SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 49389/March 10, 2004

Admin. Proc. File No. 3-11145

In the Matter of the Application of

AMR ELGINDY

and

KEY WEST SECURITIES, INC.
c/o Martin P. Russo, Esq.
Kurzman Eisenberg Corbin Lever & Goodman, LLP
One North Broadway
White Plains, New York 10601

For Review of Disciplinary Action Taken by

NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION - REVIEW OF DISCIPLINARY PROCEEDINGS

Alleged Manipulative Scheme

Failure to Observe Rules Regarding Public Communications

Former principal and chief trader of former member firm of registered securities association held responsible for attempting to manipulate market for securities and for violation of association's rules mandating disclosure of market maker status in communications with the public. Held, association’s findings and sanctions set aside in part and sustained in part.

APPEARANCES:

Martin P. Russo, of Kurzman Eisenberg Corbin Lever & Goodman, LLP, for Amr Elgindy and Key West Securities, Inc.

Marc Menchel, Alan B. Lawhead, and Jennifer C. Brooks, for NASD.

Appeal filed: June 2, 2003
Last brief received: September 22, 2003

I.

Amr Elgindy, formerly the owner, sole executive, and chief trader of Key West Securities, Inc. ("Key West" or "Firm"), a former member of NASD, and Key West appeal from NASD disciplinary action against them. NASD found that Elgindy and the Firm engaged in a manipulative scheme 1/ and violated NASD rules regarding communications with the public. 2/ NASD barred Elgindy from association with any NASD member in any capacity, expelled Key West from NASD membership, and fined Applicants $51,000

1/ NASD found that Applicants' conduct violated Securities Exchange Act Section 10(b), 15 U.S.C. § 78j (making it "unlawful for any person . . . to use or employ in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe."); Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5 (prohibiting "in connection with the purchase or sale of any security . . . any device, scheme, or artifice to defraud" or any other "act, practice, or course of business" that "operates as a fraud or deceit."); and NASD Conduct Rule 2120 (prohibiting members from effecting "any transaction in, or induc[ing] the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.").

2/ NASD found, and Applicants have not contested, that Applicants violated NASD Rules 2110 and 2210(d)(2)(B) by not disclosing in communications with the public that the Firm made a market in a security that was the subject of a recommendation by the Firm.

jointly and severally. 3/ We base our findings on an independent review of the record.

II.

Saf T Lok, Inc. ("Saf T Lok") made safety mechanisms for firearms. Its stock traded on the NASDAQ SmallCap Market under the symbol "LOCKC." 4/ By October 9, 1997, Saf T Lok was nearly insolvent and faced delisting. On the morning of October 9, however, the Associated Press reported that then-President Clinton had signed an agreement requiring handgun manufacturers to provide child-proof safety locks to each purchaser of their handguns. It appears that this news excited investor interest in Saf T Lok.

On October 9, there were as many as twenty market makers in Saf T Lok. On October 9 and 10 the market makers traded more than 32,000,000 shares of Saf T Lok in increments of 1/32 and lots as small as 100 shares. Over the 16 trading hours on those two days, market makers entered more than 16,000 quote updates. On October 9, Saf T Lok opened at $0.43 per share and closed at $3.00 on volume of 12,036,089 shares, up from 147,473 shares the previous trading day. On October 10, Saf T Lok closed at $4.56 on volume of 17,642,215 shares. 5/

Key West had been a market maker for Saf T Lok only since April 1997, and the Firm had not traded significantly in Saf T Lok before October 9. When the market opened on October 9, 1997, the Firm's inventory was "flat" in Saf T Lok: it had no Saf T Lok shares in inventory, and it had not sold short any Saf T Lok shares.

3/ NASD fined Applicants $50,000 for the manipulative conduct and $1,000 for the violation of public communication rules.

4/ The "C" appended to the end of the trading symbol denoted that the company was subject to imminent delisting.

5/ Volume moderated after the initial surge of interest: trading in Saf T Lok decreased to 5,024,985 shares on October 13 (the next trading day) and 1,860,133 shares on October 14.

Over the next month the price decreased gradually. Through November 11, Saf T Lok's daily closing prices were between $2.03 and $3.56 with an average of $2.95 per share.

