

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
	:	
HUNTER ADAMS,	:	
JASON A. COHEN,	:	
STEVEN M. COHEN,	:	
DAVID HIRSCH,	:	
JONATHAN D. WINSTON,	:	
JOHN J. GREMMO, III,	:	INITIAL DECISION
JAMES L. BILA,	:	June 30, 2005
CHRISTIAN W. BLAKE,	:	
LOUIS R. FACCHINI, JR.,	:	
ROBERTO A. MANGIARANO,	:	
JOSEPH P. MANNINO,	:	
DAVID M. MARGULES,	:	
JAMES J. PELLIZZI,	:	
DAVID M. PESSO,	:	
MICHAEL PUGLIESE,	:	
CHRISTOPHER J. RUSSO,	:	
HOWARD I. WEINSTEIN,	:	
and ROBERT J. WINSTON	:	

Background

The Securities and Exchange Commission (Commission) initiated this proceeding against eighteen Respondents on March 8, 2001, simultaneously with the initiation of a parallel criminal proceeding. United States v. Winston, No. 00 Cr. 1248 (E.D.N.Y. filed Mar. 8, 2001). The relevant period is from August 1995 through October 1997. All Respondents have pled guilty in the criminal proceeding, and all but six Respondents have been sentenced. (Appendix A.)

On September 8, 2003, in response to a motion from the Division of Enforcement (Division), and pursuant to Section 8A of the Securities Act of 1933 (Securities Act) and Sections 21C and 15(b)(6) of the Securities Exchange Act of 1934 (Exchange Act), I: (1) barred Respondents Hunter Adams (Adams), James L. Bila (Bila), Christian W. Blake (Blake), Jason A. Cohen (J. Cohen), Steven M. Cohen (S. Cohen), John J. Gremmo, III (Gremmo), Louis R. Facchini, Jr. (Facchini), David Hirsch (Hirsch), Roberto A. Mangiarano (Mangiarano), Joseph P. Mannino (Mannino), David M. Margules (Margules), James J. Pellizzi (Pellizzi), David M. Pesso (Pesso), Michael Pugliese (Pugliese), Christopher J. Russo (Russo), Howard I. Weinstein (Weinstein), and Robert J. Winston (R. Winston) from association with any broker or dealer; and (2) ordered these Respondents to cease and desist from committing or causing any violations, or

future violations, of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Hunter Adams, 81 SEC Docket 7 (Sept. 8, 2003).¹

At the request of the Division, I held the proceeding open until Respondents were sentenced in the parallel criminal proceeding for possible additional sanctions, specifically, disgorgement and civil penalties.

Pending Motion

On February 16, 2005, the Division filed a Motion for Final Summary Disposition (Final Summary Disposition Motion) containing the Declaration of Derrick K. Acker (Acker Declaration), and a Declaration of Thomas J. Feretic (Feretic), a staff accountant in the Division, with two volumes of exhibits (Feretic Declaration).² The Division requests that each Respondent, except J. Winston and Mannino, who the Division represents have submitted offers of settlement, be: (1) barred from participating in any offering of penny stock; (2) ordered to make disgorgement, plus prejudgment interest; and (3) ordered to pay a civil penalty. As evidence in support of its Final Summary Disposition Motion, the Division relies on: (1) the Final Summary Disposition Motion and exhibits; (2) the Order Instituting Proceedings as to the Respondents who have defaulted; (3) the Division's Partial Summary Disposition Motion with exhibits; (4) the Order on the Division's Partial Summary Disposition Motion; and (5) Respondents' admissions in their criminal allocutions and signed plea agreements. (Final Summary Disposition Motion at 1-2.)

The Division's disgorgement figures have two components: (1) the Respondent's earnings from First United Equities Corporation (First United) for employment in the relevant period admitted during the guilty plea; and (2) the commissions generated from trading in Ashton Technology Group Inc. (Ashton), and NMFS securities. (Final Summary Disposition Motion at 12-14; Feretic Declaration and Exhibits.) Feretic calculated the disgorgement amount for each Respondent during the time they were employed by First United during the relevant period "by adding the respondent's earnings to the commissions the respondent earned for trading in Ashton and NMFS securities" using payroll records and commission runs from clearing brokers. (Feretic Declaration at 4, Exhibit C.) The Division used information supplied by the FBI to identify Respondents' trades. Where more than one Respondent traded under the same registered representative number, the Division claims that each of the Respondents is jointly and severally liable for the profits earned under that number. (Final Summary Disposition Motion at 13-14.)

¹ I did not take action against Respondent Jonathan D. Winston (J. Winston) because he was in settlement discussions with the Division. Hunter Adams, 81 SEC Docket at 21 n.26.

