Administrative Proceedings
Rulings Release No. 630

ADMINISTRATIVE PROCEEDING
FILE NO. 3-12359

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
October 18, 2006

In the Matter of	:	
	:	ORDER GRANTING PARTIAL
ANTHONY C. SNELL and	:	SUMMARY DISPOSITION TO THE
CHARLES E. LECROY	:	DIVISION OF ENFORCEMENT
	:	

The Securities and Exchange Commission (Commission) instituted this proceeding against Anthony C. Snell (Snell) and Charles E. LeCroy (LeCroy) on July 7, 2006, pursuant to Sections 15(b)(6), 15B(c)(4), and 21C of the Securities Exchange Act of 1934 (Exchange Act). Snell and LeCroy (collectively, Respondents) jointly filed a timely Answer. The Commission's Division of Enforcement (Division) has made its investigative file available to Respondents for inspection and copying.

At a telephonic prehearing conference held on August 4, 2006, the Division sought leave to file a motion for summary disposition as to all issues raised in the Order Instituting Proceeding (OIP). See Rule 250(a) of the Commission's Rules of Practice. I granted the Division's request for leave to file (Order of Aug. 4, 2006).

The Division has now filed its motion for summary disposition. Respondents have submitted their opposition, and the Division has filed a reply. I grant the Division's motion in part and deny it in part.[1]

Pursuant to Rule 250(b) of the Commission's Rules of Practice, I find that there are no genuine issues of material fact and that the following allegations in the OIP are true.

Undisputed Background Facts

Snell, age forty-six and a resident of Smyrna, Georgia, was a vice president in the Atlanta, Georgia, office of J.P. Morgan Securities, Inc. (J.P. Morgan Securities), from January 1998 until March 2004. Snell has held Series 7, 52, 53, and 63 securities licenses.

[1] Respondents have also filed a motion for partial summary disposition, but briefing on that motion is not yet complete. Rule 250(b) of the Commission's Rules of Practice requires me to rule promptly on the Division's motion. Barring unforeseen circumstances, I anticipate issuing another order that addresses Respondents' motion for partial summary disposition before the October 31, 2006, telephonic prehearing conference.

LeCroy, age fifty-one and a resident of Winter Park, Florida, was Snell's direct supervisor and the managing director of the southeast regional office of J.P. Morgan Securities in Orlando, Florida. LeCroy has held Series 7, 24, 53, and 63 securities licenses.

J.P. Morgan Securities is registered with the Commission as a broker, dealer, and municipal securities dealer. It is incorporated in Delaware and its principal place of business is in New York, New York.

Respondents Have Been Convicted of Wire Fraud

In April 2003, Snell and LeCroy submitted a false invoice to J.P. Morgan Securities, seeking payment of $50,000 to an attorney for legal work that the attorney had not actually performed. In May 2003, J.P. Morgan Securities honored the invoice and paid the attorney $50,000. When Snell and LeCroy's scheme came to light, J.P. Morgan Securities terminated their employment.

In June 2004, a grand jury in the United States District Court for the Eastern District of Pennsylvania indicted Snell and LeCroy. In November 2004, the grand jury filed a superseding indictment. Snell and LeCroy were each charged with two counts of wire fraud in violation of 18 U.S.C. § 1343 in connection with a scheme to defraud their employer by the $50,000 invoice. In January 2005, Snell and LeCroy each pleaded guilty to two counts of wire fraud.

