INITIAL DECISION RELEASE NO. 500
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15177

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	:	
	:	
MARK A. GELAZELA and	:	INITIAL DECISION
STEVEN E. WOODS	:	July 30, 2013

APPEARANCES: Richard S. Hong and Christopher C. Nee for the Division of Enforcement, Securities and Exchange Commission

Mark A. Gelazela, pro se

James J. Warner for Respondent Steven E. Woods

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Mark A. Gelazela (Gelazela) and Steven E. Woods (Woods) (collectively, Respondents) from the securities industry. They were previously enjoined from violating the antifraud and registration provisions of the federal securities laws.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on January 16, 2013, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The undersigned granted the parties leave to file motions for summary disposition at a March 5, 2013, prehearing conference, pursuant to 17 C.F.R. § 201.250(a). Mark A. Gelazela, Admin. Proc. No. 3-15177 (A.L.J. Mar. 5, 2013) (unpublished). The Division of Enforcement (Division) timely filed its Motion for Summary Disposition on March 15, 2013. Woods timely filed a Notice of Non-Opposition on April 30, 2013. Gelazela has filed nothing to date.[1] The administrative law judge is required by 17 C.F.R. § 201.250(b) to act "promptly" on a motion for summary disposition.

[1] The due date for Respondents' oppositions was May 1, 2013. Mark A. Gelazela, Admin. Proc. No. 3-15177 (A.L.J. Mar. 5, 2013) (unpublished).

This Initial Decision is based on (1) the Division's Motion for Summary Disposition, which Woods does not oppose; and (2) Gelazela's Answer to the OIP. There is no genuine issue with regard to any fact that is material to this proceeding. All material facts that concern the activities for which Respondents were enjoined were decided against them in the civil case on which this proceeding is based. Any other facts in Respondents' pleadings have been taken as true, pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Respondents were enjoined on December 18, 2012, from violating the antifraud and registration provisions of the federal securities laws, in SEC v. Wilde, No. 8:11-cv-00315 (C.D. Cal. Dec. 18, 2012), appeal pending, No. 13-55043 (9th Cir.), based on wrongdoing from October 2009 through mid-March 2010, when they and others operated a "prime bank" scheme. The Division urges that a collateral bar be imposed on them. In his Answer to the OIP Gelazela urges that this proceeding be dismissed or suspended pending the outcome of his appeal in SEC v. Wilde.

C. Procedural Issues

1. Official Notice

Official Notice pursuant to 17 C.F.R. § 201.323 is taken of the docket report and the court's orders in SEC v. Wilde.

2. Collateral Estoppel

The Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against a respondent, whether resolved by consent; by summary judgment, like SEC v. Wilde; or after a trial. See Jeffrey L. Gibson, Exchange Act Release No. 57266 (Feb. 4, 2008), 92 SEC Docket 2104 (injunction entered by consent); John Francis D'Acquisto, 53 S.E.C. 440, 444 (1998) (injunction entered by summary judgment); James E. Franklin, Exchange Act Release No. 56649 (Oct. 12, 2007), 91 SEC Docket 2708, 2713 (injunction entered after trial); Demitrios Julius Shiva, 52 S.E.C. 1247, 1249 & nn.6-7 (1997). Additionally, the pendency of Gelazela's appeal in SEC v. Wilde does not preclude "follow-on" action based on the injunction. Joseph P. Galluzzi, 55 S.E.C. 1110, 1116 n.21 (2002); John Francis D'Acquisto, 53 S.E.C. at 444 n.9 (1998). If the Court of Appeals vacates the judgment on which this proceeding is based, the Commission will entertain an application to reconsider the sanction herein. Evelyn Litwok, Advisers Act Release No. 3438 (July 25, 2012), 104 SEC Docket 56983; C. R. Richmond & Co., Exchange Act Release No. 12535 (June 10, 1976), 46 S.E.C. 412, 414 n.11.

