

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

SECURITIES EXCHANGE ACT OF 1934
Release No. 53698/April 21, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12150

In the Matter of :
: ORDER MAKING FINDINGS AND
MICHAEL J. HEALEY : IMPOSING SANCTIONS BY DEFAULT

SUMMARY

This Order bars Michael J. Healey (Healey) from association with a broker or dealer, fines him \$35,000, and orders him to cease and desist from violations of Section 15(a) of the Securities Exchange Act of 1934 (Exchange Act) and to disgorge ill-gotten gains of \$151,000.

I. BACKGROUND

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) against Healey on January 19, 2006, pursuant to Sections 15(b) and 21C of the Exchange Act. The OIP alleges that he violated Section 15(a) of the Exchange Act through his activities in the offer and sale of securities of Stansbury Holdings Corporation (Stansbury) from January 2000 through May 2002 while not associated with, or outside the scope of any association with, a broker-dealer.

Healey was served with the OIP on January 31, 2006. To date, he has failed to file an Answer, due twenty days after he was served.¹ See OIP at 2; 17 C.F.R. § 201.220(b). The Division of Enforcement (Division) filed a Motion for Default on April 3, 2006, seeking an order finding the allegations of the OIP to be true. The Division requests a cease-and-desist order, disgorgement, a civil penalty, and a broker-dealer bar. Healey was ordered to show cause by April 18, 2006, why he should not be held in default and the proceeding decided against him. Michael J. Healey, Admin. Proc. No. 2-12150 (A.L.J. Apr. 4, 2006) (unpublished). Healey did not file an opposition to the Motion or respond to the order to show cause. Thus, Healey has failed to answer, to respond to a dispositive motion within the time provided, or otherwise to defend the

¹ Healey appeared pro se and through counsel, James F. Champa, at a February 24, 2006, prehearing conference. On March 20, 2006, Mr. Champa, citing a lack of communication, advised that he no longer represents Healey.

proceeding within the meaning of 17 C.F.R. § 201.155(a)(2). He is in default, and the undersigned finds the allegations of the OIP to be true. See 17 C.F.R. §§ 201.155(a), .220(f).

II. FINDINGS OF FACT

Healey, forty-seven, of Cumberland, Rhode Island, holds Series 7 and 63 securities licenses. OIP at 1. He was associated with a registered broker-dealer from October 1994 to December 2001, but is not currently associated with a registered broker-dealer. OIP at 1.

From January 2000 through May 2002 (the relevant period), Healey offered and sold securities in the form of notes and stock issued by Stansbury. OIP at 1. He raised \$694,800 from twenty-four investors through his sales of Stansbury securities. OIP at 1. Healey received \$151,000 in commissions from Stansbury for his selling efforts and those of other individuals whom he recruited.² OIP at 1-2.

During the relevant period Healey was not a registered broker-dealer and, after December 2001, was not associated with a registered broker-dealer. OIP at 2. From January 2000 through December 2001, he sold Stansbury securities outside the scope of his association with a registered broker-dealer. OIP at 2.

III. CONCLUSIONS OF LAW

Section 15 of the Exchange Act provides for registration and regulation of brokers and dealers. Section 15(a) makes it unlawful, with exceptions and exemptions not relevant here, for anyone who is not a registered broker or dealer or associated person “to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security” Thus, Healey’s actions in the offer and sale of Stansbury securities violated Section 15(a) since he was not a registered broker or dealer, and, during the time he was associated with a registered broker-dealer, his actions were outside the scope of his association. Additionally, his violation was willful within the meaning of Sections 15(b) and 21B of the Exchange Act, pursuant to which the Division seeks a bar and civil penalties.³

IV. SANCTIONS

² The Motion for Default includes a staff attorney’s declaration under penalty of perjury that, based on her review of various records, from January 2000 through June 25, 2002 (a longer period than the relevant period specified in the OIP), Healey was responsible for raising \$974,800 from twenty-nine investors and received compensation of \$192,151. In view of 17 C.F.R. § 201.155(a), which provides that, as to a party in default, the allegations of the OIP “may be deemed to be true,” the values and relevant period specified in the OIP are accepted as fact.

³ A finding of willfulness does not require an intent to violate, but merely an intent to do the act which constitutes a violation. See Wonsover v. SEC, 205 F.3d 408, 413-15 (D.C. Cir. 2000); Steadman v. SEC, 603 F.2d 1126, 1135 (5th Cir. 1979); Arthur Lipper Corp. v. SEC, 547 F.2d 171, 180 (2d Cir. 1976); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

The Division requests a cease-and-desist order, disgorgement of \$192,151 plus prejudgment interest, a civil penalty of \$35,000, and a broker-dealer bar. For the reasons discussed below, these sanctions will be ordered: a cease-and-desist order, disgorgement of \$151,000 plus prejudgment interest, a civil penalty of \$35,000, and a broker-dealer bar.

A. Sanction Considerations

When the Commission determines administrative sanctions, it considers:

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).

