ADMINISTRATIVE PROCEEDING
FILE NO. 3-8371

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)
	)
MICHAEL GARTNER	)
	)

INITIAL DECISION

November 4, 1994
Washington, D.C.

Edward J. Kuhlmann
Administrative Law Judge

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APPEARANCES: Rory C. Flynn and C.J. Rinaldi for the Division of Enforcement

Michael Gartner, pro se

BEFORE: Edward J. Kuhlmann, Administrative Law Judge

This proceeding was instituted, on May 23, 1994, by an order of the Commission pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78o(b) and 78s(h), to determine whether remedial sanctions are appropriate in the public interest in light of respondent Michael Gartner having been permanently enjoined by the United States District Court for the Central District of California from violating Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a), and Sections 5(a), 5(c), 10(b) and 15(a) of the Exchange Act, 15 U.S.C. §§ 77e(a), 77e(c), 78j(b) and 78o(a) and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5. A hearing was held on July 28, 1994 at the Metropolitan Detention Center in Los Angeles, California, where the respondent is detained. The Division of Enforcement filed proposed findings of fact and conclusions of law and memorandum of points and authorities on August 16, 1994.

The respondent was scheduled to file his proposed findings and conclusions on September 23, 1994. When he failed to file or seek an extension, this office called him at the Metropolitan Detention Center. In that conversation, the respondent represented that he had not received the Division's proposed findings and conclusions, even though the Commission's files contain a receipt signed by the respondent which indicates that he did receive them. The respondent stated that if he was given an additional week he would be able to file. The Division then sent him additional copies of its proposed findings of fact and conclusions of law and brief in support of the proposed findings and conclusions of law. The respondent was given until October 7, 1994 to file, a week more

than he said he would need. He did not file a response on October 7, 1994. When no filing was received from the respondent on the due date, this office again sought to speak to him at the Los Angeles Metropolitan Detention Center but the respondent refused to come to the telephone. On October 13, 1994, this office received a copy of Gartner's untimely Post-Hearing Brief, which does not comport with Rule 16 of the Rules of Practice of the Commission.

The following findings of fact and conclusions of law are based upon the record as a whole, the proposals of the Division and Gartner's "brief". Gartner's brief argues that he did not have access to documents or funds and, therefore, he could not defend himself. He asks that the proceeding be continued until he is able to adequately defend himself. On October 28, 1994, the Division filed a reply to Gartner's brief. The Division points out that Gartner was provided with all transcripts from the investigation that he sought. (Testimony from the investigation was introduced by Gartner at the hearing.) In addition, Gartner was given subpoenas to submit to the United States Postal Inspector, who according to Gartner, hold documents that would have aided him in his defense. Gartner did not use the subpoenas or attempt to obtain the documents. It should also be noted that Gartner was informed, on June 9, 1994, about the procedure for obtaining subpoenas. At the same time, he was also informed that the Commission does not provide legal counsel to those persons who are unable for any reason to hire one of their own. On June 30, 1994,

a prehearing conference was held by telephone in which the respondent participated. During the prehearing it was apparent that the respondent had access to some documents through his counsel in his criminal case and that family members could assist him if choose to have them do so. At the hearing held on July 28, 1994, the respondent did not indicate that he was unprepared or that he was unable to go forward or that he was unable to make the necessary showing on his behalf.

The respondent also argues that he did not receive the Division's proposed findings and brief until they were sent the second time on September 28, 1994. A receipt signed by the respondent shows that he was sent the Division's filings on August 16, 1994, well over a month before his filing was due. In any event, the respondent did nothing to protect his interest. Until this office spoke with him after the due date for his proposed findings and brief, he did not indicate that he intended to file or that he would need more time. There is no reason to believe that if the respondent were given a second chance, he would act any differently. His filing requesting a continuance until some unspecified time is disingenuous and exhibits bad faith. The respondent has taken only the most minimal steps to defend himself, despite substantial assistance from this office and the Division to aid him.1/ Under the circumstances presented, the respondent

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1/ Respondent complains that he had limited access to a typewriter. At the conclusion of the hearing on July 28, 1994, he informed the presiding officer of that problem and the time for his response was set with that restriction in (continued...)

has provided no justification for extending the time for resolving this proceeding.