² Derrick K. Acker is a Special Agent of the Federal Bureau of Investigations (FBI) who participated in the investigation and prosecution of the federal criminal action against Respondents and others. Exhibit A to the Final Summary Disposition Motion shows the registered representative number(s) used by each Respondent; Exhibit B identifies four customers for whom Margules traded National Medical and Financial Services (NMFS) securities; and Exhibit C lists the nominee accounts controlled by J. Cohen, Bila, Pessa, Pugliese, and Mangiarano.

Feretic prepared a final disgorgement calculation for each Respondent based on each Respondent's earnings for 1995, 1996, and 1997,³ and the amount earned trading Ashton and NMFS securities during the relevant period. (Feretic Declaration at 7, Exhibit F.) The Division asserts that its disgorgement presentation is a conservative and reasonable approximation of the ill-gotten gains Respondents received as compensation for participation in the fraud at First United. (Final Summary Disposition Motion at 14-15.)

<u>Respondent</u>	<u>Earnings</u>	<u>Commissions</u>	<u>Disgorgement</u>	<u>Prejudgment Interest</u>
Adams	\$43,246.40	\$401,708.37	\$444,954.77	\$277,009.41
Bila	23,546.27	45,939.38 519,225.18	588,710.83	366,505.64
Blake	1,278.16	45,939.38 113,403.86	160,621.40	99,995.88
Hirsch	157,587.06	377,064.59	534,651.65	332,850.78
J. Cohen	300,000.00	31,673.84	395,021.52	245,923.16
S. Cohen	46,666.67	250,248.52	296,915.19	184,846.44
Facchini	0	172,505.33	172,505.33	107,394.29
Gremmo	160,350.52	6,778.14	167,128.66	104,047.04
Mangiarano	60,628.79	968,109.07	1,028,737.86	640,447.30
Margules	0	14,712.50	14,712.50	9,159.36
Pellizzi	2,453.00	660,785.69	663,238.69	412,903.45
Pesso	90,486.86	292,689.11	383,175.97	238,548.65
Pugliese	450	3,960.94	4,410.94	2,746.07
R. Winston	66,088.22	243,626.88	333,815.10	207,818.70

³ The Division was unable to obtain payroll records for 1997. For earnings in 1997, Feretic divided the earnings in the 1996 calendar year by twelve and multiplied the result by the number of months the Respondent admitted working in 1997. (Feretic Declaration at 6.)

		24,100.00		
Russo	6,178.39	136,271.88	142,450.27	88,683.29
Weinstein	20,105.84	1,096,476.80	1,140,682.64	710,139.23
		24,100.00		

The Division's calculations used the Internal Revenue Service tax underpayment rate, 26 U.S.C. § 6621(a)(2), to calculate prejudgment interest, which the Commission has adopted for administrative proceedings, 17 C.F.R. § 600(b). (Feretic Declaration at 7.) The Feretic Declaration, Exhibit G sets out for each Respondent the interest calculation used for each quarter from November 1, 1997, the first day after the end of the relevant period through November 30, 2004, on the disgorgement amount.

Respondents Russo and Gremmo filed in opposition to the Final Summary Disposition Motion; however, Respondent Gremmo withdrew his opposition in a letter dated April 21, 2005. In response to successive Division requests, I postponed the date for replies to the Final Summary Disposition Motion for three months. 17 C.F.R. §§ 201.154(b), 111(d).

On June 21, 2005, the Division informed my office that: (1) it expected to submit signed offers of settlement from Respondents Mannino, Russo, and J. Winston to the Division's offices in Washington, D.C., for review; and (2) it would not reply to Respondent Russo's opposition to the Final Summary Disposition Motion. The Division did not specify when it would submit the offers of settlement to the Commission.

On June 22, 2005, I received a letter from Respondent Gremmo, requesting two weeks from his sentencing, scheduled for July 21, 2005, to resolve the issues of disgorgement and civil penalties with the Division. On June 27, 2005, I received a letter from Respondent Hirsch, which states that he is engaged in settlement discussions with the Division and requests that I delay entering a final order until he can resolve the restitution amount in his criminal case.

Legal Conclusions and Sanctions

I adopt and incorporate by reference the findings of fact and conclusions of law made previously for each Respondent, except J. Winston, in Hunter Adams, 81 SEC Docket 7 (Sept. 8, 2003).

Section 15(b)(6) of the Exchange Act authorizes the Commission to bar a person from participating in an offering of penny stock if it is in the public interest to do so and the person was participating in a penny stock offering at the time the person violated the securities laws.⁴ Respondents do not dispute the Division's assertion that Ashton and NMFS, the two securities at issue in this administrative proceeding, were micro-cap securities that traded at below five dollars a share during the relevant period and meet the definition of penny stocks. (Motion for

⁴ The Division asserts that Respondents Blake and Pugliese did not actively trade the two securities but participated in the fraudulent offerings. (Motion for Final Summary Disposition, 10 n.13.) Respondent Pugliese, however, admits to participating in the penny stock offerings. (Feretic Declaration, Ex. ¶ 2.)

