

INITIAL DECISION RELEASE NO. 270
ADMINISTRATIVE PROCEEDING
FILE NO. 3-11529

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

In the Matter of :
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: INITIAL DECISION
FREDERICK W. WALL : January 13, 2005
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APPEARANCES: Jack Kaufman and Meaghan Cheung for the Division of Enforcement,
Securities and Exchange Commission

Frederick W. Wall, pro se

BEFORE: Lillian A. McEwen, Administrative Law Judge

SUMMARY

Respondent Frederick W. Wall (Wall) was convicted of conspiracy to commit securities fraud, wire fraud, and mail fraud based on his involvement in a scheme to sell phony private placements in several companies. This Initial Decision bars Wall from association with any broker or dealer.

PROCEDURAL HISTORY

The Securities and Exchange Commission (Commission) initiated this proceeding on June 28, 2004, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). Wall filed his Answer on July 30, 2004. I held a one-day public hearing in New York, New York, on October 13, 2004, during which the Division of Enforcement (Division) called no witnesses and Wall called four witnesses. Four exhibits from the Division and seven exhibits from Wall were admitted into evidence. The Division and Wall filed their posthearing briefs and proposed findings of fact and conclusions of law on November 12, 2004.¹

¹ Citations to the transcript of the hearing will be noted as “(Tr. __.)” Citations to the Division’s and Wall’s exhibits will be noted as “(Div. Ex. __.)” and “(Resp. Ex. __.)” respectively. Citations to the Division’s and Wall’s posthearing briefs will be noted as “(Div. Post-Hearing Br. at __.)” and “(Resp. Post-Hearing Br. at __.)” respectively.

ISSUES PRESENTED

The Order Instituting Proceedings (OIP) alleges that on December 11, 2000, Wall pleaded guilty to one count of conspiracy to commit securities fraud, wire fraud, and mail fraud, before the United States District Court for the Southern District of New York. United States v. Tivolacci, 1:00-CR-554. The OIP further alleges that the district court sentenced him to prison for thirty months and ordered him to make restitution in the amount of \$500,000. If I conclude that the allegations in the OIP are true, I must then determine, pursuant to Section 15(b) of Exchange Act, whether a remedial sanction against Wall is in the public interest.

FINDINGS OF FACT

The findings and conclusions herein are based on the entire record. I applied preponderance of the evidence as the standard of proof for the Division's case. See Steadman v. SEC, 450 U.S. 91, 102 (1981). I have considered and rejected all arguments and proposed findings and conclusions that are inconsistent with this Initial Decision.

Wall, age forty-eight, was a licensed broker for seventeen years and holds a bachelor of arts degree in English literature. (Tr. 17, 42, 95; Div. Ex. 3 at 3.) On December 11, 2000, Wall pleaded guilty to criminal charges of conspiracy to commit securities fraud, wire fraud, and mail fraud before the United States District Court for the Southern District of New York. (Div. Ex. 3 at 20-21; Div. Ex. 4 at 1.) Based on his guilty plea, the district court convicted Wall and sentenced him to thirty months' imprisonment followed by three years' supervised release and ordered him to make restitution in the amount of \$500,000. (Div. Ex. 2 at 21; Div. Ex. 4 at 2, 3, 5.) The court entered judgment against Wall on July 27, 2001. (Div. Ex. 4 at 1.) The misconduct underlying Wall's guilty plea and conviction is summarized as follows.

The criminal indictment alleged that Wall participated in a scheme to sell phony private placements in several companies. (Div. Ex. 1 at 4-6.) Wall incorporated and served as president of First Fidelity Equities, Inc., one of the companies alleged in the scheme. (Tr. at 102, 142; Div. Ex. 1 at 3; Div. Ex. 3 at 17.) Wall's responsibilities also included a variety of activities that brought the other companies into existence. (Div. Ex. 3 at 19.) Thereafter, unregistered brokers sold phony private placements in these companies. (Tr. at 107, 109; Div. Ex. 1 at 1-2, 4-6; Div. Ex. 3 at 13-14, 18.)

