

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 56075 / July 13, 2007

Admin. Proc. File No. 3-12398

In the Matter of  
  
JOHN M. LUCARELLI

ORDER DISMISSING  
ADMINISTRATIVE  
PROCEEDING

On July 28, 2006, a jury returned a guilty verdict against John M. Lucarelli on one count of conspiracy to commit mail fraud and one count of securities fraud before the United States District Court for the District of Connecticut. 1/ The counts of the criminal indictment as to which the jury found Lucarelli guilty alleged, among other things, that Lucarelli and others engaged in a scheme to obtain certain stock illegally in connection with the conversion of a mutual savings bank into a capital stock savings bank. 2/

On August 25, 2006, the Commission instituted an administrative proceeding against Lucarelli pursuant to Section 15(b) of the Securities Exchange Act of 1934 based on the criminal conviction. 3/ On September 5, 2006, Lucarelli filed an answer. On September 20, 2006, upon motion by the United States Attorney's Office for the District of Connecticut (the "USAO"), the administrative law judge entered an order staying this proceeding pending the entry of a "judgment and commitment" by the District Court in the underlying criminal proceeding against Lucarelli.

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1/ United States v. Vought, Case No. 3:05cr268 (JBA), 2006 U.S. Dist. LEXIS 39664 (D. Conn. June 15, 2006).

2/ The allegations in the criminal indictment are substantially similar to the allegations in the Commission's complaint in the civil injunctive action that it filed against four individuals, including Lucarelli, on June 28, 2005. See SEC v. Ross, Civil Action No. 3:05cv01036 (CFD) (D. Conn.). The Commission's civil action is pending as to Lucarelli.

3/ 15 U.S.C. § 78o(b); see also Order Instituting Administrative Proceedings, Securities Exchange Act Rel. No. 54361 (Aug. 25, 2006), 88 SEC Docket 2650.

On March 22, 2007, the District Court entered a judgment of acquittal in the underlying criminal proceeding, notwithstanding the jury's guilty verdict. The District Court's order set aside the jury's verdict. <sup>4/</sup> On March 26, 2007, the USAO filed a motion for reconsideration of the judgment of acquittal, seeking reconsideration of the District Court's decision not to order a new trial. Lucarelli opposed the motion. The USAO's motion remains pending.

The parties agree that it is appropriate to dismiss this administrative proceeding, but disagree as to whether the dismissal should be granted "with prejudice" or "without prejudice." On April 19, 2007, the Division of Enforcement (the "Division") filed with the Commission a motion to dismiss this administrative proceeding "without prejudice." In support of its motion, the Division argues that this proceeding was instituted properly because it is based on the jury's guilty verdict. The Division states that the USAO has moved for reconsideration of the District Court's judgment of acquittal. In addition, the Division contends that the entry of an injunction against Lucarelli in the pending Commission civil action, <sup>5/</sup> or his alleged willful violations, "could provide an independent basis for re-institution of these proceedings at a later date." <sup>6/</sup>

Lucarelli opposes the Division's motion and requests that the Commission dismiss this administrative proceeding "with prejudice." Lucarelli asserts that "a judgment of conviction has never been entered in [the criminal] matter, only a judgment of acquittal." Lucarelli contends that he has been prejudiced by being forced to defend a proceeding that "should never have been commenced."

The Commission's Rules of Practice do not distinguish between dismissing proceedings with or without prejudice. Lucarelli seeks to preclude the Division from taking action against him in the future. However, given the state of the proceeding before the Commission, we can determine only that, as a result of the District Court's order setting aside the jury's guilty verdict, there is currently no basis for instituting or continuing a proceeding against Lucarelli pursuant to Exchange Act Section 15(b) on the record before us. We conclude that it is appropriate to dismiss the proceeding. <sup>7/</sup>

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<sup>4/</sup> United States v. Lucarelli, Case No. 3:05cr268, 2007 U.S. Dist. LEXIS 17067 (D. Conn. Mar. 8, 2007).

<sup>5/</sup> See supra note 2.

<sup>6/</sup> The Division postulates three scenarios under which this proceeding could be re-instituted: (1) a subsequent conviction in the criminal proceeding, if the District Court orders a new trial or the USAO files an appeal and the United States Court of Appeals for the Second Circuit reverses the District Court's acquittal decision and orders a new trial; (2) the entry of an injunction by the District Court in the civil injunctive action; or (3) allegations that willful violations were committed by Lucarelli.

<sup>7/</sup> See, e.g., Richard J. Adams, 55 S.E.C. 85, 88 (2001) (citing Warren G. Trepp, 54 S.E.C. (continued...))

Accordingly, IT IS ORDERED that the motion of the Division of Enforcement to dismiss the administrative proceeding instituted on August 25, 2006 against John M. Lucarelli be, and it hereby is, granted.

By the Commission.

Nancy M. Morris  
Secretary

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7/ (...continued)  
364 (1999)); see also Global Crown Capital, LLC, Exchange Act Rel. No. 55318 (Feb. 20, 2007), 90 SEC Docket 58 (dismissal order). We do not intend to suggest any view regarding the institution of any subsequent proceedings against Lucarelli arising from these or any other facts.