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ADMINISTRATIVE PROCEEDING  
FILE NO. 3-14700

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of	:	
	:	RESPONDENT'S ANSWER TO
GREGORY BARTKO, ESQ.	:	ORDER INSTITUTING ADMINISTRATIVE
	:	PROCEEDINGS
	:	

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Respondent, Gregory Bartko ("Bartko"), appearing in this action pro se, does hereby file the following answer to the above-referenced Order ("Order"), all in accordance with Rule 220 of the Commission's Rules of Practice, 17 C.F.R. §201.220:

I.

Bartko denies that the institution of these proceedings is appropriate or in the public interest as set forth in the Order.

II.

A. Respondent

1. Bartko admits the information set forth in this subparagraph of the Order.

B. Respondent's Criminal Conviction

2. Bartko admits that the referenced judgment of conviction was entered. However, Bartko affirmatively alleges and answers that his conviction was precipitated by various wrongful and collusive actions taken by staff of the Commission's Division of Enforcement out of the Commission's Atlanta District Office ("SEC Enforcement"). As detailed below in this subparagraph, these wrongful and collusive actions by one or more SEC Enforcement staff are sufficiently egregious and violative of Bartko's Fifth Amendment due process rights during his prosecution that for purposes of these proceedings, the Commission should be barred or estopped from taking any of the remedial action described in subparagraph III of the Order.

a) Bartko's indictment arose from an investment scheme developed and perpetrated by one of his former clients who was ultimately the subject of a SEC civil injunctive action and following that, a criminal prosecution. The SEC and federal criminal investigation that related to Bartko's former client involved a

fraudulent Ponzi scheme engaged in by Mobile BillBoards of American, Inc. ("MBA).

- b) Bartko's former client was heavily involved in the Ponzi scheme carried out by MBA. Bartko, at the time a practicing securities lawyer, was retained by the former client for MBA related matters.
- c) During the investigation and prosecution of Bartko's former client, SEC Enforcement staff member, Alexander Rue, coordinated his enforcement efforts with the Assistant United States Attorney, Clay Wheeler ("AUSA") who prosecuted Bartko's former client and other MBA associated individuals.
- d) Bartko is informed and believes that during the criminal prosecution of Barry C. Maloney ("Maloney"), MBA's securities attorney, Mr. Rue and the AUSA prosecuting Maloney, conducted an "impermissible commingling" of the SEC's investigation with the AUSA's criminal investigation. In fact, Maloney raised these very allegations in a Motion for Discovery Regarding Collaboration between the Department of Justice and the SEC (See U.S v. Barry C. Maloney, U.S. District Court, Eastern District of North Carolina file number 07-CR-117-3BR, Docket No. 189).
- e) SEC Enforcement violates a criminal defendant's Fifth Amendment rights when the SEC civil proceeding is in reality "A Trojan horse for a parallel criminal investigation by gaining the cooperation of an unsuspecting criminal target who would have otherwise invoked protections against self-incrimination." United States v. Scrushy, 366 F. Supp. 2<sup>nd</sup> 1134, 1139 (N.D.Ala 2005); Sterling National Bank v. A-1 Hotels Inter., Inc. 175 F. Supp. 2d 573, 579 (S.D.N.Y. 2001); United States v. Edwards, 526 F. 3d 747, 759 n. 36 (11<sup>th</sup> Cir. 2008), approving the AUSA's use of documents obtained in the SEC deposition; See also United States v. Mahaffey 446 F. Supp. 2d 115, 126 (E.D.N.Y. 2006).
- f) Maloney was acquitted at trial. Even so Maloney asserted that he was affirmatively misled by SEC Enforcement on multiple occasions (lied to). As a result of the information garnered by the SEC from Maloney, the AUSA prosecuting Maloney gained access to Maloney's cooperation and so in that instance, the SEC was acting as the "Trojan horse" for the AUSA handling the criminal prosecution.
- g) Even more egregious conduct by SEC Enforcement in collusion with AUSAs occurred in the criminal prosecution of Richard Scrushy in 2005.
- h) Interestingly enough, the same SEC Enforcement staff in the Atlanta District Office was involved in the collusive nature of the parallel proceedings that occurred in the Maloney case, the Scrushy case and the Edwards case. Alexander Rue of the SEC Enforcement staff and the AUSA that prosecuted Bartko also engaged in the kind of "impermissible commingling" of an SEC civil inquiry with the AUSA's criminal investigation.
- i) In February 2005, according to Mr. Rue's testimony at Bartko's trial, questions arose on why and to what extent Bartko's former client may have delivered private placement offering materials to a prospective investor without authority or approval from Bartko. Mr. Rue met with Bartko on March 14, 2005 to get

information from Bartko about Bartko's private equity fund, Capstone ("Capstone"). Bartko is advised and believes that Mr. Rue and AUSA Wheeler had already generated a "collusive sharing arrangement" about the MBA investigation as far back as the fall of 2004.

