SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 50411 / September 20, 2004

Admin. Proc. File No. 3-11229

In the Matter of

MICHAEL T. STUDER
CASTLE SECURITIES CORP
45 Church Street
Freeport, New York 11520

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDINGS

Ground for Remedial Action

Injunction

President of broker-dealer was permanently enjoined from violating registration, antifraud, and anti-manipulative provisions of the securities laws. Held, it is in the public interest to bar president from association with any broker or dealer. As respondent broker-dealer has withdrawn its registration, it is appropriate to dismiss the proceedings with respect to it.

APPEARANCES:

Michael T. Studer, pro se.

Alexander M. Vasilescu and Jayne K. Blumberg, for the Division of Enforcement.

Appealed filed: February 13, 2004
Last brief received: May 3, 2004

I.

Michael T. Studer, who was president of Castle Securities Corp., formerly a registered broker-dealer, 1/ appeals from the

1/ Castle was a respondent in this proceeding. The administrative law judge's initial decision, issued on

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initial decision of an administrative law judge. The law judge found that Castle and Studer were permanently enjoined from further violations of antifraud and other provisions of the securities laws. She concluded that it was in the public interest to bar Studer from association with any broker or dealer. 2/ We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.

II.

On July 21, 2003, following a bench trial, the United States District Court for the Southern District of New York found that Castle, Studer, and other defendants had engaged in a fraudulent blind pool offering of the securities of Windfall Capital Corp. and, following the merger of Windfall and U. S. Environmental, Inc. ("USE"), in a manipulation of the market for USE securities. 3/ The court found that, from the formation of Windfall through Studer's oversight of Castle's role in the manipulation, Studer was intimately involved in the fraudulent transactions. The court's findings may be summarized as follows.

Castle and Studer oversaw the creation of, and initial investment in, Windfall, a shell corporation with no business or revenues. Thereafter, they supervised the filing of a Form S-18 registration statement for a purported public offering of Windfall securities. The registration statement, which became effective in February 1989, fraudulently failed to disclose the actual terms of the offering. No disclosure was made of the facts that, by prearrangement, the entire offering would be acquired by Castle, Studer, their co-defendants, and various

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January 23, 2004, concluded that Castle's broker-dealer registration should be revoked. The law judge was apparently unaware that Castle had withdrawn its registration, which became effective on December 30, 2003. In light of that fact, we have determined to dismiss these proceedings as to Castle.

2/ Citing Koch v. SEC, 177 F.3d 784 (9th Cir. 1999), the law judge denied the Division of Enforcement's request to impose a penny stock bar on Studer. She concluded that doing so would involve an improper retroactive application of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 since Studer's misconduct underlying the injunction predated the Act's enactment. The Division did not appeal that ruling, and we do not address it.

3/ SEC v. U.S. Environmental, Inc., et al., 2003 U.S. Dist. Lexis 12580, *1, Fed. Sec. L. Nep. (CCH) ¶92,471.

nominees, and that, after the purported close of the offering and the merger of Windfall and USE, the actual public offering of the securities would occur through resales, after the price of the securities had been manipulated upward.

Following the offering and Windfall's merger with USE, Castle was the initial and then the principal market maker for USE securities. There was no information that justified a price increase for the securities of USE, a company with almost no assets or operations. However, through Castle's trading as a market maker under Studer's supervision, Castle, Studer, and their co-defendants caused an artificial rise in the price of USE stock from five cents a share to more than five dollars a share. The success of this manipulative scheme was dependent on the trading services of Castle and Studer. Noting Studer's claim that he was unaware of the manipulation, the court stated that this assertion "flies in the face of reality."

Between June 8 and July 3, 1990, about 130 Castle customers bought almost 15,000 shares of USE stock at prices as high as $6 per share. When the price of USE stock fell, many of Castle's customers lost most or all of their money. Castle, however, made trading profits of at least $170,000.

The court found that Castle and Studer violated Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, Sections 10(b) and 15(c)(1) of the Securities Exchange Act of 1934, and Exchange Act Rules 10b-3, 10b-5, 10b-6 (now Rule 101 of Regulation M), and 15c1-2. 4/ Noting that the violations by Castle and Studer were "egregious and repeated," that they had not acknowledged any wrongdoing or accepted any responsibility for the frauds perpetrated on the public, and that there was a reasonable likelihood that, unless enjoined, they would continue to engage in conduct violative of the federal securities laws, the court enjoined Castle and Studer from further violations of the provisions they were found to have violated. The court also ordered respondents to disgorge $134,224 plus prejudgment interest.

III.

Exchange Act Section 15(b)(6)(A)(iii) 5/ provides that we may sanction any person (if we find it appropriate in the public interest) who is, or at the time of the alleged misconduct was, associated with a broker or dealer if such person is enjoined

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4/ 15 U.S.C. Sections 77e(a), 77e(c), 77q(a), 78j(b), and 78o(c)(1); 17 C.F.R. Sections 240.10b-3, 10b-5, and 15c1-2, and 242.101.

