INITIAL DECISION NO. 68

ADMINISTRATIVE PROCEEDING
FILE NO. 3-8438

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of RICHARD J. PUCCIO	))))))	INITIAL DECISION JULY 10, 1995

APPEARANCES: Christopher J. Mahon and David G. Rizzo for the Division of Enforcement, Securities and Exchange Commission

Charles Snow and Atea Martin of the firm Snow Becker Krauss, P.C. for Respondent Richard Puccio.

BEFORE: Glenn Robert Lawrence, Administrative Law Judge

The Securities and Exchange Commission (Commission) instituted this proceeding on August 24, 1994, pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act). In the Commission's Order For Public Proceedings and Notice of Hearing (Order), the Division of Enforcement (Division) alleges that Richard J. Puccio (Puccio or Respondent) was enjoined, on consent, by the United States District Court for the Southern District of New York, from violating in the future Section 17(a) of the Securities Act of 1933, Section 10(b) of Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder (collectively, the antifraud provisions). The activities underlying the injunction occurred during Puccio's employment with the registered broker-dealer Stratton Oakmont, Inc. (Stratton Oakmont) from March 1989 to June 1991.

A hearing was held in New York, New York on February 28, 1995 for the purpose of determining if the allegations set forth in the Order are true, and what, if any, remedial action should be taken in the public interest. The Division called one of Puccio's former customers and Puccio himself. Respondent called one witness, a former Stratton Oakmont registered representative. A total of twenty Division exhibits were received in evidence.

FINDINGS OF FACT

The findings and conclusions herein are based upon the record and my observations of the respondent's demeanor. Preponderance of the evidence is the applicable standard of proof in this proceeding.

Stratton Oakmont

When Puccio began working at Stratton Oakmont, the firm was comprised of himself and six other people. (Tr. 57). Two of those seven individuals were principals, and had previously

been associated with ICI. (Tr. 58-59). At the time of Puccio's departure from the firm in June 1991, Stratton Oakmont employed over two hundred individuals. Of those individuals, approximately eighty were registered representatives and most of the remainder were unregistered "qualifiers" or cold callers. (Tr. 60, 125). Employees of the firm were predominantly in their twenties in age, with a mix of backgrounds including some who attended college. (Tr. 126). During this period of substantial growth, Stratton Oakmont moved to a large space, with a sales area roughly the size of a basketball court. (Tr. 127-28). In this space registered representatives and qualifiers sat side by side in rows of desks. (Tr. 128).

On a typical day at Stratton Oakmont, Puccio and other employees arrived at 8:30 a.m. to attend a meeting. If they were late or did not attend the meeting, they were fined. (Tr. 130-31). The meetings consisted of "role playing" between one of the firm's principals and a registered representative, where a mock sales transaction for a new stock was staged for the benefit of the sales force. (Tr. 131-33). The firm distributed "presentations" for each of the securities Stratton Oakmont sold, in the form of sales scripts. (Tr. 133). These scripts were used in the course of telephone contact with prospective customers. (Tr. 134; See D. Exs. 9-15, 19). The employees of Stratton Oakmont were closely supervised by the firm's principals during their daily telephone work, which continued, with the exception of a lunch break, until 5:00 p.m. (Tr. 60, 134-36). At 5:00 p.m. (at 4:00 p.m. on Fridays), another meeting was held where brokers were asked by the principals about what they had done for the day, or more "role playing" was performed. (Tr. 137). Sometimes at the morning and evening meetings "new account" contests were announced, in which the salesperson who opened the most new accounts

would receive money or units of an initial public offering. Puccio did not recall winning any of these contests. (Tr. 139).

Respondent

Puccio, age 29 at the time of the hearing, began his career in the securities industry at the firm Investor's Center, Inc. (ICI) in approximately October, 1988, after attending college. (Transcript of Proceedings, pp. 48-49).1/ While at ICI, Mr. Puccio took and passed the Series 7 test administered by the National Association for Securities Dealers (NASD), permitting him to act as registered representative.2/ (Tr. 49). Further, during his short tenure at Investor's Center, Puccio entered into a settlement agreement with the Oklahoma Department of Securities, concerning his unlawful solicitation of an Oklahoma resident to purchase an unregistered stock while neither he nor ICI were registered with the Oklahoma Department of Securities. (Division Exhibit 23; Tr. 52-53).3/

In February, 1989, Puccio left ICI to work at Stratton Securities, which later became known as Stratton Oakmont. (Tr. 56). Puccio worked at Stratton Oakmont from February, 1989 to June, 1991, during which time he earned over $100,000 per year or $250,000 during the entire period. (Tr. 60, 123-24, 149). At the time of the hearing, Puccio was employed as Sales Manager of Cambridge Credit Corp., a firm which Puccio described as engaged in the business reorganizing people's debts for a fee. (Tr. 48).

1/ "Transcript of Proceedings, pp. ___" shall hereinafter be referred to as "Tr. ___".