During the morning of October 9, Elgindy noticed a steep increase in activity in Saf T Lok stock. Elgindy read the Associated Press report of President Clinton's action and called Saf T Lok to determine whether that company would benefit from the agreement. Saf T Lok informed Elgindy that the safety-lock agreement would not benefit Saf T Lok. Saf T Lok also told Elgindy that no handgun manufacturers purchased Saf T Lok's products because they were too expensive and relatively ineffective. Elgindy began preparing a negative press release on Saf T Lok; Elgindy published the release at 12:48 p.m. on October 9.

While investigating the increase in Saf T Lok trading and preparing his press release, Elgindy was making the Firm's market in Saf T Lok. Elgindy was the only person at the Firm entering the Firm's quotations for Saf T Lok.

For three periods on October 9 totaling 8 minutes and 43 seconds (10:26:20 a.m. to 10:27:33 a.m.; 10:50:12 a.m. to 10:53:03 a.m.; and 11:41:06 a.m. to 11:45:45 a.m.), Key West established or joined the inside bid for Saf T Lok stock. During these three periods, the Firm established the inside bid for only brief periods of time (sometimes seconds) before it was either joined or supplanted by another market maker. The Firm briefly was at the inside bid and inside offer later on October 9 and again on October 10. However, it was the inside bid for less than one percent of the trading time during those two days.

Elgindy testified that Key West's bid moved as a consequence of his attempts to move the Firm's offer above and "out of the way" of the high demand for Saf T Lok. 6/ Elgindy stated that he believed that he had to maintain a set "spread," between the Firm's bid and offer quotations because NASD's "excess spread" rule required that market makers limit their spread. Elgindy also testified that the Firm's workstation maintained a fixed spread between the bid and the ask and that the process of changing the amount of the spread was time-consuming and complicated. Consequently, as Elgindy moved the Firm's offer out of the way, the bid increased with it. 7/

6/ Elgindy testified without contradiction that, if the Firm were at the inside offer, the Firm would receive so many orders so rapidly that the Firm's computer system would freeze up.

7/ NASD presented unrefuted evidence that the excess spread
(continued...)

While managing Key West's quotations, Elgindy engaged in a series of short sales of Saf T Lok. Elgindy entered broadcast sell orders roughly contemporaneously with the Firm's increasing bids, sold additional shares short on a preference basis, and sometimes sold short at the Firm's bid. 8/ Immediately after the period from 10:26:20 a.m. to 10:27:33 a.m. when NASD alleges Elgindy was bidding up Saf T Lok, Key West received execution on six short sales amounting to 12,000 shares of Saf T Lok. During the second period when Key West entered the inside bid quotations (between 10:50:12 a.m. and 10:53:03 a.m.), Key West received execution on a short sale of 1,000 shares of Saf T Lok. During and immediately after the third period when Key West entered the inside bid (between 11:41:06 a.m. and 11:45:45 a.m.), Key West received execution on two short sales totaling 2,000 shares. At 12:48 p.m., Elgindy issued his press release, reporting that Saf T Lok would not benefit from the new legislation. All told, Nasdaq records indicate that Key West engaged in 30 short sales on October 9 between 9:53:56 a.m. and 3:28:46 p.m, moving Key West's position in Saf T Lok from flat to short 46,000 shares.

Also on October 9, the Firm failed to execute 21 orders to buy Saf T Lok shares at the Firm's posted bid price; some of the 21 orders were withdrawn, and others lapsed because they "timed out," that is, they were not filled within a pre-determined period. Elgindy testified that, when orders appeared on his computer screen, he had either to "execute" or "cancel" them before doing anything else on the computer, or his computer would

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7/ (...continued)
rule did not apply to securities listed on the Nasdaq Small Cap Market in October 1997.

Elgindy also testified that his workstation warned him when he entered a quotation that violated the excess spread rule. NASD presented evidence that the Nasdaq system did not have the capability to warn users that a quotation violated the excess spread rule. NASD did not address Elgindy's other representations regarding the operation of the Firm's workstation.

8/ In October 1997, Key West used SelectNet, a computerized order system operated by Nasdaq that permitted market participants to enter buy or sell orders in Nasdaq securities. A firm using SelectNet could direct its order to a single market maker (a "preferenced" order) or to all market makers (a "broadcast" order).

"freeze." 9/ Elgindy testified that, if he were working on another task when Key West received an order, his practice was to cancel the new order on the screen, finish what he was doing, and then turn to the new order.

