

INITIAL DECISION RELEASE NO. 282
ADMINISTRATIVE PROCEEDING
FILE NO. 3-11774

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

In the Matter of :
 : INITIAL DECISION
ULYSSES "THOMAS" WARE : April 25, 2005

APPEARANCES: Jeffrey B. Norris, Esq., for the Division of Enforcement,
Securities and Exchange Commission

Respondent Ulysses "Thomas" Ware, Esq., pro se

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision permanently disqualifies Ulysses "Thomas" Ware (Ware) from appearing or practicing before the Securities and Exchange Commission (Commission). Ware was previously enjoined from violating the antifraud, registration, and reporting provisions of the securities laws.

I. BACKGROUND

The Commission issued its Order Instituting Proceedings (OIP) against Ware on December 16, 2004, pursuant to 17 C.F.R. § 201.102(e)(3) and temporarily suspended him from appearing or practicing before the Commission. Ware filed a petition, pursuant to 17 C.F.R. § 201.102(e)(3)(ii), seeking to lift the temporary suspension. The Commission denied his petition and ordered a hearing in its Order Denying Motion to Lift Temporary Suspension and Directing Hearing (Hearing Order) on February 17, 2005. Pursuant to leave granted at the March 9, 2005, prehearing conference, pursuant to 17 C.F.R. § 201.250, the Division of Enforcement (Division) filed a Motion for Summary Disposition on March 17, 2005. The deadline set at the prehearing conference, at Ware's request, for his opposition was April 18, 2005, but he did not file an opposition. The Division filed a supplemental brief on April 20, 2005. 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 the Division's Motion for Summary Disposition, including those attachments admitted into evidence, infra.¹ 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 Ware was enjoined were decided against him in the civil case on which this proceeding is based. Pursuant to 17 C.F.R. § 201.250(a), any other facts in his opposition would have been taken as true, had he filed one. All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

A. Allegations and Arguments of the Parties

The OIP alleges that Ware was enjoined in 2004 from violating the antifraud, registration, and reporting provisions of the federal securities laws, based on his wrongdoing while participating in a fraudulent scheme to manipulate the stock of Investment Technology, Inc. (Investment Technology), a publicly traded company. The Division urges that Ware be permanently disqualified from appearing or practicing before the Commission. Ware did not file an opposition to the Division's motion. However, the Hearing Order indicated that Ware had argued that the temporary suspension should be lifted because he had moved to set aside his court-ordered injunction.

B. Exhibits Admitted into Evidence

The following items, of which official notice is taken pursuant to 17 C.F.R. § 201.323, included in the Division's Motion for Summary Disposition, at Exhibits 3, 4, and 5, are admitted into evidence as Division Exhibits 3, 4, and 5:

Order, SEC v. Inv. Tech., Inc., Case No. CV-S-03-0831-KJD-RJJ (SEC v. Inv. Tech.) (D. Nev. July 29, 2004) (Div. Ex. 3);

Order, SEC v. Inv. Tech. (D. Nev. Oct. 25, 2004) (Div. Ex. 4); and

Order, SEC v. Inv. Tech. (D. Nev. Oct. 27, 2004) (Div. Ex. 5).

The following items, of which official notice is taken pursuant to 17 C.F.R. § 201.323, included in the Division's supplemental brief, at Exhibits A and B, are admitted into evidence as Division Exhibits A and B:

Order, SEC v. Inv. Tech. (D. Nev. Apr. 7) (Div. Ex. A); and

Amended Final Judgment, SEC v. Inv. Tech. (D. Nev. Apr. 7, 2005) (Div. Ex. B);

¹ The Division also moved for leave to exceed the thirty-five page limit set forth in 17 C.F.R. § 201.250. Leave will be granted.

Additionally, the Commission's complaint in SEC v. Inv. Tech., included in the Division's Motion for Summary Disposition at Exhibit 2, is admitted into evidence as Division Exhibit 2.

II. FINDINGS OF FACT

Ware has been permanently enjoined from violations of the antifraud, registration, and reporting provisions of the federal securities laws. Div. Ex. 4. Specifically, he was enjoined, by default, from violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933; of Sections 10(b) and 13(d) of the Securities Exchange Act of 1934 and Rules 10b-5 and 13d-1 thereunder. Div. Ex. 4 at 7-10; Div. Ex. B at 3, 5-7. The court also ordered a penny stock bar, disgorgement of ill-gotten gains of \$171,000 plus prejudgment interest, and a civil penalty of \$120,000. Div. Ex. 4 at 6-7, 10-11; Div. Ex. B at 8-9. Additionally, the court found that Ware had engaged in misconduct and dilatory tactics and made frivolous motions and arguments in bad faith during the injunctive proceeding. Div. Ex. 3 at 10; Div. Ex. 4 at 3, Div. Ex. 5. The court ordered Ware to pay the Commission \$4,310 for attorneys' fees and expenses related to his misconduct. Div. Ex. 5. The court denied Ware's motion to set aside entry of the default "because default was entered due to Defendants' willful and culpable conduct." Div. Ex. A.

The wrongdoing that underlies Ware's injunction concerned Investment Technology, a publicly traded shell corporation based in Las Vegas, Nevada, that purchased a purported on-line gambling casino business with no operating history. Div. Ex. 2. Ware, an attorney and self-styled investment banker, served as the corporation's counsel. Div. Ex. 2. During 2002, Ware and others conducted a fraudulent pump-and-dump scheme, using false and misleading analyst reports and press releases. Div. Ex. 2. Ware reaped ill-gotten gains of \$171,000 from the scheme. Div. Ex. 4 at 6-7; Div. Ex. B at 8.

III. CONCLUSIONS OF LAW

Ware has been permanently enjoined "by reason of his . . . misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder" within the meaning of 17 C.F.R. § 201.102(e)(3)(i)(A). Even if he is appealing his injunction, the pendency of an appeal does not preclude "follow-up" action based on the injunction. Joseph P. Galluzzi, 78 SEC Docket 1125, 1130 n.21 (Aug. 23, 2002).

IV. SANCTION

The Division requests that Ware be permanently disqualified from appearing or practicing before the Commission.² This sanction is consistent with 17 C.F.R. § 201.102(e)(3), and accords with Commission precedent and the sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979). Ware's unlawful conduct was recurring and egregious,

² "Practicing before the Commission" includes "transacting any business with the Commission." 17 C.F.R. § 201.102(f).

extending over a period of time. He reaped ill-gotten gains of \$171,000. There are no mitigating circumstances, and his misconduct in the court proceeding is an aggravating circumstance.

V. PROCEDURAL ORDER

IT IS ORDERED that the Division's motion for leave to exceed the thirty-five page limit set forth in 17 C.F.R. § 201.250(c) IS GRANTED.

IT IS FURTHER ORDERED that the prehearing conference scheduled for April 29, 2005, IS CANCELLED.

VI. ORDER

IT IS ORDERED that ULYSSES "THOMAS" WARE IS PERMANENTLY DISQUALIFIED from appearing or practicing before the Commission.

Carol Fox Foelak
Administrative Law Judge