INITIAL DECISION RELEASE NO. 300
ADMINISTRATIVE PROCEEDING
FILE NO. 3-11866

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

In the Matter of	:	
	:	
JOSEPH CATAPANO,	:	INITIAL DECISION
AARON ANDRZEJEWSKI, and	:	November 10, 2005
MICHAEL KORDICH	:	
	:	

APPEARANCES: Howard M. Sklar for the Division of Enforcement, United States Securities and Exchange Commission

Aaron Andrzejewski, pro se

BEFORE: Lillian A. McEwen, Administrative Law Judge

SUMMARY

This Initial Decision finds that Respondent Aaron Andrzejewski (Andrzejewski) was permanently enjoined from violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act), Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 (Exchange Act), and Exchange Act Rule 10b-5. This Initial Decision bars Andrzejewski from association with any broker or dealer.

PROCEDURAL HISTORY

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on March 22, 2005, pursuant to Section 15(b) of the Exchange Act. A Default Order was issued against Respondent Joseph Catapano (Catapano) on July 8, 2005, for failing to file an Answer or otherwise defend the allegations set forth in the OIP. Joseph Catapano, Exchange Act Release No. 52002. Respondent Michael Kordich (Kordich) submitted an Offer of Settlement, which the Commission accepted on August 16, 2005. Joseph Catapano, Exchange Act Release No. 52272. Thus, this Initial Decision addresses only the charges in the OIP related to Andrzejewski.

I held a one-day public hearing in Miami, Florida, on July 12, 2005. The Division called one witness, Andrzejewski, and introduced five exhibits. Andrzejewski testified on his own behalf,

called no other witnesses, and introduced two exhibits.[1] Andrzejewski sent a letter to the undersigned, which I deem to be his posthearing brief, on August 8, 2005. The Division filed its posthearing brief and proposed findings of fact and conclusions of law on August 12, 2005, and a reply brief on September 2, 2005.

ISSUES PRESENTED

The OIP alleges that the United States District Court for the Southern District of Florida entered a Final Judgment by Default as to Andrzejewski (Final Judgment) in SEC v. Opsis Technologies International, Inc., No. 03-62251-Civ.-Martinez/Klein (S.D. Fla. Mar. 1, 2005). It alleges that the Final Judgment: (1) permanently enjoined Andrzejewski from violating Sections 5(a), 5(c), and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5; and (2) barred him from participating in a penny stock offering.

The OIP alleges that the civil injunctive complaint charged that from no later than 2001 through April 2003, Andrzejewski, while associated with an unregistered broker-dealer, made material misrepresentations in connection with the offer and sale of unregistered Opsis Technologies International, Inc. (Opsis), securities in violation of the antifraud provisions of the securities laws. The OIP also alleges that the civil injunctive complaint charged that Andrzejewski violated the registration provisions of Section 5 of the Securities Act and the broker-dealer registration provisions of Section 15(a) of the Exchange Act.

If I conclude that the allegations in the OIP are true, I must then determine, pursuant to Section 15(b) of the Exchange Act, whether any remedial sanctions against Andrzejewski are appropriate 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.

The Civil Action

On December 22, 2003, the Commission filed a civil injunctive complaint against Andrzejewski, along with Catapano, Kordich, Opsis, Venture Capital Holdings, LLC (Venture), and M&T Consulting Group, LLC (M&T) (collectively, "Defendants"). (Div. Ex. 1.) The Commission's complaint alleged that from no later than 2001 through April 2003 Andrzejewski: (1) sold and offered to sell unregistered Opsis securities; (2) made material misrepresentations during the sales and offers to sell Opsis securities; and (3) was not associated with a registered

[1] Citations to the transcript of the hearing will be noted as "(Tr. __.)." Citations to the Division's and Andrzejewski's exhibits will be noted as "(Div. Ex. __.)," and "(Resp. Ex. __.)," respectively. Citations to Andrzejewski's posthearing brief will be noted as "(Resp. Br. at __.)."

broker or dealer despite his efforts to promote and sell Opsis securities. On March 1, 2005, the United States District Court for the Southern District of Florida, Miami Division (District Court), a court of competent jurisdiction, entered a default judgment against Andrzejewski, Catapano, Opsis, and M&T (collectively, "Defaulting Defendants"). (Div. Ex. 2.) The District Court found the following allegations in the Commission's complaint to be true, as to the Defaulting Defendants, which I also find to be true. Id. at 2.