On October 9, each time Elgindy returned to an order that he had cancelled, the order either had been withdrawn or had timed out. Elgindy testified that he called the brokers whose orders he had not filled to see whether they still wished to do the deal. None of the brokers Elgindy contacted wanted to complete the transaction. 10/

On October 10, between 9:27:19 a.m. and 3:58:24 p.m., Key West effected another six short sales for a total of 12,000 shares, increasing Key West's short position in Saf T Lok to 58,000 shares.

Elgindy testified that he sold Saf T Lok short because he thought it was a poor investment. Elgindy thought that the increase in the price of Saf T Lok was based on a misunderstanding. Elgindy concluded that, when investors understood that the safety-lock mandate would not benefit Saf T Lok, the price of Saf T Lok would collapse. 11/

On October 10, Elgindy issued two more negative press releases on Saf T Lok (one at 11:13 a.m. and another at 2:27 p.m.). Key West subsequently issued two more press releases on October 24 and November 11, respectively. All five press releases accurately reported on Saf T Lok's financial troubles and the fact that there was no reasonable prospect that its business would increase as a result of the new mandate. Elgindy later accurately reported that the senior management of Saf T Lok

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9/ If he chose to execute the order the transaction was completed. If, on the other hand, Elgindy chose to cancel the order, the order would move to a different part of his computer screen, the computer would no longer be frozen, and he would be able to act on the order later.

10/ Elgindy did not receive any complaints from brokers whose orders he had not filled. An NASD witness testified that NASD had not received any complaints about Elgindy "backing away" from the Firm's bid.

11/ The Firm ultimately lost money on the short sales.

had sold their shares in the company. 12/ Elgindy did not disclose in any of the press releases that the Firm made a market in Saf T Lok stock. In an interview with a reporter from Bloomberg News Service, Elgindy did disclose that the Firm made a market in Saf T Lok stock. Bloomberg reported that fact in a story on Saf T Lok published on October 10 at 10:29 a.m. and 11:13 a.m.

NASD's hearing panel concluded that Elgindy had not manipulated the market for Saf T Lok stock because the Firm lacked the requisite market power to do so. The hearing panel found that Elgindy and the Firm had engaged in conduct inconsistent with just and equitable principles of trade by "backing away" from the Firm's bids for Saf T Lok stock and that Elgindy violated NASD rules on public communications by failing to disclose in the press releases that the Firm made a market in Saf T Lok stock. 13/

The National Adjudicatory Council ("NAC") reversed the hearing panel's dismissal of the manipulation charge, finding that Elgindy and the Firm had engaged in a manipulative scheme with respect to Saf T Lok stock as alleged in the complaint. The NAC did not reach the question of the Applicants' backing away from the Firm's bids for Saf T Lok stock. 14/

III.

Applicants deny that they engaged in a manipulative scheme. Applicants further deny that they had fair notice of the backing away charge as well as denying the substance of the charge. We address each of Applicants' contentions below.

12/ NASD did not allege and did not find that Elgindy's press releases were inaccurate in what they reported.

13/ The Hearing Panel suspended Elgindy and the Firm for one year, fined each $2,000 for failing to honor the Firm's bids, and fined Elgindy $1,000 for issuing recommendations regarding Saf T Lok without disclosing the Firm's market maker status.

14/ The NAC affirmed the Panel's findings that the press releases violated the NASD's rules on public communications because they failed to disclose Key West's status as a market maker in Saf T Lok.

A. Manipulation. We have defined "manipulation" as "intentional interference with the forces of supply and demand." 15/ Determining whether a person has engaged in a manipulative scheme depends on inferences from a variety of factual detail, patterns of behavior, and, among other things, trading data. 16/ Courts have suggested that manipulation requires the injection of inaccurate information into the market or creation of a false impression of market activity. 17/

We have noted that manipulations often display several characteristics. In Brooklyn Capital, we found that manipulations may be characterized by a rapid surge in the price of a security dictated by the firm that controlled the market for that security, little investor interest in the security, an abundant supply of shares of the security, and the absence of any known prospects for the issuer or favorable developments affecting the issuer or its business. 18/ In Michael J. Markowski, we suggested that market domination, maintenance of high bid prices, absorption of all shares sold by others into inventory, abuse of price leadership resulting from almost exclusive control over the supply of the shares, and a failure to reflect genuine market conditions are characteristics of manipulation. 19/

Applicants argue that none of these indicia is present in this case. There were twenty market makers in Saf T Lok. Key West's transactions were a minimal percentage of the Saf T Lok volume. Key West had no supply of the security. There was substantial, if misguided, interest in Saf T Lok based on the press reports.