- j) Unbeknown to Bartko during the March 14, 2005 meeting with Mr. Rue, two weeks earlier on March 1, 2005 Mr. Rue has spoken to the NASD examiner assigned to Bartko's broker-dealer. After this call, the NASD examiner prepared a written memorandum of even date to document the phone call. Attached to this answer as Exhibit A is a copy of the NASD phone memorandum. Mr. Rue's express statements made on March 1, 2005 reflect his intentions to prosecute Bartko. The SEC has no criminal jurisdiction.
- k) On information and belief, Mr. Rue communicated information he gathered from Bartko as the "Trojan horse" for use by the Department of Justice, specifically AUSA Wheeler for purposes of a criminal prosecution. Mr. Rue never informed Bartko of this collaboration with the AUSA but instead requested Bartko to provide hundreds of pages of documents and materials to SEC Enforcement, which Bartko did.
- l) Through his newly retained counsel, Bartko notified Mr. Rue that he terminated his relationship with his former client and that all funds that had been received in the Capstone offering were being returned voluntarily by Bartko. In fact, between May 1, 2005 and thereafter, Capstone's funds were returned at Bartko's initiative. Mr. Rue was notified about all steps taken to refund investors' money and under an agreement of confidentiality, provided Mr. Rue with all documents demonstrating the return of funds.
- m) Since all of Bartko's documents were given to the AUSAs for prosecution, Bartko is informed and believes that Mr. Rue did so as the "Trojan horse" for the criminal prosecution.
- n) This was just the beginning of the government's deceit in hope of having Mr. Rue gather a far greater magnitude of information as the "Trojan horse". On the morning of June 28, 2005, two SEC broker-dealer examiners came to Bartko's office unannounced to conduct a "spot" examination of Bartko's broker-dealer. No mention was made by either SEC examiner that Mr. Rue sent them.
- o) On the first morning of the exam, Mr. Rue called Bartko's attorney as a courtesy to advise Bartko's counsel that Mr. Rue had heard about the examination and Mr. Rue then and there lied to Bartko's counsel when he said that the examination was merely coincidental timing and was a regularly scheduled exam. Bartko's counsel contacted Bartko to relay this information provided by Mr. Rue and based upon the presumption that Mr. Rue was not involved in the exam, Bartko and his counsel proceeded with the broker-dealer exam.
- p) The SEC, through the two examiners, told Bartko that the exam related strictly to his broker-dealer. SEC forms 1661 and 1662 given to Bartko validate the nature of the exam. The exam proceeded normally for several days and near the end of the exam after Bartko's unwitting cooperation resulted in his delivery of

documentary and other information related to his Capstone fund, the senior examiner disclosed that Mr. Rue was requesting the information.

- q) Bartko's delivery of all information to the SEC was specifically premised upon confidentiality.
- r) Mr. Rue and the senior SEC broker-dealer examiner testified for the government at Bartko's criminal trial. All of the materials and information delivered during the broker-dealer exam were impermissibly commingled from the SEC's civil proceeding to the AUSA conducting the criminal investigation. Once again, the SEC functioned as the "Trojan horse" for the AUSA prosecuting Bartko.
- s) At Bartko's trial it was revealed in discovery that a "secret report" had been prepared following the broker-dealer examination, which report was prepared by Mr. Rue and the senior examiner, David McLellan. The focus of the secret report was not Bartko's broker-dealer; rather the focus was on the Capstone fund. The report in general purports to document SEC conclusions drawn from the Capstone fund offering all of which were extremely negative. The SEC-Trojan horse turned the secret report over to the AUSA for criminal prosecution purposes. Nothing about the secret report was disclosed to Bartko except during discovery in his criminal case.
- t) It is certainly no surprise to Bartko that his indictment included allegations that he obstructed SEC proceedings and offered and sold unregistered securities. Bartko testified at trial for 7 hours and his testimony is consistent with his innocence. It was the senior examiner from the SEC, David McLellan, who testified at trial that Bartko lied to him during the examination and that Bartko obstructed SEC proceedings. No aspect of Mr. McLellan or Mr. Rue's testimony at Bartko's trial revealed that SEC Enforcement was, in reality a "Trojan horse" for AUSA Wheeler, nor did either SEC witness admit their deceit in their dealings with Bartko.
- u) The above described collusive conduct among Mr. Rue, Mr. McLellan and AUSA Wheeler had as its aim the gaining of Bartko's cooperation as an unsuspecting criminal target, who would have otherwise invoked his Fifth Amendment rights. As found in *Scrushy, I.d.*, "separate (SEC and criminal) investigations should be like side-by-side train tracks that never intersect."
- v) Bartko has since made FOIA requests to the SEC requesting delivery of records in the SEC's possession and control that relate to the matters described above. Bartko's criminal counsel has separately served a subpoena for these materials on SEC Enforcement. In response Bartko has received three responses: (i) that FOIA has identified 11 boxes of responsive records; (ii) that SEC Enforcement has no records responsive to Bartko's requests; and (iii) that the SEC has destroyed the records relating to the Capstone Fund.

