INITIAL DECISION RELEASE NO. 253
ADMINISTRATIVE PROCEEDING
FILE NO. 3-11419

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
	:	
MICHAEL PUORRO,	:	INITIAL DECISION AS TO BRUCE
WALTER DOROW,	:	BERTMAN AND GEOFFREY W. GAZDA
JAMES C. PARRISH,	:	
GEOFFREY W. GAZDA,	:	June 28, 2004
MELVIN L. LEVINE,	:	
MICHAEL T. REITER,	:	
BRUCE BERTMAN,	:	
JERRY POOLE,	:	
and LARRY W. KERSCHENBAUM	:	

APPEARANCES: Bruce Bertman and Geoffrey W. Gazda appear pro se

Paul N. Anderson and Christopher Martin for the Securities and Exchange Commission's Division of Enforcement

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

Background

On March 3, 2004, the Securities and Exchange Commission ("Commission") issued an Order Instituting Proceedings ("OIP") pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") alleging that each Respondent had been convicted in federal court of one or more felonies involving securities fraud. All Respondents were served with the OIP.

Respondents, with the possible exception of Respondent Kerschenbaum, all had notice of the prehearing conferences on April 22 and May 21, 2004.[1] No Respondent participated in the prehearing conference on April 22, and only Respondent Levine participated in the prehearing conference on May 21.

[1] The Office of the Secretary sent out the Orders that set the prehearing conferences to the Respondents at the addresses listed on the service list. In addition, the Division of Enforcement ("Division") attempted to contact the Respondents to set up the prehearing conferences. (Prehearing conference April 22, 2004, Tr. 4-5; Prehearing conference May 21, 2004, Tr. 5.) All Respondents, except Respondent Kerschenbaum, were or are incarcerated.

On May 20, 2004, I issued an Order Making Findings and Imposing Remedial Sanctions by Default as to Michael Puorro, Walter Dorow, James C. Parrish, and Jerry Poole, Exchange Act Release No. 49743 (May 20, 2004). On June 23, 2004, I issued an Order Making Findings and Imposing Remedial Sanctions by Default Against Larry W. Kerschenbaum, Exchange Act Release No. 49908 (June 23, 2004).

The Division has represented that Respondents Levine and Reiter are in the process of submitting Offers of Settlement that the Division will recommend that the Commission accept. (Prehearing conference, May 21, 2004, Tr. 9-11, 14.)

On June 9, 2004, the Division filed a Motion for Summary Disposition Against Respondents Geoffrey W. Gazda and Bruce Bertman and Memorandum of Law in Support Pursuant to Rule 250 of the Commission's Rules of Practice ("Motion"). The Motion has three exhibits: Exhibit A is a judgment in United States v. Gazda, Case No. 02-60126-CR-Martinez (S.D. Fla. Mar. 18, 2003); Exhibit B is a judgment in United States v. Gazda Case No. 02-20456-CR-Martinez (S.D. Fla. Mar. 10, 2003); and Exhibit C is a judgment in United States v. Bertman, Case No. 02-20454-CR-Graham (S.D. Fla. July 2, 2003).

Standards for Summary Disposition

The Commission's Rules of Practice permit motions for summary disposition after a respondent has filed an answer and after the Division has made the investigative file available to the respondent. 17 C.F.R. § 201.250. The Motion is appropriate because both conditions have been met. Respondents Bertman and Gazda filed answers dated March 25 and March 12, 2004, respectively, and the Division gave notice that documents were available for inspection on March 25, 2004.

Rule 250 also provides that, "[t]he facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323." 17 C.F.R. § 201.250(a). I take official notice of the following cases and the facts stated in the judgments that are part of this record: (1) United States v. Bertman, Case No. 02-20454-CR-Graham (S.D. Fla. July 2, 2003); (2) United States v. Gazda, Case No. 02-60126-CR-Martinez (S.D. Fla. Mar. 18, 2003); and (3) United States v. Gazda Case No. 02-20456-CR-Martinez (S.D. Fla. Mar. 10, 2003). (Motion, Exhibits A, B and C.)

The hearing officer may grant the motion if there is no genuine issue with regard to any material fact, and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b).