Opsis is a Delaware corporation with its principal office in Boca Raton, Florida. (Div. Ex. 1 at ¶ 8.) Opsis's purported business is the manufacture and marketing of "smart cards" utilizing DVD technology. Id. The securities of Opsis were not registered with the Commission and did not qualify for any exemption from registration under the Securities Act. Id. at ¶¶ 3, 8. From no later than 2001 to April 2003, the Defendants, including Andrzejewski, offered and sold over $1.4 million in unregistered Opsis securities to at least thirty-three investors in at least nineteen different states. Id. at ¶ 14. The full extent of the amounts raised and the number of investors involved are not yet known and may be significantly greater. Id.

M&T, a company with offices in Boca Raton, Florida, owned Opsis stock at various times from 2001 through April 2003. Id. at ¶ 10. M&T was not registered as a broker or dealer under Section 15(a) of the Exchange Act. Id. at ¶¶ 12, 14. Andrzejewski resided in Florida during the relevant period and was associated with M&T and M&T's principal, Catapano, when he sold and offered to sell Opsis securities. Id. at ¶¶ 12-14. Due to his sales activity, Andrzejewski operated as an unregistered broker-dealer in connection with his sales and offers to sell Opsis securities. Id. at ¶ 38. Since M&T was not a registered broker or dealer, Andrzejewski was not associated with a registered broker or dealer when he sold and made offers to sell Opsis securities. Id. at ¶¶ 13, 38, 41.

Andrzejewski, using the name of "Aaron Andrews,"[2] contacted various investors or prospective investors and knowingly or recklessly misrepresented that: (1) an initial public offering (IPO) of Opsis stock was imminent; (2) the share price would rise to certain levels on the secondary market; and (3) Opsis held certain patents to "smart card" technology. In April 2002, he told an investor that Opsis would conduct an IPO in four to five months. Id. at ¶ 22. In October 2002, Andrzejewski later told this same investor that Opsis would go public in one to two months. Id. In June 2002, he told two other investors that the Opsis IPO would occur in three to four months. Id. When the IPO did not occur, Andrzejewski told one of these two investors that the Opsis IPO did not go forward due to adverse economic conditions. Id.

Andrzejewski's representations regarding an imminent IPO by Opsis were materially false and misleading because Opsis had yet to file a registration statement, draft a prospectus, hire underwriters, auditors, or other professionals for an IPO, or produce audited financial statements. (Div. Ex. 1 at ¶ 23.) Andrzejewski, along with the other Defendants, failed to provide any evidence that Opsis took any meaningful steps toward completing an IPO. Id.

[2] Although Respondent's legal name is Andrzejewski, he has used the surname Andrews since high school. (Tr. 17, 19-20, 53-54.)

Andrzejewski also made baseless and contradictory secondary market price projections and profit guarantees for Opsis stock. In April 2002, Andrzejewski told an investor that Opsis stock would go as high as $10 per share, but at least up to $8 per share, after the purported IPO. (Div. Ex. 1 at ¶ 27.) In June 2002, he told another investor that Opsis stock would trade for $5 per share after the purported IPO. Id. In July 2002, he told a third investor that Opsis stock would trade for $15 per share soon after the purported IPO. Id.

The representations by Andrzejewski concerning the value of Opsis stock on the secondary market after the purported IPO were materially false and misleading because the price projections lacked a factual basis and were inherently arbitrary. Id. at ¶ 28. In addition, the disparity among the price projections given to the different investors indicated that the figures were fabricated. Id. Further, all of the secondary market price projections were contingent on an IPO by Opsis, which, as discussed above, appeared remote. Id. at ¶¶ 23, 28.

Andrzejewski also made representations to investors that Opsis held or owned rights to patents for "smart card" technology. Opsis created two documents that made such claims, one titled "Executive Summary" and the other titled "January 2003 Executive Level Business Briefing." Id. at ¶ 30. Andrzejewski distributed the Executive Summary to several investors and the January 2003 Executive Level Business Briefing to at least one investor. Id. Specifically, the Executive Summary stated that Opsis "has negotiated agreements to acquire ownership of the patent for the optical smart card technology and various patents for future optical smart card technology." Id. at ¶ 32. The January 2003 Executive Level Business Briefing stated that "Opsis has 'patents pending' for the OpCard®, purportedly a 'state of the art 250-megabyte (MB) DVD media smart card.'" Id. at ¶ 33.

