

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 63785 / January 27, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14207

In the Matter of

DAVID M. TAMMAN, ESQ.

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION 4C
OF THE SECURITIES EXCHANGE ACT OF
1934 AND RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against David M. Tamman, Esq. (“Tamman” or “Respondent”) pursuant to Section 4C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.¹

II.

After a referral from the Los Angeles Regional Office and an investigation, the Office of the General Counsel alleges that:

¹ Rule 102(e)(1)(ii), 17 C.F.R. 201.102(e)(1)(ii), provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission . . . to have engaged in unethical or improper professional conduct

Section 4C(a), 15 U.S.C. 78d-3(a), provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found by the Commission . . . to have engaged in unethical or improper professional conduct

A. RESPONDENT

Tamman is an attorney and a member of the California Bar. He is 43 years old and is a resident of Santa Monica, California.

B. IMPROPER PROFESSIONAL CONDUCT

1. From approximately May 2003 through approximately October 2009, Tamman represented NewPoint Financial Services, Inc. (“NewPoint”) in connection with a number of corporate transactional matters, including several offerings of debentures issued by NewPoint. Between approximately May 2003 and approximately January 2009, Tamman prepared several versions of private placement memoranda (PPMs) to be provided to investors in NewPoint’s debentures offerings. Those PPMs stated that the funds raised in the offerings would be used primarily for real estate related investments. In fact, the vast majority of money raised in the offerings was misappropriated by NewPoint’s principal, John Farahi. *See SEC v. NewPoint Financial Services, Inc., et al.* (Case No. CV10-0124 DDP (JEMx), C.D. Cal.), Docket Nos. 1, 39, and 42.

2. In March 2009, Tamman, then a partner in the Los Angeles, California office of a large international law firm, arranged a call with himself, two other attorneys at the law firm (Attorney A and Attorney B), and John Farahi to discuss disclosures to be added to a PPM to be used for a future NewPoint offering. On that call, Mr. Farahi said that most of the money raised would be loaned to him. He also indicated that most of the money raised in the previous offerings had been loaned to him. Later that month, Attorney A proposed adding several disclosures to the PPM regarding loans to be made to John Farahi. Tamman had Attorney B, an associate at the law firm, add the proposed disclosures to a draft PPM to be used for a future offering. That was the first time that such language regarding loans to John Farahi appeared in any NewPoint PPM.

3. On April 13, 2009, the Commission’s Los Angeles Regional Office examination staff initiated an unannounced examination of NewPoint Securities, LLC (a broker-dealer affiliated with NewPoint). That same day, Tamman met with John Farahi in person to discuss the Commission’s examination. Later that day, Tamman, for the first time, added purported disclosures regarding loans to John Farahi to a PPM dated October 2008. On May 14, 2009, Tamman added, for the first time, similar purported disclosures to a PPM dated May 2003. Tamman knew that the language regarding loans to John Farahi that he added to the PPMs were not contained in PPMs provided to investors in May 2003 or October 2008.

4. During the course of its examination, the staff discovered information indicating that NewPoint might be engaged in an offering fraud. In mid-May 2009, examination staff notified the Commission’s enforcement staff of its findings and later the Commission issued a formal order of investigation. On May 19, 2009, the Commission’s examination staff provided NewPoint Securities with formal document requests seeking, among other things, copies of any PPMs provided to NewPoint investors. The next day, another attorney at Tamman’s law firm (Attorney C) gave Tamman a document retention memorandum that stated that, given the ongoing

Commission examination, it was important that NewPoint not “**discard, alter or destroy** any [] documents or records.” (emphasis in original). After Tamman agreed that the memorandum should be provided to NewPoint, Attorney C sent the document retention memorandum to NewPoint (copying Tamman) along with an article regarding obstruction of justice charges brought by the United States Attorney’s office in Houston against an individual for obstructing a Commission investigation.

5. Later in May 2009, NewPoint retained new outside counsel (Attorney D) to represent it in connection with the Commission’s examination of NewPoint Securities and any related enforcement inquiries. In response to requests from Attorney D for copies of PPMs to be produced to the Commission, Tamman provided the versions of the PPMs dated May 2003 and October 2008 that he had altered to add disclosures regarding loans to John Farahi. On June 8, 2009, those altered PPMs were produced to the Commission in response to the formal document requests by the Commission’s examination staff. The altered PPMs were later produced in response to a subpoena served by the Commission’s enforcement staff seeking, among other things, copies of all PPMs provided to NewPoint investors.

6. In mid-July 2009, Attorney D told Tamman that the Commission’s enforcement staff was insisting on production of native file copies of the PPMs with metadata showing when the documents were created. On July 14, 2009, Tamman forwarded an email to Attorney C regarding a seminar on the ethical implications of removing metadata from documents. Only two days later, Tamman asked his law firm’s IT department to remove metadata from the native file copies of the PPMs that had been produced to the Commission. He then produced the documents, in their altered, metadata-less form to Attorney D with the understanding that the documents were to be reviewed for possible production to the Commission. Attorney D continued to press Tamman to provide native file copies of all versions of the PPMs, not just those produced to the Commission. After repeatedly resisting providing the documents, Tamman finally provided them to Attorney D on July 31, 2009, stressing that he wanted to be informed before the documents were provided to the Commission so that he could assert any potential work product objections. Tamman never told Attorney D or other attorneys at his law firm working on the matter that he had altered the PPMs that were produced to the Commission’s examination and enforcement staff.

C. VIOLATIONS

As a result of the conduct described above, Tamman engaged in improper professional conduct and is subject to discipline pursuant to Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.

Tamman’s knowing conduct violates California Business and Professions Code § 6106 providing for the disbarment or suspension of an attorney engaged in “[t]he commission of any act involving moral turpitude, dishonesty, or corruption”

Tamman’s knowing conduct violates California Rules of Professional Conduct § 5-220 which prohibits a member of the California Bar from “suppress[ing] any evidence that the member or the member’s client has a legal obligation to reveal or to produce.”

Tamman's knowing conduct further violates 18 U.S.C. § 1519 which makes it a crime to "knowingly alter[], destroy[], mutilate[], conceal[], cover[] up, falsif[y], or make[] a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States. . . ." *See also* California Penal Code § 135 (making it a crime to destroy or conceal evidence to be produced in an investigation).

III.

In view of the allegations made by the Office of the General Counsel, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Tamman an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Tamman pursuant to Section 4C of the Exchange Act and Rule 102(e) of the Commission's Rules of Practice including, but not limited to, denying, temporarily or permanently, the privilege of appearing or practicing before the Commission.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Tamman shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Tamman fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative Proceedings Pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice ("Order"), on the Respondent and his legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
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