Wall knew that he was involved in a fraudulent scheme. (Tr. at 109, 113, 115-116, 141; Div. Ex. 3 at 13-14, 16, 22.) He witnessed unregistered brokers soliciting investments in the companies from public investors, which he understood was unlawful from his prior experience as a licensed broker. (Tr. at 104-107, 153-154; Div. Ex. 1 at 4-5; Div. Ex. 3 at 19-20.) He also observed unregistered brokers making false statements about the companies to induce stock purchases. (Tr. at 104-105, 109; Div. Ex. 3 at 14, 17-18.) Wall realized the companies were a "front" and "didn't actually go into business for the purpose of receiving a profit for goods and services." (Tr. at 104-107, 109; Div. Ex. 3 at 13-14.)

Wall assented to the illegal activities. He recruited three of the unregistered brokers who received substantial commissions. (Tr. at 109-110; Div. Ex. 3 at 18, 22.) Wall then accepted compensation knowing that it included overrides on the commissions of unregistered brokers Wall had recruited and that the operation was a fraudulent scheme. (Tr. at 104-107, 109-110; Div. Ex. 3 at 17-18, 20-21.) Wall admitted that he never informed authorities of the fraudulent scheme even after he left the firm. (Tr. at 148-150, 156.) The scheme involving First Fidelity Equities, Inc., continued after Wall ended his employment, ultimately defrauding investors of at least \$2.36 million. (Tr. at 91, 141; Div. Ex. 1 at 9, 17; Div. Ex. 3 at 16-18.)

CONCLUSIONS OF LAW

A. Wall's Arguments

Wall's argument that it is unlawful to subject a respondent to multiple proceedings and punishments for the same offense is without merit. (Resp. Post-Hearing Br. at 13.) Specifically, he indicates that both criminal and civil cases have already been brought against him for his involvement in this scheme. (Resp. Post-Hearing Br. at 13.) The Commission, however, is not precluded from barring a respondent from association with a broker or dealer in a follow-on proceeding based on the same conduct. See William F. Lincoln, 53 S.E.C. 452, 459-462 (1998). Further, the Commission has found that the existence of a criminal conviction is sufficient to bar a respondent from association with a broker or dealer, if such bar is in the public interest. See William F. Lincoln, 53 S.E.C. 452 (1998); John S. Brownson, 77 SEC Docket 3636, 3640 (July 3, 2002) (finding that absent extraordinary circumstances, a respondent convicted of securities fraud should not be allowed to participate in the securities industry).

Wall contends that in the prior criminal and civil proceedings opposing counsel engaged in fraudulent and unethical behavior. (Tr. at 134; Resp. Post-Hearing Br. at 1-3.) Wall implies that he is not seeking to re-litigate his criminal conviction, but that he wants to expose counsels' actions. (Tr. at 134-135.) A respondent is precluded from attacking actions taken in another case during the follow-on administrative proceeding. See Joseph P. Galluzzi, 78 SEC Docket 1125, 1131 n.23 (Aug. 23, 2002) (barring the respondent in the administrative proceeding from challenging the alleged unethical conduct of Division counsel in providing information to the U.S. Attorney for the criminal case).

B. Criminal Conviction

Wall pleaded guilty to conspiracy to commit securities fraud, wire fraud, and mail fraud. (Div. Ex. 3 at 20-21; Div. Ex. 4 at 1.) The indictment alleged that Wall was part of a scheme to sell phony private placements in several companies. (Div. Ex. 1 at 4-6.) On July 27, 2001, the United States District Court for the Southern District of New York entered judgment against Wall for this crime. (Div. Ex. 4 at 1.) I have taken official notice of the judgment entered in the criminal proceeding United States v. Tavalacci, 1:00-CR-554, and I conclude that the United States District Court for the Southern District of New York is a court of competent jurisdiction. See 17 C.F.R. § 201.323. I further conclude that Wall was convicted of an offense enumerated in Section 15(b)(4)(B) of the Exchange Act within ten years of the commencement of this proceeding.

