INITIAL DECISION RELEASE NO. 403
ADMINISTRATIVE PROCEEDING
FILE NO. 3-13835

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

In the Matter of	:	
	:	INITIAL DECISION
AARON TSAI	:	September 10, 2010

APPEARANCES: Adolph J. Dean, Jr., and Tracy W. Lo for the Division of Enforcement, Securities and Exchange Commission

Aaron Tsai, pro se

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Aaron Tsai (Tsai) from association with any broker or dealer. He was previously enjoined from violating the registration and reporting provisions of the securities laws, based on his wrongdoing in the late 1990s through 2000 while associated with registered broker-dealers.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on March 25, 2010, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The undersigned granted the Division of Enforcement (Division) leave to file a Motion for Summary Disposition at a May 21, 2010, prehearing conference, pursuant to 17 C.F.R. § 201.250(a), by July 23, 2010, with Tsai's opposition due on August 20, 2010. The parties timely filed their pleadings. The administrative law judge is required by 17 C.F.R. § 201.250(b) to act "promptly" on a motion for summary disposition.

This Initial Decision is based on (1) the Division's July 20, 2010, Motion for Summary Disposition; (2) Tsai's August 13, 2010, opposition (Opp.); and (3) Tsai's May 4, 2010, Answer to the OIP (Ans.). 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 Tsai was enjoined were decided against him in the civil cases on which this proceeding is based. Any other facts in his

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 Tsai was enjoined on March 1, 2010, from violating the registration and reporting provisions of the federal securities laws following the court's Opinion & Order in SEC v. Sierra Brokerage Servs., Inc., 608 F. Supp. 2d 923 (S.D. Ohio 2009), based on his wrongdoing from 1996 to 2000, and was associated with registered broker-dealers from 1998 to 2001. The OIP also alleges that he was enjoined on April 4, 2005, from violating the registration provisions in SEC v. Surgilight Inc., No. 6:02-cv-431 (M.D. Fla. Apr. 4, 2005). The Division urges that he be barred from association with any broker-dealer. Tsai argues that this proceeding should be dismissed in light of the District Court's errors in Sierra Brokerage that he is appealing and the fact that the Surgilight injunction was by consent and that he neither admitted nor denied wrongdoing. Additionally, Tsai states that he has not been associated with any broker-dealer for several years and has no plan for the foreseeable future to associate with a broker-dealer.

C. Procedural Issues

1. Exhibit Admitted into Evidence

The following item, of which official notice is taken pursuant to 17 C.F.R. §§ 201.250(a), .323, in the Division's Motion for Summary Disposition at Exhibit A is admitted into evidence as Division Exhibit A: March 31, 2009, Opinion & Order in Sierra Brokerage Services (Div. Ex. A.).

2. Collateral Estoppel

The Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against him. See James E. Franklin, 91 SEC Docket 2708, 2713 & n.13 (Oct. 12, 2007); John Francis D'Acquisto, 53 S.E.C. 440, 444 (1998); Demitrios Julius Shiva, 52 S.E.C. 1247, 1249 & nn.6-7 (1997). Nor does the pendency of an appeal preclude the Commission from action based on an injunction. See Franklin, 91 SEC Docket at 2714 n.15.

II. FINDINGS OF FACT

Tsai currently resides in Taiwan, having moved there in 2002. Ans. at 1, Opp. at 2. From 1996 through 2000, Tsai formed 101 "blank check" public shell corporations. Ans. at 1. In October 1996, he formed MAS Acquisition XI Corporation (MAS XI), which became BluePoint Linux Software Corporation (BluePoint) after a reverse merger in February 2000. Ans. at 1. From December 1998 through September 1999 and from July 2000 through October 2001, Tsai was associated with broker-dealers registered with the Commission. Ans. at 1. He was also president and owner of two registered broker-dealers: MAS Capital Securities, Inc., from 1999 through 2001, and MASF.Net Inc. from 1999 through 2000. Ans. at 1. Tsai has not been

associated with any broker-dealer since 2002 when he sold MAS Capital Securities, Inc., and moved to Taiwan. Opp. at 2.