FINDINGS OF FACT

On November 15, 1993, respondent Michael Gartner was permanently enjoined by the United States District Court for the Central District of California from further violations of Section 5(a), 5(c) and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder and ordered to disgorge $12,285,035 plus prejudgment interest. SEC v. InterLink Data Network of Los Angeles, Inc, InterLink Fiber Optic Partners L.P., InterLink Video Phone Partner L.P. and Michael Gartner, Civ. No. 93-3073 R (C.D. Calif.). Div. Exh. 1.

Beginning on May 27, 1993, the Division of Enforcement sought to stop the respondent from engaging in violations of the securities laws. A request for a civil injunction was made on an emergency basis against the respondent and three issuers, InterLink Data Network of Los Angeles, Inc., InterLink Fiber Optic Partners L.P., and InterLink Video Phone Partners L.P. Div. Exh. 2 at 1. The Commission alleged that the respondent and the three issuers engaged in a nationwide, fraudulent scheme through which they sold

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1/(...continued)
mind. The respondent agreed that the time provided was sufficient; at no time after the Division filed its proposed findings and conclusions and brief did the respondent make a request for additional time. When he was asked on September 28, 1994, how much time he would need, he said would need a week. He was then given two more weeks to file. Despite having been given double the time he said he needed, his filing was not made until two weeks and five days after it was due.

unregistered securities and that InterLink Data through the respondent operated as an unregistered broker-dealer in selling the securities. Id.

The court issued a temporary restraining order which froze the assets of the respondent and the issuers pending a hearing on an application for a preliminary injunction. Id. On June 7, 1993, the district court signed an order which preliminarily enjoined the defendants from future violations and continued the asset freeze. Id. On August 23, 1993, the district court held the respondent in civil contempt for violating the court's freeze order and he was ordered to pay $22,700 to the registry of the court no later than August 30, 1993. Div. Exh. 2 at 2-3; Div. Exh. 4. The respondent violated that order when he paid $19,200 in cash for monthly rent on a house he leased. Div. Exh 2 at 3. He also removed $3,000 from a bank account that had been frozen and wrote checks on corporate accounts that he controlled. Id. This contempt was purged when he borrowed the amount of the expenditures and deposited them with the registry of the court. Id.

On November 1, 1993, the district court again found that the respondent was in violation of the freeze order and he was held to be in contempt. Div. Exh. 5 at 1-2. Respondent was ordered to pay to the court registry $51,000 by November 8, 1993. Id. The court stated that if the respondent did not pay the money to the registry or demonstrate that he was unable to do so, he would be taken into custody. Id. at 2. The respondent then went to Canada. Tr. 81-82.

On November 15, 1993, the district court permanently enjoined the respondent from violating the anti-fraud, broker-dealer and securities provisions of the federal securities laws and granted the Division's motion for summary judgment. Div. Exh. 1. The court entered findings of fact and conclusions of law in reaching its judgment.

On January 19, 1994, when the respondent tried to enter the United States from Canada under an assumed name, he was taken into custody. On March 14, 1993, the respondent was held in civil contempt for the third time for failing to disgorge $12,285,035 of investor funds. Div. Exh. 1 at 5; Div. Exh. 6. The court order provided that if the respondent did not deposit the funds or demonstrate that he was unable to pay, he would remain in jail until he complied with the order. Div. Exh. 6 at 2.2/ The respondent has refused to testify about the whereabouts or disposition of investor funds; he has asserted the Constitutionally based privilege against self-incrimination. Div. Exh. 2 at 2; Div. Exh. 7; Tr. 84, 122-24. The respondent has done nothing to voluntarily disgorge the over twelve million dollars in illegally

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2/ On August 17, 1994, the respondent was indicted on thirty counts of securities fraud, wire fraud, mail fraud and money laundering by the U.S. Attorney for the Central District of California. Three counts of the criminal indictment arose from respondent's attempts to solicit additional investor funds for telecommunications ventures while he has been detained. It is alleged that the respondent's sister placed three-way telephone calls that allowed the respondent to speak directly with investors from prison. Allegedly, investors were not informed that the respondent was in prison and had been permanently enjoined for securities fraud. SEC News Digest, Issue 94-160, August 26, 1994 at 3.

obtained investor funds. Tr. 85-86. Moreover, he has used some of the money for his personal benefit to purchase cars and a boat, pay rent on a large house, hire a personal trainer and install carpeting in the house he rented. Tr. 99-101.