These statements in both the Executive Summary and the January 2003 Executive Level Business Briefing documents were materially false and misleading. The United States Patent and Trademark Office had no record of Opsis owning or holding any proprietary rights in any patents, nor has Andrzejewski, or any other Defendant, provided the Commission with any evidence that Opsis held any patents or rights to patents anywhere in the world. Id. at ¶ 34.

Based on the preceding facts, the District Court found that Andrzejewski violated Sections 5(a), 5(c), and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5. (Div. Ex. 2.) The District Court entered its Final Judgment in which it: (1) permanently enjoined Andrzejewski from violating Sections 5(a), 5(c), and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5; (2) permanently barred Andrzejewski from, directly or indirectly, participating in an offering of penny stock; (3) ordered the Defaulting Defendants, jointly and severally, to disgorge ill-gotten gains of $4,598,517 and prejudgment interest of $135,392; and (4) ordered Andrzejewski to pay $110,000 in civil penalties. Id.

CONCLUSIONS OF LAW

The Permanent Injunction

On March 1, 2005, the District Court entered a Final Judgment by default against Andrzejewski, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5. Based on the foregoing, I conclude that Andrzejewski was permanently enjoined by a court of competent jurisdiction in connection with the purchase or sale of a security within the meaning of Sections 15(b)(6)(A) and 15(b)(4)(C) of the Exchange Act.

Associated persons of a broker or dealer may be subject to sanctions under Section 15(b) of the Exchange Act if they have been "enjoined from any action, conduct, or practice," in a court of competent jurisdiction, "in connection with any the purchase or sale of any security." Exchange Act §§ 15(b)(4)(C), (6)(A). 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 provides that 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." Andrzejewski was associated with M&T, an unregistered securities broker-dealer, when he sold or offered to sell Opsis securities. Accordingly, as a result of the conduct underlying the Final Judgment, I conclude Andrzejewski was associated with a broker-dealer and participated in the sales of unregistered securities.

Andrzejewski's Arguments

Upon receipt of the Commission's complaint and the District Court's Order on Default Final Judgment Procedure, Andrzejewski requested additional time to file an answer. (Tr. 24-25, 33; Div. Exs. 3, 4.) He, however, decided not to respond to the complaint and accepted a default judgment. (Tr. 14, 23-24, 31.) Andrzejewski argues the Division's use of the Final Judgment was inappropriate because he relied on his attorney's advice to default. (Resp. Br. at 1.) While Andrzejewski mentions that his attorney, Mr. Winters, only acted in a "minimal capacity," he does not clearly articulate the significance of this arrangement. Id. I decline to speculate on the efficacy of Mr. Winters' legal advice. See Bell v. Eastman Kodak Co., 214 F.3d 798, 802 (7th Cir. 2000) (ineffective assistance of counsel is not a ground for a collateral attack on a civil judgment). The record indicates that Andrzejewski was given full notice of the charges in the Commission's complaint, but chose not to respond. While Andrzejewski fully contests the instant proceeding, there is no evidence in the record that he attempted to set aside the Final Judgment. As such, full weight will be accorded to the Final Judgment. See Michael Batterman, 84 SEC Docket 1349, 1356 (Dec. 3, 2004) (challenges to a district court's civil injunction are properly addressed to the appellate court).

Andrzejewski argues that he was only minimally involved with M&T, Venture, Catapano, Kordich, and Opsis. He claims he was not a principal at M&T or Venture, nor did he have a financial or administrative position at those firms. (Resp. Br. at 2.) At the hearing, Andrzejewski admitted that he worked for both Catapano and Kordich, or their respective firms, M&T and Venture. (Tr. 21-23.) His duties were to initiate contact with potential investors, tell them about

the company, and send them a copy of the business plan for Opsis. (Tr. 18-19.) Although Andrzejewski described some of his telephone communications as unsolicited "cold calls," he denied that he closed any sales, or that he sold any stock. (Tr. 20; Answer at 1 (filed May 25, 2005).) There is, however, no requirement that a person be a principal or officer of a broker or dealer to be in violation of Section 15(b)(6)(A) of the Exchange Act. A person associated with a broker or dealer is equally liable.