The superseding indictment alleged, among other things, that Snell and LeCroy knew that the $50,000 payment violated unidentified municipal securities regulations (Division Exhibit 1 at 46, 48, 110; Respondents' Exhibit B at 110) (Div. Ex. ___; Resp. Ex. ___). At their change of plea hearings, both defendants specifically denied that they intended to evade or circumvent Municipal Securities Rulemaking Board (MSRB) Rule G-38 when they arranged the $50,000 payment (Div. Ex. 8 at 203-04; Resp. Ex. A at 26-27; Resp. Ex. C at 20). The United States Attorney and defendants' attorneys agreed that intent to circumvent MSRB Rule G-38 was not an essential element of the crime of wire fraud, and that the defendants' denials did not stand in the way of their guilty pleas. The district court concurred with counsel and accepted the guilty pleas (Resp. Ex. A at 27; Resp. Ex. C at 21). The Division acknowledges that the underlying criminal proceeding did not adjudicate the issue of whether Snell and LeCroy violated MSRB Rule G-38 (Division Reply Brief at 5) ("The Division has never contended that the District Court found or that the Respondents admitted, during the criminal proceedings, that they violated MSRB Rule G-38.").[2]

[2] The Division observes that the district court denied LeCroy's motion to dismiss or to strike the language about the alleged violation of municipal securities regulations from the original indictment. United States v. White, 2004 U.S. Dist. LEXIS 22886 at *40 (E.D. Pa. Oct. 29, 2004) ("[T]he disputed language mentioning defendants' knowledge of municipal securities regulations. . . is not only relevant, but arguably required, to allege the requisite knowledge and intent for a charge of wire fraud.") (emphasis added). The transcripts of the plea hearings make it plain that the district court judge later changed his mind on this issue (Div. Ex. 5 at 27-28; Resp. Ex. C at 21). The Division is not entitled to summary disposition of any issues relating to

In June 2005, the court sentenced LeCroy to three months of incarceration, followed by two years of supervised release, including ninety days of home custody (Div. Ex. 6 at 52-54). It also ordered LeCroy to pay a $15,000 fine and a $200 special assessment. LeCroy paid restitution of $50,000 prior to sentencing. The court sentenced Snell to ninety days of house arrest and three years of probation. It also ordered Snell to pay a $15,000 fine and a $200 special assessment (Div. Ex. 7 at 17-18). Snell did not need to pay restitution because LeCroy had already paid the full amount.

Associational Bars are in the Public Interest

Sections 15(b)(6)(A)(ii) and 15B(c)(4) of the Exchange Act empower the Commission to impose sanctions against a person associated with a broker, dealer, or municipal securities dealer if such person has been convicted of any offense specified in Section 15(b)(4)(B) of the Exchange Act within the past ten years. Specifically, the Commission may censure such an associated person, place limitations on the activities or functions of that person, suspend that person for a period not exceeding twelve months, or bar that person from being associated with a broker, dealer, or municipal securities dealer if the Commission finds, on the record and after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest.

Snell and LeCroy have been convicted, within ten years of the commencement of this proceeding, of felonies involving violations of 18 U.S.C. § 1343. Such offenses are specifically identified in Section 15(b)(4)(B)(iv) of the Exchange Act as a basis for action under Sections 15(b)(6)(A)(ii) and 15B(c)(4) of the Exchange Act. Snell and LeCroy were associated with J.P. Morgan Securities, a registered broker, dealer, and municipal securities dealer, at the times relevant to their criminal conviction. Accordingly, Snell and LeCroy are subject to sanctions under Sections 15(b)(6)(A)(ii) and 15B(c)(4) of the Exchange Act because of their criminal convictions.

To determine whether sanctions under Sections 15(b)(6)(A) and 15B(c)(4) of the Exchange Act are in the public interest, the Commission considers six factors: (1) the egregiousness of the respondents' actions; (2) whether the respondents' violations were isolated or recurrent; (3) the degree of scienter; (4) the sincerity of the respondents' assurances against future violations; (5) the respondents' recognition of the wrongful nature of their conduct; and (6) the likelihood that the respondents' occupations will present opportunities for future violations. See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1980). No one factor is controlling. Registration sanctions are not intended to punish a respondent, but to protect the public from future harm. See Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

Respondents' alleged violations of MSRB Rule G-38 and Section 15B(c)(1) of the Exchange Act. Nor is the Division entitled to summary disposition on two of its requested sanctions: civil monetary penalties and cease-and-desist orders. These aspects of the OIP cannot be resolved in the Division's favor at this time because material factual disputes remain.