The respondent and the three issuers, InterLink Data, InterLink Fiber and InterLink Video sold unregistered securities in entities that were to develop private, fully integrated telecommunication networks and video phone systems. Div. Exh. 2 at 3. Respondent and InterLink Data sold the securities through a "boiler room" operation from three California locations. Div. Exh. 2 at 4; Tr. 49. In the fall of 1992, respondent and the issuers arranged with Portfolio Asset Management/USA Financial Group, Inc. (PAM) to provide the shield of a registered broker-dealer to cover the unregistered brokerage operations of the issuers. Div. Exh. 2 at 4.

PAM was essentially InterLink Data's alter ego. InterLink paid all of PAM's overhead expenses, the issuers maintained all sale documents and respondent, or people he controlled, hired and fired the sales force used to sell the issuers's securities, and directly paid salespersons commissions of ten percent and more. Div. Exh. 2 at 4-5; Div. Exh. 11 at 24-26, 50-54, 66-67, 69-70, 80-81; Tr. 23, 49, 54, 58-65. Most of the sales people were unregistered. Div. Exh. 2 at 4; Div. Exh. 10 at 87-88.

The respondent or persons under his control instructed the sales people about how to "pitch" the securities to investors, and prepared scripts and other selling materials that were used in

making sales. Div. Exh. 2 at 5; Div. Exh. 11 at 109, 139-40; Tr. 62, 118-22. The scripts, promotional materials and presentations by respondent to the sales force were dishonest. Div. Exh. 2 at 5. Investor's checks were sent directly to InterLink Data and were made payable to the InterLink companies. Id. Respondent spoke with investors himself and he deposited investor checks in InterLink Data's accounts. Div. Exh. 10 at 37, 44; Div. Exh. 11 at 37, 39. The person who was called the compliance officer - he did little more than file documents - was hired by respondent as a part-time employee of InterLink Data. Div. Exh. 10 at 16-17, 21-26, 30-31, 71, 95, 121-22; Tr. 23.

InterLink Data sold three offerings of securities to the public which raised $3,163,795 ostensibly to build a fiber optic cable system and manufacture video phones. Div. Exh 2 at 5-6. Instead, the money was used by respondent to pay investors in InterLink Fiber and InterLink Video. Id. On June 1, 1992, InterLink Data acting as the general partner in the limited partnership called InterLink Fiber, began selling interests in the partnership which promised to provide an 18 percent return to be paid monthly until the 25th month when the principal would be returned. Id. at 6-7. The offering memorandum stated that the money would be used to finance the fiber optic cable network to be built by InterLink Data. The offering raised $8,341,500. Id. at 7; Div. Exh. 10 at 102-03.

InterLink Video recently offered investors interests in the sale of video telephones that it would be manufacturing. Div. Exh.

2 at 7. The terms were similar to those offered in InterLink Fiber except that the monthly return was 12 percent. At least $779,740 was raised with this offering.

The securities in the InterLink entities were sold without any registration statement being in effect. Div. Exh. 2 at 7. Respondent and the issuers claimed that they relied on exemptions to the registration requirements in the Securities Act of 1933. But the evidence indicates that the issuers did not meet the requirements which would have allowed them to be exempt. Div. Exh 2 at 8; Div. Exh 11 at 39, 109-11.

Respondent and the issuers made material misrepresentations and omissions in selling securities to investors. They represented that they held 16 patents for video telephone technology, when they held none. Div. Exh. 2 at 9. Investors were told that the issuers were currently installing fiber optic cable in Los Angeles and regulatory approval had been obtained to do so, both claims were false. Id. at 10-11. Respondent knew these representations were untrue. Id.

The sales script read to investors falsely stated that the shares in the issuers would be traded on the American Stock Exchange and the NASDAQ system. Respondent and the issuers told investors that they would receive extremely high returns but they did not explain that the money would come from the money provided by other investors. Div. Exh. 2 at 13. Investors were told that their investment was "100% secure" with an interest in the fiber optic network. However, they were not told that there was no

network. Tr. 93-98. Investors were not told that respondent would use the money for extraordinary personal expenses. Respondent diverted at least $2 million to his corporate alter-ego Photonic Technologies, Inc. Div. Exh. 2 at 14. He then used the Photonic bank account to buy things for himself. Div. Exh. 14-15; Div. Exh. 11 at 40-41; Tr. 86-89.