Final Summary Disposition at 5, 7-11.) Accordingly, I find that NMFS and Ashton were penny stocks and that Respondents participated in penny stock offerings.

The public interest determination is made on consideration of the Steadman factors, Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), set out in Hunter Adams, 81 SEC Docket at 23-24 (Sept. 8, 2003). As noted there, Respondents' actions were egregious; they consisted of patently illegal activities; the violations continued in most cases for extended periods of time; and Respondents' future participation in the securities industry would present opportunities for future violations. For all these reasons, I will bar the non-settling Respondents from participating in any offering of penny stock.

Section 21B of the Exchange Act authorizes the assessment of civil money penalties in a proceeding instituted pursuant to Section 15(b)(6) of the Exchange Act where there has been a willful violation of the securities statutes. Penalties at the third tier are applicable where the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement and the violations resulted in substantial losses or created a substantial pecuniary gain to the violator. As noted, the relevant period is from August 1995 through October 1997. Penalties at the third level were set for a natural person at a maximum of \$100,000 for each act or omission from the beginning of the relevant period until December 9, 1996, when the amount per occurrence increased to \$110,000. 17 C.F.R. §201.1001, Section 21B of the Exchange Act, 15 U.S.C. §78u-2.

The Division recommends that Respondents Adams, Bila, Blake, J. Cohen, S. Cohen, Facchini, Gremmo, Hirsch, Mangiarano, Margules and Pessa be ordered to pay civil penalties at the third tier, and that "discretion" be applied in assessing penalties against Pellizzi, Pugliese, Weinstein, and R. Winston, who have "provided substantial cooperation and do not contest this litigation." (Final Summary Disposition Motion 17.) The Division recommends that the fraudulent conduct with respect to each security, Ashton and NMFS, constitutes a separate violation, but the Division does not quantify its recommendations. (Id. at 18.)

Respondents' criminal acts involved major violations of the securities statutes and involved fraud, deceit, or manipulation, and resulted in substantial pecuniary gain to Respondents and substantial losses to investors. Hunter Adams, 81 SEC Docket 7 (Sept. 8, 2003). For these reasons, I will assess civil money penalties at the third tier against the non-settling Respondents who did not cooperate with the Commission's investigation of this matter. I will use the \$110,000 per occurrence figure and will treat Respondents' actions as one violation in each of the two securities.

On April 28, 2005, I ordered the Division to give these matters priority attention to achieve resolution, including submitting to the Commission the offers of settlement of J. Winston and Mannino, which the Division represented it had in-hand and would recommend that the Commission accept. Nothing has happened. With the expectation that this ruling will resolve a proceeding for most Respondents that has been pending for over four years, and in view of the lack of opposition, I GRANT the Final Summary Disposition Motion as to all Respondents, except Respondents John J. Gremmo, III, David Hirsch, Joseph P. Mannino,

Christopher Russo, and Jonathan D. Winston.⁵ I expect that the Commission will have received offers of settlement from these five Respondents by the date of the next prehearing conference.

Order

Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b)(6) and 21B of the Securities Exchange Act of 1934:

I ORDER that Hunter Adams is barred from participating in any offering of penny stock; shall disgorge \$444,954.77 and prejudgment interest of \$277,009.41 for a total of \$721,964.18; and shall pay a civil penalty of \$220,000.

I FURTHER ORDER that James L. Bila is barred from participating in any offering of penny stock; shall disgorge \$588,710.83 and prejudgment interest of \$366,505.64 for a total of \$955,216.47; and shall pay a civil penalty of \$220,000.⁶

I FURTHER ORDER that Christian W. Blake is barred from participating in any offering of penny stock; shall disgorge \$160,621.40 and prejudgment interest of \$ 99,995.88 for a total of \$260,617.28; and shall pay a civil penalty of \$220,000.⁷

I FURTHER ORDER that Jason A. Cohen is barred from participating in any offering of penny stock; shall disgorge \$395,021.52 and prejudgment interest of \$245,923.16 for a total of \$640,944.68; and shall pay a civil penalty of \$220,000.

I FURTHER ORDER that Steven M. Cohen is barred from participating in any offering of penny stock; shall disgorge \$296,915.19 plus prejudgment interest of \$184,846.44 for a total of \$481,761.63; and shall pay a civil penalty of \$220,000.

I FURTHER ORDER that Louis R. Facchini, Jr., is barred from participating in any offering of penny stock; shall disgorge \$172,505.33 plus prejudgment interest of \$107,394.29 for a total of \$279,899.62; and shall pay a civil penalty of \$220,000.