The Commission determines sanctions pursuant to a public interest standard. See Sections 15(b)(6) and 21B(c) of the Exchange Act. Thus, in addition to issues related to the violator, it "weigh[s] the effect of [its] action or inaction on the welfare of investors as a class and on standards of conduct in the securities business generally." Arthur Lipper Corp., 46 S.E.C. 78, 100 (1975); see also Richard C. Spangler, Inc., 46 S.E.C. 238, 254 n.67 (1976). The amount of a sanction depends on the facts of each case and the value of the sanction in preventing a recurrence. See Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963); see also Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

B. Sanctions

1. Cease and Desist

Exchange Act Section 21C authorizes the Commission to issue a cease-and-desist order against a person who "is violating, has violated, or is about to violate" any provision of the Act or rules thereunder. Whether there is a reasonable likelihood of such violations in the future must be considered. KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1185 (2001), reh'g denied, 55 S.E.C. 1 (2001), pet. denied, 289 F.3d 109 (2002), reh'g en banc denied, 2002 U.S. App. Lexis 14543 (July 16, 2002). In determining whether a cease-and-desist order is appropriate, the Commission considers the Steadman factors quoted above, as well as the recency of the violation, the degree of harm to investors, and the combination of sanctions against the respondent. See KPMG, 54 S.E.C. at 1192.

Healey's violations were egregious and recurrent, involving many transactions over a period of more than two years, as well as recruitment of other individuals to engage in violative transactions. Scienter is not an element of violations of Section 15(a) of the Exchange Act. The violations are recent. Healey has not acknowledged the wrongful nature of his conduct or given assurances against future violations. Finally, a cease-and-desist order is appropriate in light of the combination of sanctions ordered.

2. Disgorgement

Exchange Act Section 21C(e) authorizes an accounting and disgorgement, including reasonable interest, of ill-gotten gains from Healey. Disgorgement is an equitable remedy that requires a violator to give up wrongfully obtained profits causally related to the proven wrongdoing. See SEC v. First City Fin. Corp., 890 F.2d 1215, 1230-32 (D.C. Cir. 1989); see also Hateley v. SEC, 8 F.3d 653, 655-56 (9th Cir. 1993). It returns the violator to where he would have been absent the violative activity.

Based on its accounting, the Division requests disgorgement of \$192,151. However, as found above, Healey's ill-gotten gains amount to \$151,000, and disgorgement of that amount, plus prejudgment interest, will be ordered.

3. Civil Money Penalty

Section 21B of the Exchange Act authorizes the Commission to impose civil money penalties for willful violations of the Exchange Act. In considering whether a penalty is in the public interest, the Commission may consider six factors: (1) fraud or deliberate or reckless disregard of a regulatory requirement; (2) harm to others; (3) unjust enrichment; (4) previous violations; (5) deterrence; and (6) such other matters as justice may require. See Section 21B(c) of the Exchange Act. In this case, the penalty imposed will be based on Healey's violations that occurred after January 19, 2001, in view of 28 U.S.C. § 2462, which provides a five-year statute of limitations for "an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise" See Johnson v. SEC, 87 F.3d 484 (D.C. Cir. 1996).

Healey was enriched by his wrongdoing, and a penalty is in the public interest in this case. A penalty in addition to the other sanctions ordered is necessary for the purpose of deterrence. See Section 21B(c)(5) of the Exchange Act; see also H.R. Rep. No. 101-616 (1990). In view of the absence of other penalty factors, a first-tier penalty is appropriate. See Section 21B(b)(1) of the Exchange Act.

The maximum first-tier penalty for each act or omission occurring after February 2, 2001, is \$6,500 for a natural person; for those occurring between January 19 and February 2, 2001, it is \$5,500.⁴ Section 21B of the Exchange Act, like most civil penalty statutes, leaves the precise unit of violation undefined. See Colin S. Diver, The Assessment and Mitigation of Civil Money Penalties by Federal Administrative Agencies, 79 Colum. L. Rev. 1435, 1440-41 (1979). The \$35,000 penalty requested by the Division assumes fewer than six violative transactions occurred between January 19, 2001, and May 2002, and is entirely reasonable and appropriate.

4. Bar

⁴ See 17 C.F.R. §§ 201.1001, .1002.

As the Division requests, and based on the factors enunciated in Steadman v. SEC, 603 F.2d at 1140, Healey will be barred from association with a broker or dealer, as authorized by Section 15(b) of the Exchange Act. Healey's violations were egregious and recurrent, he has not acknowledged the wrongfulness of his past conduct or given assurances against future violations, and his occupation presents an opportunity to commit violations of the securities laws in the future. Combined with other sanctions ordered, a bar is necessary in the public interest and for the protection of investors.

V. ORDER

IT IS ORDERED that, pursuant to Section 21C of the Exchange Act, MICHAEL J. HEALEY CEASE AND DESIST from committing or causing any violations or future violations of Section 15(a) of the Exchange Act;

IT IS FURTHER ORDERED that, pursuant to Section 21C of the Exchange Act, MICHAEL J. HEALEY DISGORGE \$151,000 plus prejudgment interest at the rate established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), compounded quarterly, pursuant to 17 C.F.R. § 201.600, from June 1, 2002, through the last day of the month preceding which payment is made;

IT IS FURTHER ORDERED that, pursuant to Section 21B of the Exchange Act, MICHAEL J. HEALEY PAY A CIVIL MONEY PENALTY of \$35,000; and

IT IS FURTHER ORDERED that, pursuant to Section 15(b) of the Exchange Act, MICHAEL J. HEALEY IS BARRED from association with a broker or dealer.

Payment of the disgorgement and money penalty shall be made on the first business day following the day this Order becomes effective by certified check, U.S. Postal money order, bank cashier's check, or bank money order payable to the Securities and Exchange Commission. The check and a cover letter identifying the Respondent and Administrative Proceeding No. 3-12150, shall be delivered by hand or courier 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 shall be sent to the Commission's Division of Enforcement at the same address.

Carol Fox Foelak
Administrative Law Judge