There were 565 individuals, couples, trusts and corporations that invested in InterLink Fiber, Data and Video. Div. Exh. at 17. Many were retired and living on fixed incomes, and some had invested their life savings. Tr. 91-92.

When the respondent knew that the Division was about to seek emergency relief to prevent him from continuing his activities in violation of the securities laws, he withdrew $95,000 from one of the InterLink Data's accounts, paying $60,000 to Photonic and $35,000 to himself. Div. Exh. 2 at 15. After respondent became aware that the Division intended to seek an asset freeze, he removed $93,000 from an InterLink Data account. Id. Respondent until this hearing refused to account for any of the missing funds, based upon his Fifth Amendment privilege against self-incrimination. Id.

After the asset freeze order was imposed by the federal district court, the respondent violated the freeze and was twice found to have been in contempt of the court's order. Div. Exhs. 4 and 5. Some of the money he removed from the frozen accounts was used to start a new company called Videotel Technologies, Inc. The respondent controls the company, although its president is Stephen

Pace, his personal fitness trainer. The intention is to sell $200 million in preferred shares of stock. Div. Exh. 2 at 16-17; Tr. 74.

The foregoing findings, in part, were taken from the district court's findings in granting the Commission's motion for summary judgment on November 15, 1993. Respondent has been permanently enjoined by the district court from violating Section 17(a) of the Securities Act and Sections 5(a), 5(c), 10(b) and 15(a) of the Exchange Act, and Rule 10b-5 promulgated thereunder. Div. Exh. 1 at 2-5.

CONCLUSIONS

The final judgment of the district court, which made detailed findings in November 1993 that the respondent had violated the securities laws, will be given considerable weight in assessing the public interest and will form the basis of the public interest finding that he should be barred from further association with a broker-dealer and from entering other securities professions where he might continue to perpetrate fraud on unsuspecting investors. In re Elliot, 52 SEC Docket 2011 (September 17, 1992).

The respondent and the issuers, InterLink Data Network of Los Angeles, Inc., InterLink Fiber Optic Partners L.P., and InterLink Video Phone Partners L.P., made use of interstate communication, transportation, and the mails to sell securities without registering them with the Commission. The respondent instructed the sales force how to "pitch" the securities to investors and commissioned the sales materials used in the sales. He spoke directly to investors. As the principal officer of InterLink Data

he directed the operations of the company in making the securities offerings. The record reflects that the respondent knew of the registration requirements and that he knew that the securities being offered had not been registered. This failure to register the securities being offered violated Section 5 of the Securities Act which prohibits any person, directly or indirectly, from using instrumentalities of interstate commerce or the mails to offer or sell a security unless a registration statement has been filed or is in effect as to such security.

The offering documents used by InterLink Data, telephone conversations and meetings with prospective investors and advertisements taken out on the radio and television by the respondent, and those he controlled, knowingly disseminated false and misleading information and failed to disclose material facts to induce potential purchasers to invest in the securities of the issuers. The matters which were misrepresented or omitted concerned information that was both relevant and essential to the purchasers' investment decisions - a reasonable investor would consider the statements important. 3/ These false and misleading statements violate Section 17(a) of the Securities Act and Section

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3/ The respondent and those he controlled falsely represented that InterLink Data owned 16 patents for the video telephone technology; that InterLink Data was in the process of laying fiber optic cable in Los Angeles; that InterLink Data was seeking to register its shares on a national exchange or the NASDAQ and that its stock would be publicly traded in 1993; and that investors would receive "interest" payments when they were only receiving a return of a portion of the funds they had invested. Investors were not told that substantial sums that they invested would be used to support a lavish lifestyle for the respondent.

10(b) of the Exchange Act and Rule 10b-5 thereunder and were made by the respondent with the intent to deceive, manipulate and defraud investors in the issuers.

The respondent, and those he controlled, used interstate commerce and the mails in connection with the offer and sale of issuers' unregistered common stock and limited partnership interests. The respondent and the issuers were not registered with the Commission in violation Section 15(a)(1) of the Exchange Act. Respondent directed the brokerage operation, including hiring salespersons and instructing them how to "pitch" the securities of the issuers.