5/ 15 U.S.C. § 78o(b)(6)(A)(iii).

from engaging in any conduct or practice in connection with either (a) the activity of a broker or dealer or (b) the purchase or sale of a security. As described above, Studer is subject to such an injunction, and the doctrine of collateral estoppel precludes him from relitigating in this proceeding the court's determinations. 6/ Nevertheless, Studer seeks to attack the court's findings, as follows.

1. Studer contends that collateral estoppel cannot be applied to the injunctive court's findings. He notes that he has filed a motion for a new trial based on his claim that certain exculpatory investigative transcripts were not made available to him. Studer argues that it is questionable whether he had "a full and fair opportunity to litigate the factual issues," a necessary prerequisite to the application of collateral estoppel.

The Division of Enforcement disputes Studer's claim of unfairness in the injunctive proceeding. However, that issue is not before us. Findings of fact and conclusions of law made in an injunctive action cannot be attacked in a subsequent administrative proceeding. 7/ Neither Studer's motion for a new trial nor his pending appeal of the injunctive court's decision affects the finality and preclusive effect in this proceeding of the court's determinations. 8/

2. Studer argues that the Windfall prospectus was not false in any material respect, that there was no undisclosed prearrangement with respect to that offering, and that he played no meaningful role in filing the Windfall offering documents. He points out that the documents were filed by Alan Berkun, Windfall's attorney, and signed by Windfall's two officers, Leslie Roth and Paula Morelli. Studer complains that the law judge improperly excluded evidence supporting his claims, specifically, the Windfall prospectus and the investigative testimony of Berkun and Morelli in the injunctive action.

As noted, Studer cannot relitigate the injunctive court's findings in this proceeding. The court found that the Windfall prospectus was fraudulent, and that Studer was responsible for

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6/ See Blinder, Robinson & Co, Inc. v. SEC, 837 F.2d 1099, 1109-1111 (D.C. Cir. 1988).

7/ See, e.g., Joseph P. Galluzzi, Exchange Act Rel. No. 46405 (August 23, 2002), 78 SEC Docket 1125, 1129; Robert Sayegh, Exchange Act. Rel. No. 41226 (March 30, 1999), 69 SEC Docket 1307, 1312; Demetrios Julis Shiva, 52 S.E.C. 1247, 1249 (1997); Gibbs & Company, 40 S.E.C. 963, 967-968 (1962).

8/ See Blinder, Robinson & Co., Inc. v. SEC, supra, 837 F.2d at 1104 n.6.

that fraud. Studer's attempt to absolve himself of responsibility by shifting the blame to Berkun, whom Studer hired to prepare Windfall's registration statement, and Roth and Morelli, employees of Studer's accounting practice whom he recruited as Windfall's officers, cannot be countenanced in this proceeding. We have nevertheless determined to admit the excluded materials, and we have considered them. However, they do not alter our conclusions in this matter.

3. In the same vein, Studer asserts that he never engaged in any fraudulent conduct, and only became aware of the USE manipulation when this Commission brought it to his attention. He also asserts that all of Castle's retail sales of USE were unsolicited. The court rejected Studer's claim that he was unaware of the manipulation. Since Studer knowingly participated in the manipulation, and knew that his firm was selling USE securities at manipulated prices, the fact that Castle may not have solicited those sales is irrelevant. We note, however, that the only support Studer offers for his claim is a letter to Studer from a Castle registered representative. The letter merely states that the representative did not solicit USE sales after some point in June 1990. However, the court found that Studer's co-defendants liquidated their USE holdings at manipulated prices through Castle and other brokers beginning in January 1990.

IV.

Studer raises various procedural issues, as follows.

1. Studer argues that res judicata prevents us from seeking to bar him in this proceeding since that sanction could have been sought in the injunctive action. However, neither res judicata nor collateral estoppel limits this Commission's authority to institute administrative proceedings based on an injunction. Such proceedings are expressly authorized by the securities acts, in this case Section 15(b)(6) of the Securities Exchange Act of 1934. 9/

2. Studer contends that these proceedings are barred either by a statue of limitations or laches. These defenses, which Studer raised in the injunctive action, are wholly inapposite here. 10/ As noted above, the injunction on which

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9/ 15 U.S.C. § 78o(b)(6). See The Barr Financial Group, Inc., Investment Advisers Act Rel. No. 2179 (October 2, 2003), 81 SEC Docket 828, 840 n.29. See also Blinder, Robinson & Co., Inc., v. SEC, supra, 837 F.2d at 1107.