II. FINDINGS OF FACT

Respondents and others operated a "prime bank" scheme from October 2009 through mid-March 2010. SEC v. Wilde, No. 8:11-cv-00315 (C.D. Cal. Dec. 17, 2012) (December 17 Order). Respondents and their entities promoted their fictitious prime bank scheme by falsely promising extraordinary returns and raised approximately $6.3 million from investors. December 17 Order at 11. Gelazela personally profited from the scheme by making $1,150,000 in fees. Id. Woods made $565,000 in fees, which was approximately half of the total investor funds that he brought into the scheme. December 17 Order at 11-12. Respondents acted with at least a reckless degree of scienter. December 17 Order at 14-15.

Respondents were (and are) permanently enjoined from violating the antifraud provisions of the federal securities laws – Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder – as well as registration provisions – Sections 5 of the Securities Act and 15(a)(1) of the Exchange Act; jointly and severally with others, they were also ordered to pay a civil penalty of $6,195,908 and to disgorge $6,195,908 in ill-gotten gains plus prejudgment interest of $548,175.49. SEC v. Wilde, No. 8:11-cv-00315 (C.D. Cal. Dec. 18, 2012).

III. CONCLUSIONS OF LAW

Respondents have been permanently enjoined "from engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security" within the meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act.

IV. SANCTION

As the Division requests, a collateral bar will be ordered.[2, 3]

A. Sanction Considerations

[2] The fact that Respondents were not, and were not associated with, a registered broker-dealer is not a barrier to imposing a broker-dealer and collateral bar. See Vladislav Steven Zubkis, Exchange Act Release No. 52876 (Dec. 2, 2005), 86 SEC Docket 2618, 2627, recon. denied, Exchange Act Release No. 53651 (Apr. 13, 2006), 87 SEC Docket 2584 (unregistered associated person of an unregistered broker-dealer barred from association with a broker or dealer).

[3] The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which became effective on July 22, 2010, provided collateral bars in each of the several statutes regulating different aspects of the securities industry. Respondents' wrongdoing occurred before July 22, 2010. However, the Commission has determined that sanctioning a respondent with a collateral bar for pre-Dodd-Frank wrongdoing is not impermissibly retroactive, but rather provides prospective relief from harm to investors and the markets. John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722; see also Alfred Clay Ludlum, III, Advisers Act Release No. 3628 (July 11, 2013); Johnny Clifton, Securities Act Release No. 9417 (July 12, 2013); Tzemach David Netzer Korem, Exchange Act Release No. 70044 (July 26, 2013).

The Commission determines sanctions pursuant to a public interest standard. See Section 15(b)(6) of the Exchange Act. The Commission considers factors including:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. Marshall E. Melton, 56 S.E.C. 695, 698 (2003). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. See Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46.

In proceedings based on an injunction, the Commission examines the facts and circumstances underlying the injunction in determining the public interest. See Marshall E. Melton, 56 S.E.C. at 698. "An injunction, by its very nature, is predicated on conduct that . . . violate[s] laws, rules, or regulations." Id. at 709. The Commission considers an antifraud injunction to be particularly serious. Id. at 710. The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. See Richard C. Spangler, Inc., 46 S.E.C. 238, 252 (1976).

B. Sanctions

Respondents' conduct was egregious and recurrent and involved at least a reckless degree of scienter. Their previous occupation, if they were allowed to continue it in the future, would present opportunities for future violations. The violations are recent. The degree of harm to investors and the marketplace is indicated in the $6,195,908 civil penalty and the $6,195,908 in disgorgement that Respondents were ordered to pay. Further, as the Commission has often emphasized, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. See Christopher A. Lowry, 55 S.E.C. 1133, 1145 (2002), aff'd, 340 F.3d 501 (8th Cir. 2003); Arthur Lipper Corp., 46 S.E.C. 78, 100 (1975). A bar is also necessary for the purpose of deterrence. Arthur Lipper Corp., 46 S.E.C. at 100.

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b), MARK A. GELAZELA IS BARRED from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

IT IS FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b), STEVEN E. WOODS IS BARRED from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Carol Fox Foelak
Administrative Law Judge