 4; [65], p. 4. Furthermore, Defendants' assets are currently frozen pursuant to the Court's December 6, 2012 Orders of Permanent Injunction. Doc. Nos. [11]; [12]. In addition to civil penalties, Defendants must also pay for disgorgement and prejudgment interest. See Doc. No. [63], p. 6-11. In consideration of these factors, Plaintiff's request for \$300,000 in civil penalties per Defendant is reasonable.

**IT IS ORDERED, ADJUDGED, AND DECREED** that Defendants McClintock and Alexander each pay a civil penalty pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act for violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act. The maximum third-tier penalty for each violation is appropriate. Defendants are ordered to pay civil penalties in the amount of \$300,000 each to the Securities and Exchange Commission within 30 days of the entry of this Order, which shall thereafter be transmitted to the United States Treasury.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court shall retain jurisdiction over this matter for all purposes, including

implementing and enforcing the terms of this Final Judgment, and may order other and further relief that this Court deems appropriate under the circumstances.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that there is no just reason for delay, and the Clerk is directed to enter a Final Judgment against Defendants McClintock and Alexander pursuant to the terms of this Order, pursuant to the terms of the Orders of Permanent Injunction previously entered in this Court against them on December 6, 2012 (Doc. Nos. [11]; [12]), and pursuant to the terms of the Court's Order granting the Commission's Motion for Summary Judgment against them on September 15, 2015. Doc. No. [63].

**IT IS SO ORDERED**, this 28<sup>th</sup> day of October, 2015.

  
HONORABLE STEVE C. JONES  
UNITED STATES DISTRICT JUDGE