2/ While Puccio acknowledged that he passed the Series 7, he experienced difficulty recalling at the hearing material he studied in preparation for the exam which related to being honest to customers. (Tr. 50-51).

3/ "Division Exhibit" shall hereinafter be referred to as "D. Ex."

Puccio was enjoined, on consent, by the United States District Court for the Southern District of New York, from further violations of the antifraud provisions of the federal securities laws.4/ (Order, § II.B.; D. Ex. 21). Further, the Division alleges, and I so find, that the Complaint in the action underlying the injunction against Puccio alleges, among other things, that Puccio, while associated with Stratton Oakmont, made misrepresentations and omissions of material facts to his brokerage customers in the offer and sale, and in connection with the purchase and sale, of securities, and engaged in other fraudulent and deceptive boiler room sales practices. (Order, § II.C.).

Puccio admits that he consented on September 16, 1992 to the entry a judgement of permanent injunction in the case alleged by the Division, without admitting or denying the allegations contained in the Complaint. Further, Puccio admits that he entered a Consent and Undertaking on November 6, 1992. (Answer, ¶ B) Puccio also admits that the Complaint described by the Division in its allegation was served and filed in the case alleged. (Answer, ¶ C).

The United States District Court for the Southern District of New York entered and an Order of Permanent Injunction and Other Relief by Consent as to Richard Puccio on November

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4/ The antifraud provisions of the federal securities laws, Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and rule 10b-5 promulgated thereunder, prohibit, in the offer or sales of securities, using any means or instruments of transportation or communication in interstate commerce, or the mails, or any facility of a national securities exchange, the employment of any device, scheme or artifice to defraud; the obtaining of money or property be means of, or otherwise make untrue statements of material facts or omit to state material facts necessary to make statements made, in light of the circumstances under which they were made, not misleading; and the engagement in any transactions, act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

4, 1992, in the case SEC v. Stratton Oakmont, Inc., et al., 92 Civ. 1993 (JES). (D. Ex. 21). As alleged, the order and judgement enjoins Puccio from further violations of the antifraud provisions of the federal securities laws. Puccio entered a Consent and Undertakings, in which Puccio acknowledges his agreement and consent to the entry of the injunction, and that the Commission did not waive its rights to commence administrative proceedings, or civil or criminal contempt proceedings. (D. Ex. 21).

The Commission filed a complaint against Puccio, four other individuals and Stratton Oakmont on March 20, 1992. (D. Ex. 22). The complaint alleges Puccio recklessly engaged in the following conduct violative of the antifraud provisions while associated with Stratton Oakmont:5/

1. When recommending Stratton "house stocks" to his customers, Puccio failed to disclose to those customers that the stocks were speculative investments. (D. Ex. 22, ¶ 91);
2. When recommending Stratton "house stocks" to his customers, Puccio failed to disclose to some or all of his customers that the issuers of the stocks were new companies, with low revenues and low or negative earnings. (D. Ex. 22, ¶ 92);
3. On numerous occasions, Puccio made baseless price predictions to customers in connection with recommendations to purchase Stratton Oakmont "house stocks." Further, Puccio discouraged customers from placing unsolicited sell orders for

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5/ The Commission has considered the allegations contained in a complaint, which resulted in the entry of an injunction, on consent, without admitting or denying the allegations contained in the complaint (and in which the order of injunction was unaccompanied by findings of fact), when determining the appropriate sanction in the public interest under Exchange Act Section 15(b)(6). See, e.g., Charles Phillip Elliott, 52 SEC Docket 2011, 2013 n.5, 2015 n.12 (1992).

Stratton house stocks, making material misrepresentations of material fact when doings so. (D. Ex. 22, ¶ 93);

4. From March 1989 to June 1991, Puccio discouraged unsolicited customer sell orders of Stratton Oakmont house stocks without regard to the best interests of his customers. When Puccio originally recommended the Stratton Oakmont house stocks to customers, he did not tell the customers that he would later discourage them from selling those stocks. (D. Ex. 22, ¶ 94);

5. During the time period of his association with Stratton Oakmont, Puccio "crossed" unsolicited customer sell orders of Stratton Oakmont house stocks by inducing other customers to purchase securities sold by the other customer. When Puccio recommended that customers purchase Stratton Oakmont house stocks, he did not tell them that he was recommending the securities solely to find a buyer for the selling customer's securities. (D. Ex. 22, ¶ 95);

6. On some occasions, Puccio falsely told customers that "traders" were sitting next to him, buying large blocks of securities he was recommending that retail customers purchase. (D. Ex. 22, ¶ 96); and

7. On at least three occasions, Puccio called customers of other Stratton Oakmont registered representatives, falsely introduced himself as the other registered representative and induced the customer to purchase Stratton Oakmont house stock. (D. Ex. 22, ¶ 97).