3. Bartko denies the validity of the allegations in his criminal indictment as alleged in this subparagraph of the Order.

III.

Bartko contends that the allegations set forth in the Order fail to take into consideration the wrongful conduct of SEC Enforcement staff as described herein. For purposes of this administrative proceeding, Bartko contends that is necessary and appropriate in the public interest for a determination to be made after a hearing, of the extent to which SEC Enforcement clandestinely and impermissibly commingled the SEC's civil inquiry with AUSA Wheeler's criminal prosecution, as his "Trojan horse".

Such an inquiry is relevant to this proceeding, since conduct by SEC Enforcement violative of the principals espoused in *United States v. Scrushy*, supra; *Sterling Nat. Bank v. A-1 Hotels Inter., Inc.* supra; and *United States v. Edwards*, supra, gives rise to serious violations of Bartko's constitutional rights that would vitiate unlawful criminal proceedings.

Dated this 8<sup>th</sup> day of February, 2012

Respectfully Submitted

By: Gregory Bartko per GB  
Gregory Bartko, Respondent

# EXHIBIT A

#1 File

7/10



## MEMO

TO	File	CRD # 35784
FROM	Shane Dornburg Compliance Specialist	
DATE	March 1, 2005	

RE: Capstone Partners, L.C. - Discussion with SEC

Today I spoke to Alex Rue over at the SEC regarding Greg Bartko and Capstone Partners, L.C. Greg Bartko is the Owner/President of the broker/dealer, and he is also an attorney. Rue was investigating a person named Hollenbeck who is a legal client of Bartko's. Hollenbeck has been involved in numerous sales of fraudulent unregistered securities that appear to be Ponzi schemes.

During Rue's investigation, he was provided some documentation by an investigator with the State of North Carolina regarding a customer who had purchased approximately \$112k worth of securities from Hollenbeck on January 20, 2005. It appeared that this customer may have invested in something called the Capstone Private Equity B&M Fund, LLC. The investigator from North Carolina provided Rue with two receipts showing the woman's investment as well as a statement from an entity called Legacy Resource Management. Rue was unsure as to whether or not Bartko and Capstone Partners were involved in this sale, or whether Hollenbeck was just using the name in order to get the woman to invest her money.

Rue contacted the NASD in order to find out what information we could provide him regarding Capstone Partners and Bartko. I explained to Rue what type of business Capstone conducted and provided information as to their quarterly revenues over the previous year. I also explained to Rue that if Capstone was conducting an offering of itself or an affiliate, we would want to look into that. Rue stated that he thought that it was possible Capstone Partners was selling such an offering, but could not tell based on the information he had at this point. Rue did say that he didn't think Bartko would get involved in any kind of deal with Hollenbeck since Bartko is familiar with the investigations against Hollenbeck by the SEC and the state of North Carolina, which Rue stated would result in Hollenbeck being incarcerated.

Rue further stated that he would be continuing to investigate Bartko's involvement with Hollenbeck. He said he hadn't told Bartko what information he had regarding the sale of the Capstone Private Equity B&M Fund, and didn't want Bartko to know that he had such information. Apparently Bartko is providing information to Rue, and Rue wanted to allow Bartko to continue providing information as long as he would do so. Rue said that if Bartko was lying to him and providing false information, then they could turn around and bring a case against Bartko for obstruction of justice or perjury.