Snell's and LeCroy's criminal violations were egregious. Both Respondents occupied positions of trust within the securities industry, and LeCroy was a supervisor. They cannot minimize their guilty pleas to two felonies each by contrasting their crimes with those of a respondent in an unrelated case who was subjected to an associational bar after conviction of twenty-six felonies (Respondents' Opposition Brief at 32). Cf. Butz v. Glover Livestock Comm. Co., 411 U.S. 182, 187 (1973) (holding that the appropriate sanction in a case depends on the particular facts and circumstances and cannot be determined by comparison with action taken in other proceedings). The criminal violations at issue here involved a continuing course of conduct over eight months (March 2003 to October 2003). The violations also involved a high degree of scienter. Cf. United States v. Guadagna, 183 F.3d 122, 129 (2d Cir. 1999) (holding that the wire fraud statute requires a showing of intentional fraud).

Snell and LeCroy ultimately recognized the wrongfulness of their criminal conduct, and the district court judge determined that both defendants had accepted responsibility for their actions.[3] However, they did not do so at first. LeCroy lied to his supervisor when questioned about whether the recipient of the $50,000 payment had performed any work on behalf of J.P. Morgan Securities. Snell delivered several documents to the recipient's office after learning of the grand jury's investigation. This action supports an inference that Snell was attempting to hide his wrongdoing.

Both Respondents are first-time offenders, and LeCroy has made full restitution to J.P. Morgan Securities. The opportunity for future violations is speculative, inasmuch as neither Respondent is currently employed in the securities industry. As a result of their convictions, Snell and LeCroy are subject to a "statutory disqualification" with respect to membership or participation in, or association with a member of, a self-regulatory organization, for ten years from the dates of their respective convictions. See Section 3(a)(39)(F) of the Exchange Act. Consequently, and regardless of the outcome of this administrative proceeding, they will not be able to associate with a broker or dealer without the consent of the appropriate self-regulatory organization and of the Commission. See Section 15A(g)(2) of the Exchange Act; John S. Brownson, 55 S.E.C. 1023, 1030 n.21 (2002), pet. denied, 2003 U.S. App. LEXIS 9714 (9th Cir. May 16, 2003).

Absent "extraordinary mitigating circumstances," a person who has been convicted of fraud "cannot be permitted to remain in the securities industry." Cf. Charles Trento, 82 SEC Docket 785, 791 (Feb. 23, 2004); Brownson, 55 S.E.C. at 1027. Snell and LeCroy have not offered evidence of any such mitigating circumstances here.

Viewing the Steadman factors in their entirety, the public interest requires that both Respondents be barred from association with any broker, dealer, or municipal securities dealer.

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[3] The Division argues that Respondents have not accepted responsibility for violating MSRB Rule G-38 and Section 15B(c)(1) of the Exchange Act (Division's Motion for Summary Disposition at 40, 43). The argument is irrelevant to the imposition of associational bars. See supra note 2.

Matters Remaining for Resolution after a Hearing

This Order is interlocutory in character. It is not an Initial Decision within the meaning of Rule 360(b) of the Commission's Rules of Practice. By analogy to Fed. R. Civ. Pro. 56(d), the Division, Snell, and LeCroy should view this Order as confirming that certain facts have been established and that one sanction (associational bars) is warranted in the public interest.

A telephonic prehearing conference will be held on October 31, 2006, at 9:30 a.m. E.S.T. to schedule a hearing on the unresolved issues. The Division must identify its proposed fact witnesses, any proposed expert witnesses, and its proposed hearing exhibits no later than November 8, 2006. At that time, the Division also must provide the specific information identified in Rules 222(a)(3)-(4) and 222(b) of the Commission's Rules of Practice. Expert witnesses will be required to submit their direct testimony in narrative form before the hearing. The due date for such submissions will be established at the telephonic prehearing conference.

SO ORDERED.

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James T. Kelly
Administrative Law Judge