Findings of Fact and Conclusions of Law

Respondent Bertman was found guilty of one count of conspiracy to commit wire fraud, twelve counts of wire fraud, one count of mail fraud, and one count of securities fraud in United States v. Bertman, Case No. 02-20454-CR-Graham (S.D. Fla. July 2, 2003). Respondent

Bertman was sentenced to fifty-one months in prison, and three years of supervised release.[2] On March 3, 2004, when the OIP was issued, Respondent Bertman was incarcerated at the Eglin Federal Prison Camp, Eglin, Florida. (Motion, Exhibit C.)

Respondent Gazda pled guilty to one count of conspiracy to commit wire and securities fraud in United States v. Gazda, Case No. 02-60126-CR-Martinez (S.D. Fla. Mar. 18, 2003), and one count of conspiracy to commit wire and securities fraud in United States v. Gazda Case No. 02-20456-CR-Martinez (S.D. Fla. Mar. 10, 2003). Respondent Gazda was sentenced to forty-six months of incarceration and three years of supervised release on each count with both sentences running concurrently. (Motion, Exhibits A and B.)

In their answers, Respondents did not deny the allegations in the OIP. Respondent Bertman admitted that A1 Internet.com ("A1") was a penny stock as defined in the Exchange Act and rules promulgated thereunder, and Respondent Gazda admitted that he was a consultant to Sealant Solutions, Inc.[3] Respondents did not file oppositions to the Motion, which set out the allegations against them in the OIP. Accordingly, I find that the following material facts are undisputed: (1) Respondent Bertman's activities involved the securities of A1; (2) Respondent Gazda's activities involved the securities of Sealant Solutions, Inc. and Eagle Building Technologies, Inc.; and (3) these securities were penny stocks as that term is defined in the Exchange Act and rules promulgated thereunder.

Public Interest Considerations

Section 15(b)(6) of the Exchange Act authorizes the Commission to bar a person from participating in an offering of penny stock if the Commission finds it is in the public interest to do so and the person has been convicted within ten years of the OIP of any offense specified in Section 15(b)(4) of the Exchange Act. The considerations traditionally used to determine the public interest are set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see also Joseph J. Barbato, 53 S.E.C. 1259, 1281 n.31 (1999); Donald T. Sheldon, 51 S.E.C. 59, 86 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995). The severity of a sanction depends on the facts of each case and the value of the sanction in preventing a recurrence. See Berko v. SEC, 316 F.2d 137, 141-42 (2d Cir. 1963); see also Richard C. Spangler, Inc., 46 S.E.C. 238, 254 n.67 (1976); Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

Respondents' criminal convictions and the fact that they were each sentenced to substantial periods of incarceration and probation demonstrate that their conduct was egregious. There is no mitigating evidence in the record. Respondents did not participate in two prehearing conferences and did not file oppositions to the Motion. I therefore find that the sanctions recommended by the Division are appropriate in the public interest and to protect investors. See John S. Brownson, 77 SEC Docket 3636, 3640 (July 3, 2002) (Finding that absent extraordinary circumstances respondent convicted of securities fraud should not be allowed to participate in the securities industry).

[2] The Motion alleges that Respondent Bertman was also fined $1,000 but that does not appear in the pages of the judgment attached to the Motion. (Motion, Exhibit C.)

[3] Excepts for the admissions noted, Respondents Bertman and Gazda in their answers "neither admit nor deny" the allegations in the OIP as to them.

Order

I GRANT the Motion because there is no genuine issue of material fact as to Respondents' convictions and the Division is entitled to summary disposition as a matter of law.

Based on these findings and public interest considerations and pursuant to Section 15(b) of the Exchange Act:

I ORDER that Bruce Bertman is barred from participating in an offering of penny stock;

I FURTHER ORDER that Geoffrey W. Gazda is barred from participating in an offering of penny stock; and

I FURTHER ORDER that the prehearing conference scheduled for Monday, June 28, 2004, is postponed until Monday, July 12, 2004, at 10:00 a.m. Eastern time.[4]

This order 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.

_____

Brenda P. Murray
Chief Administrative Law Judge

[4] I expect the Division to submit Offers of Settlement from Respondents Levine and Reiter to the Commission prior to this date so that there will be no need for this prehearing conference.