I FURTHER ORDER that Roberto A. Mangiarano is barred from participating in any offering of penny stock; shall disgorge \$1,028,737.86 plus prejudgment interest of \$640,447.30 for a total of \$1,669,185.16; and shall pay a civil penalty of \$220,000.

I FURTHER ORDER that David M. Margules is barred from participating in any offering of penny stock; shall disgorge \$14,712.50 plus prejudgment interest of \$9,159.36 for a total of \$23,871.86; and shall pay a civil penalty of \$220,000.

⁵ The Division's disgorgement request does not appear to consider the restitution amount assessed against Respondents in the criminal proceeding. See SEC v. Parmesan, 135 F3d 860, 864 (2d Cir. 1998).

⁶ The disgorgement amount and prejudgment interest amount are subject to recalculation based on the Respondent's joint and several liability. See supra p.4 n.4.

⁷ Id.

I FURTHER ORDER that James J. Pellizzi is barred from participating in any offering of penny stock; and shall disgorge \$663,238.69 plus prejudgment interest of \$412,903.45 for a total of \$1,076,142.14.

I FURTHER ORDER that David M. Pessa is barred from participating in any offering of penny stock; shall disgorge \$383,175.97 plus prejudgment interest of \$238,548.65 for a total of \$621,724.62; and shall pay a civil penalty of \$220,000.

I FURTHER ORDER that Michael Pugliese is barred from participating in any offering of penny stock; and shall disgorge \$4,410.94 plus prejudgment interest of \$2,746.07 for a total of \$7,157.01.

I FURTHER ORDER that Howard I. Weinstein is barred from participating in any offering of penny stock; and shall disgorge \$1,140.682.64 plus prejudgment interest of \$710,139.23 for a total of \$1,850,821.87.⁸

I FURTHER ORDER that Robert J. Winston is barred from participating in any offering of penny stock; and shall disgorge \$333,815.10 plus \$207,818.70 for a total of \$541,633.80.⁹

I FURTHER ORDER that the prehearing conference scheduled for Thursday, June 30, 2005, is postponed to noon EDT on Friday, August 5, 2005, to consider the status of Respondents John J. Gremmo, III, David Hirsch, Joseph P. Mannino, Christopher Russo, and Jonathan D. Winston.

Payment of the disgorgement, prejudgment interest, and civil penalty shall be made on the first day following the day this initial decision becomes final. Payment shall be made by certified check, United States Postal money order, bank cashier's check, or bank money order, payable to the U.S. Securities and Exchange Commission. The payment, and a cover letter identifying the Respondent and the proceeding designation, shall be delivered to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

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

⁸ Id.

⁹ Id.

Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

Brenda P. Murray
Chief Administrative Law Judge

Appendix A

In a letter dated May 31, 2005, the Division represents that Respondents Christian W. Blake, Jason A. Cohen, John J. Gremmo, III, Howard I. Weinstein, Jonathan D. Winston, and Robert J. Winston have not been sentenced, and that the other Respondents have received the following sentences:

Hunter Adams ordered to 108 months of imprisonment, ordered to pay a special assessment of \$200, and to pay \$100,000,000.00 in restitution. (Sept. 22, 2003)

James L. Bila was sentenced to 27 months in prison, three years supervised release, ordered to pay a special assessment of \$200, and to pay \$1,744,478.57 in restitution. (April 18, 2005)

Steven M. Cohen was ordered imprisoned to time served (approximately five months), ordered to pay a special assessment of \$200, and to pay \$78,489,233.25 in restitution. (May 5, 2005)

Louis R. Facchini, Jr., ordered to three years of probation, \$200 special assessment, and to pay \$321,487.48 in restitution. (April 18, 2005)

David Hirsch ordered to three years of probation, \$200 special assessment, and restitution to be issued later. (April 3, 2003)

Roberto A. Mangiarano ordered imprisoned for 51 months, two years of supervised release, \$200 special assessment, and \$19,864,929.75 in restitution. (April 20, 2005)

Joseph P. Mannino ordered to thirty months imprisonment, \$200 special assessment, and \$1,001,177.60 in restitution. (Oct. 27, 2003)

David M. Margules ordered to three years of probation, \$200 special assessment and \$1,093,349.53 in restitution. (Dec. 18, 2003)

James J. Pellizzi ordered to three years of probation, \$200 special assessment, and to pay \$3,750,446.99 in restitution. (April 20, 2005)

David M. Pessa ordered to three years of probation, \$200 special assessment, and to pay \$1,026,538.61 in restitution. (March 31, 2005)

Michael Pugliese ordered to two years of probation, \$200 special assessment, and \$3,750,446.99 in restitution. (April 20, 2005)

Christopher Russo ordered to three years of probation, \$200 special assessment, and \$2,005,476.25 in restitution. (March 31, 2005)