10/ We note that, in any event, the defense of laches is not available against federal agencies acting to protect the

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this proceeding is based was issued on July 21, 2003. This action was instituted just one month later, on August 20. While Studer does not identify a particular statute of limitations, we note that the five-year limit specified in 28 U.S.C. § 2462 does not apply. This cause of action did not "accrue" within the meaning of that statute until the injunction against Studer was entered. 11/ Thus it is clear that this proceeding was timely brought. 12/

3. Studer argues that it would violate due process to sanction him prior to the resolution of his motion for a new trial and appeal of the injunctive action. However, the fact that Studer is still litigating that action does not affect our statutory authority to conduct this proceeding. Unless and until it is vacated, the injunction entered against Studer is a valid basis for administrative action. 13/ Should Studer obtain a reversal of the court's judgment, any action based on that judgment would be vacated on Studer's application. 14/

V.

Studer contends that the bar imposed on him is excessive. He asserts that his conduct was not egregious and did not involve scienter. According to Studer, he innocently or naively became involved with the alleged manipulator of USE securities, a manipulation of which he was unaware at that time. He further states that none of his accounting clients or securities customers has ever made a written complaint against him, and that

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public interest. See United States v. Summerlin, 310 U.S. 414, 416 (1940); United States v. Alvarado, 5 F.3d 1425, 1427 (11th Cir. 1993); SEC v. Thorn, 2002 U.S. Dist. Lexis 21510, *7 (S.D.N.Y. 2002).

11/ See Proffitt v. FDIC, 200 F.3d 855, 862-863 (D.C. Cir. 2000); Robert Sayegh, supra, 69 SEC Docket at 1311.

12/ Studer also complains that he was prevented from examining a key witness at the injunctive trial, and that he did not agree to a purported stipulation that was introduced at that trial. These contentions should properly be addressed to the courts, not to this Commission.

13/ See Elliott v. SEC, 36 F.3d 86, 87 (11th Cir. 1994); William F. Lincoln, 53 S.E.C. 452, 456 (1998); C.R. Richmond & Co., 46 S.E.C. 412, 414 n.11 (1976).

14/ See Jimmy Dale Swink, Jr., Exchange Act Rel. No. 36042 (August 1, 1995), 59 SEC Docket 2877.

he has already suffered enough as a result of the injunctive action. 15/

In determining whether a sanction is appropriate in the public interest, we consider (1) the egregiousness of the respondent's actions, (2) the isolated or recurrent nature of the infraction, (3) the degree of scienter involved, (4) the sincerity of the respondent's assurances against future violations, (5) the respondent's recognition of the wrongful nature of the misconduct, and (6) the likelihood that the respondent's occupation will present opportunities for future violations. 16/

As the court found, Studer's actions were egregious. He engaged in both a fraudulent blind pool offering and a subsequent market manipulation of shares in a company with almost no assets or operations that resulted in substantial losses to investors. His violative conduct was not an isolated instance but continued for more than a year. Moreover, this is not the only occasion on which Studer has engaged in misconduct. In 1998, we sustained NASD sanctions against Studer for serious supervisory lapses at Castle that permitted the firm to engage in a manipulation and to charge fraudulent markups. 17/

Studer's actions evidence a high degree of scienter. As the court found, he was intimately involved in all of the fraudulent transactions. He nevertheless does not understand that he engaged in any wrongdoing. He admits only that he made "mistakes in judgment" and was guilty of a "lack of supervision in some cases." Studer wishes to continue working in the securities industry. Thus there is a significant risk that his continued presence in the securities business will give rise to further violations, despite his assurances to the contrary.

As we recently pointed out, the fact that a person has been enjoined from violating antifraud provisions "has especially serious implications for the public interest." 18/ Studer's conduct exhibits a disturbing disregard for the standards that govern the securities industry. Under the circumstances, we

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15/ Studer also asks for relief from the disgorgement assessed against him in the injunctive action. However, that issue is not before us in this proceeding.

16/ See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979).

17/ Castle Securities Corporation, 53 S.E.C. 406.

18/ Marshall E. Melton, Advisers Act Rel. No.2151 (July 25, 2003), 80 SEC Docket 2812, 2825.

conclude that the protection of public investors warrants his bar from association with any broker or dealer.

An appropriate order will issue. 19/

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

Jonathan G. Katz
Secretary

19/ We have considered all of the parties' contentions. We reject or sustain them to the extent that they are inconsistent or in accord with the views expressed herein.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of

MICHAEL T. STUDER
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ORDER IMPOSING REMEDIAL SANCTION AND DISMISSING PROCEEDINGS IN PART

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

ORDERED that Michael T. Studer be, and he hereby is, barred from association with any broker or dealer, and it is further.

ORDERED that these proceedings with respect to Castle Securities Corp. be, and they hereby are, dismissed.

By the Commission.

Jonathan G. Katz
Secretary