Finally, he challenges the sufficiency of the Division's evidence to support the Commission's complaint. Andrzejewski claims that his name is mentioned by only two investors in the Division's investigative file. (Resp. Br. at 1.) Further, he claims the Division could only offer evidence that he received $6,880 from M&T, compared to the more than $4 million that is alleged to be defrauded by the Defaulting Defendants. Id. Andrzejewski also denied having conversations with investors described in the Commission's complaint, concerning price projections and the timetable for an IPO by Opsis. In the alternative, he could not recall whether they took place. (Tr. 17-21.) Andrzejewski, however, is prohibited from challenging the District Court's findings in this proceeding. See Batterman, 84 SEC Docket at 1356. Therefore, I reject all of the arguments raised by Andrzejewski, as contrary to law or otherwise without merit.

SANCTIONS

Section 15(b)(6)(A) of the Exchange Act authorizes the Commission to sanction any person who is, or at the time of the alleged misconduct was, associated with a broker or dealer if: (1) the person is enjoined from engaging in any conduct or practice in connection with the purchase or sale of a security; and (2) such a sanction is in the public interest. I have already concluded that Andrzejewski has been permanently enjoined "from engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security" within the meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act. I have also concluded that at the time of the misconduct underlying the Final Judgment, Andrzejewski was associated with a broker or dealer.

The remaining issue is what sanction, if any, is appropriate in the public interest. The Division requests a bar from association with any broker or dealer. In determining whether a sanction is appropriate in the public interest, the following factors are examined:

> [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 their conduct, and the likelihood that the [respondent's] occupations will present opportunity for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (citation omitted), aff'd on other grounds, 450 U.S. 91 (1981). In proceedings based on an injunction, the Commission also considers the circumstances surrounding the injunctive action when making the public interest determination. Marshall E. Melton, 80 SEC Docket 2812, 2814 (July 25, 2003).

Andrzejewski identifies several mitigating factors: his youth, being twenty-five-years old when the fraud occurred; his lack of a criminal or juvenile record; his lack of profits from the Opsis

scheme; his low-level position and his reliance on Kordich and Catapano; his difficulty in obtaining adequate legal representation; his remorse; and the adverse affect this proceeding will have on his future. (Resp. Br. at 1-2.)

Over a two-year period, Andrzejewski caused investors to lose more than $1.4 million. As a result, his multiple violations of the antifraud and registration provisions of the Securities Act and Exchange Act were egregious and recurrent. Andrzejewski's repeated false and misleading statements concerning Opsis and its securities evidenced a high degree of scienter. Despite his fraudulent actions, Andrzejewski fails to recognize the wrongful nature of his conduct. Instead, he claims no responsibility for defrauding any investor, choosing to place all the blame on Kordich and Catapano. (Tr. 74-76.) Given his failure to recognize the wrongful nature of his conduct, Andrzejewski's claim that he will be more careful in choosing his future business associates provides inadequate assurance against future violations of the securities laws. Andrzejewski, while "concerned that this decision will blemish [his] record," does not evidence remorse for defrauding any investors or causing their losses. (Tr. 74; Resp. Br. at 1-2.) Andrzejewski is currently "in between" jobs but is involved in developing a reality television show. (Tr. 37-41.) His duties include marketing and promoting the television show and soliciting investors. (Tr. 38-40.) His identification of local, "older people . . . in my small group in Boca," to target as investors for this speculative business venture demonstrates potential for mischief and presents the opportunity for Andrzejewski to commit future violations of the securities laws. (Tr. at 38-39, 75.) The mitigating factors, in total, do not warrant a lesser sanction than the one requested by the Division. Accordingly, I find that it is in the public interest to bar Andrzejewski from association with any broker or dealer.

CERTIFICATION OF 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 August 12, 2005.

ORDER

Based on the findings and conclusions set forth above:

IT IS ORDERED that, pursuant to Section 15(b)(6)(A) of the Securities Exchange Act of 1934, Aaron Andrzejewski 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.

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Lillian A. McEwen
Administrative Law Judge