15/ Brooklyn Capital & Securities Trading, Inc., 52 S.E.C. 1286 (1997) (quoting Pagel, Inc., 48 S.E.C. 223, 226 (1985), aff'd, 802 F.2d 942 (5th Cir. 1986)).

16/ Id. at 1290.

17/ See, e.g. GFL Advantage Fund, Ltd. v. Colkitt, 272 F.3d 189, 205 (3d Cir. 2001).

18/ Brooklyn Capital, 52 S.E.C. at 1290.

19/ Michael J. Markowski, Securities Exchange Act Rel. No. 43259 (Sept. 6, 2000), 73 SEC Docket 625, 629 (citing Patten Securities Corp., 51 S.E.C. 568, 574 (1993)), aff'd, 274 F.3d 525 (D.C. Cir. 2001), cert. denied, 537 U.S. 819 (2002).

However, we have also stated that a "finding of manipulation does not hinge on the presence or absence of any particular device usually associated with a manipulative scheme." 20/ As an initial matter, we agree with NASD that whether a respondent has adequate market power to successfully manipulate a market is not dispositive of whether the respondent engaged in a manipulative scheme. Success is not a prerequisite for a finding of manipulation. 21/

Here, NASD contends that four facts, when taken together, establish that Elgindy attempted to manipulate the market for Saf T Lok stock: (a) Elgindy bid up the price of Saf T Lok and then sold the stock short; (b) Elgindy sold Saf T Lok stock short at the Firm's bid; (c) Elgindy issued five press releases with negative coverage of Saf T Lok; and (d) the Firm failed to honor the bids Elgindy entered for Saf T Lok.

On October 9, before Key West had entered its bids, investors had begun to bid up the price of Saf T Lok stock, apparently based on a misunderstanding of the new gun safety agreement. The Firm was among the twenty market makers in Saf T Lok stock and was responsible for only a small percentage of the trading in Saf T Lok. For a few minutes (and sometimes for a few seconds) out of that trading day and of October 10 the Firm was at the inside bid. The amount of time that the Firm was at the inside bid amounted to less than one percent of the trading time those days. The price of Saf T Lok stock was rising before Elgindy began updating the Firm's quotations, and continued after the Firm ceased to be the inside bid in the market. 22/ The record does not support a finding that either the Firm's few and relatively brief escalating bids or its short sales or its negative press releases were part of a scheme to manipulate Saf T Lok trading.

We also cannot conclude that Key West's sales at the bid evidence a manipulative scheme. If there had been any upward

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20/ Swartwood, Hesse, Inc., 50 S.E.C. 1301, 1307 (1992). See also Herpich v. Wallace, 430 F.2d 792, 802 (5th Cir. 1970) (antifraud provisions designed to "encompass the infinite variety of devices that are alien to the 'climate of fair dealing' . . . that Congress sought to create and maintain") (citations omitted).

21/ Markowski, 73 S.E.C. Docket at 630.

22/ See supra text accompanying n.5.

pressure exerted by the Firm's bids, the Firm's contemporaneous broadcast short-sale orders provided countervailing information to the market indicating Key West's negative view of Saf T Lok.

Applicants published five press releases stating Elgindy's negative opinion regarding Saf T Lok. The parties do not dispute that the press releases contained accurate factual information regarding Saf T Lok. Courts have found that the dissemination of accurate information in the securities market is not a manipulative act. 23/

NASD established that Elgindy and the Firm did not honor the bids for Saf T Lok entered by the Firm. Although this fact could be evidence of manipulative intent, by itself it is, at most, equivocal. Even in combination with the other evidence in this record, the backing away by the Firm does not establish that Applicants engaged in a manipulative scheme.

