ALJ

ADMINISTRATIVE PROCEEDING
FILE NO. 3-9933

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
April 17, 2003

In the Matter of	:	
	:	
A.S. GOLDMEN & CO., INC.,	:	
ANTHONY J. MARCHIANO,	:	REPORT AND ORDER FOLLOWING
STUART E. WINKLER,	:	PREHEARING CONFERENCES
JOHN T. DIASABEYAGUNAWARDENA,	:	
(a.k.a. John Abbey)	:	
JOHN P. DELCIOPPO,	:	
CHRISTOPHER M. DELCIOPPO,	:	
VINCENT J. LIA,	:	
DUANE P. TAYLOR,	:	
and CHARLES TRENTO	:	

Background

The Securities and Exchange Commission ("Commission") issued an Order Instituting Proceedings ("OIP") on July 7, 1999. The proceeding was stayed because of related state proceedings that ended in criminal convictions in 2000 and 2001. See New York v. A.S. Goldmen & Co., Inc., Indictment No. 4772/99 (N.Y. Sup. Ct., N.Y. County Crim., Term). Respondents Winkler and Trento are the only respondents who did not settle with the Commission following the conclusion of the criminal proceedings.

On March 26, 2003, I found the allegations in the OIP to be true. Respondent Winkler willfully violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rules 10b-5 and 10b-6 thereunder, and willfully aided and abetted or caused A.S. Goldmen & Co.'s ("Goldmen") violations of Section 5 of the Securities Act, Section 17(a) of the Exchange Act, and Rules 17a-3 and 17a-4 thereunder. Respondent Trento willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5, and willfully aided and abetted or caused Goldmen's violations of Section 17(a) of the Exchange Act and Rule 17a-3.

On April 14, 2003, I held telephonic prehearing conferences for the sole purpose of allowing Respondents Winkler and Trento an opportunity to be heard on the issue of whether a hearing was necessary to determine if it is in the public interest to impose the sanctions and

penalties that the Division of Enforcement ("Division") recommends. See Exchange Act Sections 15(b)(6), 21B.

Public Interest Considerations

Based on the violations and public interest considerations, the Division recommends that the Commission: (1) bar Respondents Winkler and Trento from being associated with a broker or dealer; (2) order Respondents to cease and desist from committing or causing violations of the specific provisions of the securities statutes which they were found to have violated; and (3) order Respondents to pay a civil money penalty at the highest allowable level. In a Motion for Summary Disposition dated March 10, 2003, the Division requested a hearing as to disgorgement appropriate from Respondent Trento; however, at the prehearing conference, the Division indicated that it would request permission from the Commission not to seek disgorgement from this Respondent.[1]

Respondent Winkler accepts the bar and cease-and-desist order. However, he strongly opposes the imposition of a civil money penalty. Respondent Winkler argues that the punishment he received as a result of the plea agreement he entered with the District Attorney of the County of New York and term of incarceration imposed by the State of New York are sufficient punishment. Respondent Winkler contends that he has already paid a $500,000 fine because he paid $3.5 million, $3 million of which was restitution, pursuant to the plea agreement. He argues further that he has no financial resources, and his present conditions of incarceration are deplorable and provide sufficient punishment for the violations. The Division agreed to send Respondent Winkler a copy of the financial disclosure form referenced in Rule 630 of the Commission's Rules of Practice for a respondent who asserts he is unable to pay interest or penalties. See 17 C.F.R. § 201.630. Finally, Respondent Winkler believes that the terms of the plea agreement are relevant to the Steadman criteria because he acknowledged in the plea agreement that his actions were illegal.[2]

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[1] In an Order issued March 26, 2003, I took official notice of the exhibits to the Division's Motion for Summary Disposition. The record contains no evidence that Respondent Trento paid the approximately $1.3 million in restitution ordered by the Supreme Court of the State of New York. See Division's Motion for Summary Disposition at 6-7.

[2] The public interest factors set forth in Steadman are the following:

> [T]he 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.

Respondent Trento continues to maintain that his conviction was wrong. He claims he cannot address the public interest considerations without evidence from the criminal trial. In his April 6, 2003, letter, Respondent Trento acknowledges the doctrine of collateral estoppel. See United States v. Podell, 572 F.2d 31, 35 (2d Cir. 1978), and cases cited therein. I refused Respondent Trento's request that he be provided with materials from his criminal trial because he cannot contest his convictions in this proceeding.

Respondent Trento also requests that this proceeding be suspended pending his appeal of his conviction. However, the case law is that the Commission orders remedial sanctions while appeals are taken and vacates the sanctions based on an application by a successful appellant. See William F. Lincoln, 66 S.E.C. Docket 972 (1998); see also John A. Mulherne, 50 S.E.C. Docket 506 (1991).

Ruling

Based on the arguments and positions expressed at the prehearing conference, I find Respondents Winkler and Trento have both had an opportunity to address the public interest criteria and there is no need for a public in-person hearing.

I ORDER that by Wednesday, April 23, 2003, the Division will provide to Respondents copies of the financial disclosure form used where a respondent claims an inability to pay interest or penalties.

I FURTHER ORDER that by Monday, May 19, 2003, Respondents will submit any completed forms they want considered to the Commission's Secretary Jonathan G. Katz, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549, with a copy to the Division.

Brenda P. Murray
Chief Administrative Law Judge

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see also Joseph J. Barbato, 69 SEC Docket 178, 200 n.31 (Feb. 10, 1999); Donald T. Sheldon, 51 S.E.C. 59, 86 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995).