When the respondent was found to have violated the securities laws by the district court, he did not attempt to show that the allegations were inaccurate and he offered no evidence to refute the illegal activities alleged. The misrepresentations, omissions and fraudulent devices employed by the respondent were done for his personal benefit and to the detriment of hundreds of investors. The respondent when ordered to disgorge the money taken from investors refused to tell where it was located and left the area for Canada. He was apprehended at the Canadian-United States border when he attempted to re-enter the country using a false name. He has continued to refuse to disgorge the funds of investors or even to identify where they are located. There is little doubt that his conduct in fraudulently obtaining the funds and now in withholding the funds from their rightful owners has been egregious. The respondent has been given three opportunities

to identify the location of the funds and disgorge them to the court or demonstrate that there are none. Instead of doing so, he has chosen to be detained in prison since January 1994.

The respondent knowingly violated the securities laws and court orders issued in consideration of the violations he committed. The manipulative and illegal practices were numerous and occurred repeatedly over several years. Even after the respondent refused to tell the court what he had done with investors' funds, he began a new company which purported to operate the same type of communications business. He did this from the same office and using the same sales people.

There is no assurance that the respondent recognizes that he has engaged in wrong doing or that he might not again engage in violations of the securities laws. He has neither admitted nor denied that he has violated the securities laws.4/ With the exception of this hearing, he has repeatedly invoked his Fifth Amendment privilege against self-incrimination. There is no evidence that the respondent recognizes that he has acted illegally. It appears that the respondent, as the apparent controlling person in Videotel, could be in a position to continue to defraud investors. Videotel has represented that it intends to

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4/ The respondent's explanation for this case is that the Division is "fabricating multiple layers of rhetoric, misrepresentations of events and adverse inference." The Division, he maintains without any record support, has "twist[ed] and take[n] out of context statements, subjects, events and issues to continue to rationalize and justify its story plot." These statements are pure polemic and find no support in the record.

manufacture and sell video telephones and photonic switches. In order to do this it will attempt raise $20 million by selling preferred shares; it has already raised $100,000.

The respondent was earlier found to be liable for actual fraud in a real estate venture and ordered to pay $2 million in damages. Marin Country Club Estates, Ltd. v. Gartner Development Corporation, No. 142687 (Superior Court of the State of California April 7, 1992). Div. Exh. 9.

The record as whole shows that the respondent still represents a threat to investors. Respondent's actions with regard to the violations found by the district court show him to be unreliable and he has exhibited an unwillingness to recognize that his actions have been harmful to investors and in violation of the securities laws and the orders of the court. There is nothing in this record to warrant a conclusion he would now act in an honest way with customers for securities.

A preponderance of evidence in this proceeding leads to the conclusion that in order to foreclose similar conduct by the respondent, to deter others who might be tempted to follow his path and to protect investors from that substantial possibility, remedial action is necessary to protect the public interest. The respondent will be barred from associating with any broker-dealer, national securities exchange or registered securities association,

investment company, investment advisor, or municipal securities dealer.5/

ACCORDINGLY, IT IS ORDERED that pursuant to Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b), the respondent, Michael Gartner, is barred from associating with any broker or dealer, investment company, investment adviser, or municipal securities dealer.

IT IS FURTHER ORDERED that pursuant to Section 19(h) of the Exchange Act, 15 U.S.C. §78s(h), Michael Gartner is barred from associating with any member of a national securities exchange or registered securities association.

Pursuant to Rule 17(f) of the Rules of Practice, this initial decision will become the final decision of the Commission as to any party who has not within fifteen days after service of this initial decision, filed a petition for review pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c) determines on its own initiative to review the decision. If the applicant timely files

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5/ The respondent has argued that the sanction sought by the Division is beyond the notice provided in the order instituting this proceeding. In making that argument respondent does not accurately characterize the sanction sought by the Division and the notice given in the order instituting the proceeding. In that order, the Commission stated that this proceeding would determine what remedial action would be appropriate in the public interest pursuant to Sections 15(b) and 19(h) of the Exchange Act. Respondent has not shown that the action taken here is outside those statutory sections.

a petition for review, or the Commission takes action to review, the initial decision will not become final. 6/

Edward J. Kuhlmann
Administrative Law Judge

Washington, D.C.
November 4, 1994

6/ All proposed findings and conclusions submitted by the parties have been considered, as have their arguments. To the extent such proposals and contentions are consistent with this initial decision, they are accepted. In all cases where applicable, the demeanor of the respondent/witness has been considered in assessing his testimony. The conclusions reached are based upon a preponderance of the evidence.