Based on the record before us, we cannot conclude that the evidence demonstrates that Applicants engaged in a manipulative scheme. 24/

23/ In re Olympia Brewing Company Securities Litigation, 613 F. Supp. 1286, 1292 (N.D. Ill. 1985). See also GFL Advantage Fund, Ltd. v. Colkitt, 272 F.3d at 205 (proof of manipulation requires showing that manipulator injected inaccurate information into the marketplace). Edward J. Mawod & Co., 46 S.E.C. 865, 870 n.24 (1977), is not to the contrary. In Mawod, the reports that we found to be part of the manipulative scheme were accurately reporting facts concerning wash sales and matched orders that themselves fabricated an appearance of trading activity. Mawod, 46 S.E.C. at 871-2 (frustrating investors' expectations that supply and demand determine prices paid and received, essence of manipulation is substitution of fiction for fact). While Elgindy failed to disclose in the press release that Key West was a Saf T Lok market maker, he did disclose that information to Bloomberg.

24/ NASD barred Elgindy from association with any NASD member in any capacity, expelled Key West from NASD membership, and fined Applicants $50,000 jointly and severally with respect to the manipulative scheme. In light of our dismissal of the manipulation charge, we dismiss the bar, expulsion, and $50,000 fine.

B. Entering Bids In Bad Faith, or "Backing Away". Although the hearing panel dismissed the manipulation charge against Applicants, it found that Applicants had violated NASD Conduct Rule 2110 requiring NASD members to "observe high standards of commercial honor and just and equitable principles of trade" 25/ by publishing bid quotations that the Firm did not intend to honor. The NAC reversed the hearing panel on the manipulation charge. The NAC did not reach the hearing panel's finding that the Applicants had violated Conduct Rule 2110 by publishing bids and not honoring them.

Applicants complain that they did not have fair notice of the allegations with respect to their honoring the bids. Such conduct, if found, could, in our view, support a finding that Applicants failed to observe just and equitable principles of trade. However, because the NAC neither made findings regarding the backing away conduct, nor imposed sanctions regarding that conduct, there is no finding of violation or final disciplinary action before us. 26/

C. Violation of Public Communication Rules. Applicants have not disputed that Elgindy's five press releases recommending that investors sell Saf T Lok violated NASD's rules regarding communications with the public in that the press releases did not disclose that Key West made a market in Saf T Lok securities. Accordingly, we find that Applicants committed the charged violations. The $1,000 fine imposed jointly and severally on Applicants for violation of NASD rules regarding communications with the public is within the range suggested by the NASD Sanction Guidelines. 27/ We find that the sanction is neither excessive, oppressive nor an unnecessary or inappropriate burden on competition. 28/

25/ NASD Conduct Rule 2110 (2000).

26/ Russell A. Simpson, 53 S.E.C. 1042, 1046 (1998) (actions that do not impose final disciplinary sanction not reviewable).

27/ See NASD Sanction Guidelines, 88 (2001) (Communications With the Public -- Failing to Comply with Rule Standards Or Use of Misleading Communications), which provides for a fine of between $1,000 and $20,000 for non-egregious cases.

28/ Exchange Act Section 19(e), 15 U.S.C. § 78s(e). In September 1998, NASD revoked Elgindy's registration for

(continued...)

An appropriate order will issue. 29/

By the Commission (Chairman DONALDSON and Commissioners GLASSMAN, GOLDSCHMID, and ATKINS), Commissioner CAMPOS not participating.

Jonathan G. Katz
Secretary

28/ (...continued)
failure to pay fines and costs associated with a previous NASD disciplinary action. NASD cancelled Key West's registration in November 1998 for failure to pay its NASD fees.

29/ We have considered all of the arguments advanced by the parties. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

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

SECURITIES EXCHANGE ACT OF 1934
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For Review of Disciplinary Action Taken by

NASD

ORDER SETTING ASIDE IN PART AND SUSTAINING IN PART DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the bar from association with any NASD member in any capacity imposed by NASD against Amr Elgindy be, and it hereby is, dismissed; and it is further

ORDERED that the expulsion from membership imposed by NASD on Key West Securities, Inc. be, and it hereby is, dismissed; and it is further

ORDERED that the $50,000 fine imposed jointly and severally on Amr Elgindy and Key West Securities, Inc. be, and it hereby is, dismissed; and it is further

ORDERED that the $1,000 fine imposed jointly and severally on Amr Elgindy and Key West Securities, Inc., be, and it hereby is, sustained.

By the Commission.

Jonathan G. Katz
Secretary