On April 4, 2005, he was enjoined against violating the registration provisions, Section 5 of the Securities Act of 1933 (Securities Act) in the Surgilight Final Judgment.[1] Ans. at 1; official notice. Tsai argues that this consent injunction cannot be considered in this administrative proceeding because it specified that he "consented to entry of this Final Judgment without admitting or denying the allegations of the [Commission's] Complaint." Final Judgment at 1, SEC v. Surgilight Inc., No. 6:02-CV-431 (M.D. Fla. Apr. 4, 2005). This argument is unavailing. The Final Judgment also orders, "[T]he Consent of Defendant Aaron Tsai signed on October 21, 2004 is incorporated herein . . . and Defendant shall comply with all of the undertakings and agreements set forth therein." Id. at 4. That Consent states, "in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factually allegations of the complaint in this action."[2] Consent of Defendant Aaron Tsai at 3, SEC v. Surgilight Inc., No. 6:02-CV-431 (M.D. Fla. Mar. 31, 2005)

On March 1, 2010, Tsai was enjoined again against violating the registration provisions, Securities Act Section 5, and against violating the reporting provisions, Exchange Act Sections 13(d)(1) and 16(a) and Rules 13d-1(a) and 16a-3 when the court entered its final judgment against him in Sierra Brokerage. SEC v. Sierra Brokerage, No. 2:03-cv-00326 (S.D. Ohio Mar. 1, 2010). The wrongdoing that underlies that injunction was Tsai's participation in the sale of unregistered shares of BluePoint to the public on the Over the Counter Bulletin Board, which commenced in March 2000. Div. Ex. A at 7-20. In addition to being enjoined, Tsai was ordered to pay disgorgement of $250,000 plus prejudgment interest; other defendants who violated the registration and reporting provisions in the course of action enabled by Tsai's conduct were ordered to pay disgorgement totaling $3,807,598 plus prejudgment interest. Div. Ex. A at 85. The court noted that Tsai was a recidivist securities law violator and found that his multiple violations were egregious and that he was reckless in committing them. Div. Ex. A at 80-81. While noting that scienter is not an element of violations of registration and reporting provisions, the court found "there is strong evidence of scienter with regards to . . . Tsai." Div. Ex. A at 48, 55 n.32, 82. The court also found that Tsai lied to the NASD in order to carry out his violations. Div. Ex. A at 81.

[1] Tsai was also ordered to pay disgorgement of $4,464 plus prejudgment interest and a civil penalty of $4,464.

[2] In proceedings based on consent injunctions, the Commission considers the allegations of the complaint in determining the sanction. Marshall E. Melton, 56 S.E.C. 695, 698, 710-12 (2003). The Commission's Surgilight complaint, of which official notice is taken, alleged that Tsai's wrongdoing that violated Section 5 of the Securities Act occurred in 1999 and 2000.

III. CONCLUSIONS OF LAW

Tsai has been permanently enjoined twice "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.

Tsai argues that the judgment in Surgilight does not constitute proof of violations because it was based on consent and that the judgment in Sierra Brokerage was erroneous.[3] However, as discussed above, these arguments are unavailing. Further, if the Court of Appeals vacates the Sierra Brokerage injunction, the Commission may entertain an application to reconsider the sanction herein. See C. R. Richmond & Co., 46 S.E.C. 412, 414 n.11 (1976).

IV. SANCTION

The Division requests a broker-dealer bar. As discussed below, Tsai will be barred from association with a broker-dealer because of the seriousness of his violation, taking account of the facts and circumstances of his conduct.

A. Sanction Considerations

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., 87 SEC Docket 848, 862 & n.46 (Jan. 31, 2006).

In proceedings based on an injunction, the Commission examines the facts and circumstances underlying the injunction in determining the public interest. See 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.

B. Sanction

[3] Tsai's appeal of Sierra Brokerage to the United States Court of Appeals for the Sixth Circuit is pending. SEC v. Sierra Brokerage Servs., Inc., No. 10-3546 (6th Cir.).

Tsai's violations are not recent. However, his conduct was egregious and recurrent. In fact, he has been enjoined twice, in two different courses of conduct, against violating Section 5 of the Securities Act. The District Court in Sierra Brokerage found recklessness and strong evidence of scienter. Consistent with a vigorous defense of the charges against him, Tsai has not given assurances against future violations or recognition of the wrongful nature of his conduct.

While Tsai has no present intent to associate with a broker-dealer, by virtue of his experience and age, he could do so absent a bar. See Thomas J. Donovan, 86 SEC Docket 2652, 2663 (Dec. 5, 2005). The degree of harm to investors and the marketplace is quantified in his ill-gotten gains of over $3 million that the court ordered disgorged by Tsai and the other Sierra Brokerage defendants. 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 broker-dealer bar is also necessary for the purpose of deterrence.

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, AARON TSAI IS BARRED from associating with any broker or dealer.

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