

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

STEVEN MCCRAW,

Defendant,

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Case No.: 4:14-cv-348

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

The Court held a hearing on Plaintiff’s Motion for Determination of Amount of Civil Penalty (Dkt. 16) on October 6, 2015. Having considered the evidence and argument presented, the Court recommends that the motion be GRANTED as set forth below.

This action was filed on May 30, 2014 by the Securities and Exchange Commission (“the Commission”) against Defendant Steven McCraw, arguing that Defendant aided and abetted Kevin White in a fraudulent securities scheme and committed other violations of the Securities Act. Dkt. 1. The Commission requested permanent injunctive relief against Defendant, an order that Defendant disgorge any ill-gotten gains and pay prejudgment interest, and an order that Defendant pay an appropriate civil monetary penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). *Id.*

On June 4, 2014, the Commission filed an Unopposed Motion to Enter Interlocutory Judgment, indicating that the Commission and Defendant had reached an agreement resolving the claims for injunctive relief and the amounts for disgorgement and prejudgment interest, leaving only

the claim for civil penalties unresolved. Dkt. 3. On June 17, 2014, Defendant, through counsel, filed a notice indicating that “he consents to the terms of the proposed interlocutory judgment against him.” Dkt. 7. On June 19, 2014, the undersigned recommended that the unopposed interlocutory judgment be entered, and, with no objections filed to that report, the Court entered an Interlocutory Judgment as to Defendant Steven McCraw on April 1, 2015. *See* Dkt. 15.

The Court’s April 1, 2015 Interlocutory Judgment as to Defendant Steven McCraw entered a permanent injunction against him and ordered him to pay a disgorgement amount of \$111,800, and prejudgment interest in the amount of \$922.86. Dkt. 15. The Interlocutory Judgment also ordered Defendant to pay a civil penalty in an amount to be determined later on motion by the Commission. *Id.*

On June 1, 2015, the Commission filed its Motion for Determination of Amount of Civil Penalty. Dkt. 16. In the motion, the Commission asks that the Court impose the maximum third-tier penalty against Defendant. The Commission also requests that, once the Court determines the penalty amount, the Court incorporate the penalty and the terms of the Interlocutory Judgment into a Final Judgment in this matter.

In response, Defendant argues that the Court should find that no additional civil penalty should be imposed and that Defendant should only be required to pay the disgorgement amount of \$111,800.00 plus prejudgment interest of \$922.86 less the \$71,000.00 previously paid to the Court Receiver in *Securities and Exchange Commission v. White, et al*; Civil Action No. 4:13-CV-0383, also pending in this District. Defendant further argues that the Commission has significantly overstated the seriousness, the scope, and the amount of Defendant’s involvement in Kevin White’s

criminal conduct. Defendant asks that, if the Court determines that the imposition of a civil penalty is appropriate, it be reduced significantly in light of the Defendant's demonstrated current and future financial condition.

**STANDARD FOR DETERMINATION OF MONEY PENALTIES IN
CIVIL ACTIONS FILED UNDER THE SECURITIES ACT**

In determining the amount of money penalties to be assessed in certain civil actions, the Securities Act provides as follows:

(2) Amount of penalty

(A) First tier

The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) [\$7,500] for a natural person..., or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

(B) Second tier

Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) [\$80,000] for a natural person ..., or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) [\$160,000] for a natural person ..., or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if--

(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a

regulatory requirement; and

(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

15 U.S.C. § 77t(d); *see also* 17 C.F.R. Pt. 201, Supt. E, Table V (amending fine amounts as indicated in brackets).

As noted in the Commission's motion, other factors are relevant in determining whether a civil penalty is appropriate and, if so, in what amount. These factors are: (1) the egregiousness of the defendant's conduct; (2) the degree of the defendant's *scienter*; (3) whether the defendant's conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant's conduct was isolated or recurrent; (5) whether the defendant has admitted wrongdoing; and (6) whether the penalty should be reduced due to the defendant's demonstrated current and future financial condition. *SEC v. Razmilovic*, 822 F. Supp. 2d 234, 280 (E.D. N.Y. 2011); *SEC v. Colonial Inv. Mgmt. LLC*, 659 F. Supp. 2d 467, 503 (S.D. N.Y. 2009); *see SEC v. Snyder*, 2006 WL 6508273, at *11 (S.D. Tex. Aug. 22, 2006) (citing *SEC v. Lybrand*, 281 F. Supp.2d 726, 730 (S.D. N.Y. 2003)).

EVIDENCE PRESENTED

At the October 6, 2015 hearing, the Commission offered into evidence the following: (1) May 30, 2014 Complaint, filed in *SEC v. McCraw*, Cause No. 4:14-CV-00348 (Doc 1); (2) May 27, 2014 Consent of Defendant Steven McCraw, filed in *SEC v. McCraw*, Cause No. 4:14-CV-00348 (Doc 4-1); (3) June 17, 2014 Notice of Consent, filed in *SEC v. McCraw*, Cause No. 4:14-CV-00348 (Doc 7); (4) April 1, 2015 Interlocutory Judgment as to Defendant Steven McCraw, filed in *SEC v. McCraw*, Cause No. 4:14-CV-00348 (Doc 15); (5) June 1, 2015 Plaintiff's Motion for Determination

of Amount of Civil Penalty and Brief in Support, filed in *SEC v. McCraw*, Cause No. 4:14-CV-00348 (Doc 16); (6) August 5, 2015 Defendant's Response to Securities and Exchange Commission's Motion for Determination of Amount of Civil Penalty, filed in *SEC v. McCraw*, Cause No. 4:14-CV-00348 (Doc 21) (7) December 20, 2012 Email from Steve McCraw to Kevin White Re: Forex; (8) December 20, 2012 Email from Steve McCraw to Kevin White Re: Forex; (9) January 17, 2013 Email from Steve McCraw Re: Forex and attaching Revelation Forex Fund Brochure and KGW Newsletter; (10) January 17, 2013 Email from Steve McCraw Re: Forex and attaching Revelation Forex Fund Brochure and KGW Newsletter; (11) February 8, 2013 Email from Steve McCraw Re: New Website; (12) February 12, 2013 Email from Steve McCraw Re: New web address; (13) April 1, 2013 Email from Steve McCraw Re: KGW Slogans; (14) April 23, 2013 Email from Steve McCraw Re: KGW Revelation Return vs Risk Calculations; (15) April 23, 2013 Email from Steve McCraw Re: 2009 Annualized Return – RFF; (16) April 23, 2013 Email from Steve McCraw Re: Revelation Fund Results Illustrating Monthly Compounding; (17) April 23, 2013 Email from Steve McCraw Re: Data of Total Return? [sic]; (18) April 24, 2013 Email from Steve McCraw Re: Thank You; (19) April 25, 2013 Email from Steve McCraw Re: 24 FX Management Ltd Fund Information – Return Calculation.xlsx; (20) April 25, 2013 Email from Steve McCraw Re: Elite 10 Ranking; (21) April 25, 2013 Email from Steve McCraw Re: KGW Capital Management Newsletter – 2nd Quarter 2013; (22) April 26, 2013 Email from Steve McCraw Re: Forex Fund – Return Calculation.xlsx; (23) April 29, 2013 Email from Steve McCraw Re: KGW Revelation Return vs Risk Calculations SM Revised 4.29.2013.xlsx; (24) April 29, 2013 Email from Steve McCraw Re: KGW Revelation Return vs Risk Calculations SM Revised 4.29.2013.xlsx; (25)

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