C. Section 15(b)(6)

Section 15(b)(6) of the Exchange Act authorizes the Commission to sanction a person associated with a broker or dealer, if the Commission finds that such person has been convicted, within ten years of the commencement of the proceeding, of any offense enumerated in Section 15(b)(4)(B) of the Exchange Act and that such a sanction is in the public interest.

Wall was associated with a broker. Section 3(a)(4) of the Exchange Act defines the term “broker” as “any person engaged in the business of effecting transactions in securities for the account of others.” Section 3(a)(18) of the Exchange Act states the term “person associated with a broker or dealer” includes “any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer.” Wall’s performance of various activities to bring the companies into existence, his service as president of one of the companies, his recruitment of brokers, and his receipt of funds generated by the scheme, establish that at the time of the alleged misconduct Wall was associated with a broker.

SANCTIONS

I have already concluded that Wall was associated with a broker and convicted of an offense enumerated in Section 15(b)(4)(B) of the Exchange Act. Thus, the only other issue is the appropriate sanction. The Division requests that Wall be barred from association with a broker or dealer. (Div. Post-Hearing Br. at 1.)

In determining whether a sanction is in the public interest, the Commission considers the following factors:

[T]he egregiousness of the respondent’s actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the respondent’s assurances against future violations; the respondent’s recognition of the wrongful nature of his conduct; and the likelihood that the respondent’s occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff’d on other grounds, 450 U.S. 91 (1981). No one factor controls. See SEC v. Fehn, 97 F.3d 1276, 1295-96 (9th Cir. 1996).

Wall’s actions were egregious and recurrent, and involved a high degree of scienter. Wall incorporated First Fidelity Equities, Inc., and performed various activities to bring the other companies into existence. He knew that unregistered brokers made false statements to investors to solicit phony private placements in these companies. Instead of immediately notifying authorities, he continued to work for the firm and accepted commission overrides on the funds generated by the fraud. The entire scheme resulted in at least \$2.36 million in investor losses.

Wall does not fully recognize the wrongful nature of his actions or provide adequate assurances against future violations. Wall’s involvement in this scheme led to his conviction for conspiracy to commit securities fraud, wire fraud, and mail fraud. At the criminal sentencing hearing, United States District Judge Denny Chin noted that Wall “played a significant role” and

that Wall's role was "more substantial than many of the others." (Div. Ex. 2 at 20.) Nevertheless, Wall testified that he believed there was only a "weak connection" between his actions and the harm done to investors. (Tr. at 108.) Although he testified that he should have notified authorities of the scheme, Wall argues in his posthearing brief that he should not be punished for "not spending hours with authorities" regarding his part-time involvement in the scheme. (Tr. at 155-156; Resp. Post-Hearing Br. at 9.) Wall also accepted funds generated by the fraudulent scheme. At the hearing, Wall stated that he accepted this payment because "[t]hat's what [he] felt [he] had to do to get paid." (Tr. at 106, 107, 112, 143.) Accordingly, Wall fails to prove that he would act differently in the future because he understands the wrongful nature of his prior actions.

Lastly, Wall's future association with a broker or dealer would present opportunities for future violations. Wall maintains that he was licensed for seventeen years and had prior compliance experience. (Tr. at 153-154.) His substantial experience in this industry could enable him to associate with other brokers. Further, Wall could work in the industry for several more years given his relatively young age. Thus, if Wall is not barred, he could seek opportunities that would expose him to similar circumstances.

Viewing the Steadman factors in their entirety, I conclude that Wall should be barred from association with any broker or dealer. There are no mitigating circumstances in this case to warrant a lesser sanction.

CERTIFICATION OF THE RECORD

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), I hereby certify that the record includes the items set forth in the record index issued by the Secretary of the Commission on December 8, 2004.

ORDER

IT IS ORDERED that, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Respondent Frederick W. Wall is hereby BARRED from association 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.

Lillian A. McEwen
Administrative Law Judge