The Division called one of Puccio's former Stratton Oakmont customers, Frank Campion, as a witness.6/ Mr. Campion, a 66 year old program manager retired from McDonald Douglas Corp., testified that Puccio called him by telephone on August 9, 1989 and identified himself as vice president of investments for Stratton Oakmont. (Tr. 18, 22). Puccio told his prospective customer that Stratton Oakmont had been in business for ten years, primarily engaged in investment banking for large institutions and wealthy investors. Further, Puccio represented that Stratton Oakmont was opening its doors to individual investors, and thus individual customers would benefit from receiving the same advice as large institutional investors. (Tr. 22). Puccio never asked Mr. Campion about his prior investment experience or the qualities he was looking for in an investment. (Tr. 23).

Puccio recommended to Mr. Campion that he purchase the stock of Kodak, based on Puccio's representation that Stratton Oakmont's legal department and securities analysts had gathered information regarding potential settlement of litigation which would make the stock attractive to institutional investors. (Tr. 23-24). Puccio did not tell his customer that the Kodak recommendation was an integral part of Stratton Oakmont's "sales program," which involved first introducing a customer to a blue chip stock, and thereafter recommending the customer purchase Stratton Oakmont house stocks as part of their "investment banking program."7/ Nor

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6/ The witness was called and his testimony allowed for the purpose of introducing evidence of Puccio's conduct for consideration in the public interest determination, not for the purpose of establishing independent liability for violating the antifraud provisions. (Tr. 25-27).

7/ The stocks involved in the Stratton Oakmont "investment banking" program were stocks for which Stratton Oakmont acted as a market maker or as an investment banker (referred to as "house stocks"). These stocks generally differed from blue chip stocks such as Kodak in that they were speculative and involved new companies with low or negative earnings. (D. Ex. 22, ¶ 92).

did Puccio tell his Mr. Campion that his sole basis for the information he represented regarding Kodak was a script and "rebuttals" prepared by Stratton Oakmont. (D. Ex. 9). Based on Puccio's representations, the customer purchased 100 shares of Kodak at $50.50 per share. (Tr. 23).

In accord with the Stratton Oakmont "sales program," Puccio next induced Mr. Campion to purchase the stock of Ventura Entertainment Group, based on a representation that Stratton Oakmont controlled the company, and the price would rise to between $16-20 per share in a few months. (Tr. 27-28). Puccio did not inform Mr. Campion that Ventura's stock was a speculative security. Following these transactions Puccio sold Mr. Campion numerous speculative securities based on, among others, representations of specific substantial increases in price over specified periods. In none of these instances did Mr. Puccio tell his customer that the securities were risky and speculative. (Tr. 30-39).

In approximately September, 1990, Mr. Campion told Mr. Puccio that he would like to sell some of his stock holdings, saying he would like to have certain securities sold before the end of October, 1990. (Tr. 40). On November 2, 1990, Puccio informed Mr. Campion that he had not sold the securities, whereupon Mr. Campion asked Puccio to liquidate his entire securities portfolio. (Tr. 40-41). Mr. Campion was concerned because he was about to be laid off from his job, which he told Mr. Puccio. (Tr. 42). Nevertheless, Puccio did not sell Mr. Campion's securities. Mr. Campion lost approximately $70,000 to $75,000 on his investments recommended by Puccio. (Tr. 45).

Puccio admitted at the hearing most of the allegations raised in the complaint underlying his injunction and those issues raised by Mr. Campion's testimony.

Puccio did not refute his involvement in luring customers such as Mr. Campion through the use of the Stratton Oakmont "sales program." (Tr. 61-62, 83-84). Puccio claims he used a range of where a stock's price would rise to when he made price predictions to customers, but could not recall having told customers certain securities would rise to specified prices or ranges of prices over a specific periods of time, until he learned that he contradicted prior testimony he gave the Division in May, 1991. (Tr. 64-73). Puccio admitted that the sole basis for these price predictions was from statements made to him orally or in writing from Stratton Oakmont and its principals. (Tr. 76-77).

Overall, Puccio claims that he was instructed by Stratton Oakmont and complied in always talking about the positive aspects of securities, countering any negative aspects. (Tr. 88). Puccio admitted that the information he passed on to clients about securities he was recommending while at Stratton Oakmont was never based on independent research he performed himself. (Tr. 77). Puccio admitted he never heard the term "risk factor" before, except that he had seen it in writing on a prospectus. Further, when communicating with customers, Puccio could not recall "us[ing] any words to say risk" (Tr. 78), and did not recall telling any customers that stocks in the investment banking program may be risky securities. (Tr. 85). Puccio could not recall telling customers there were risk factors involved with certain securities, implying the investors' "qualification" as "high net worth individuals that played the market" negated the need to make any such communication. (Tr. 82). With respect to Mr. Campion, Puccio assumed that he was interested in investing in speculative securities because he had previously invested with ICI, who sold speculative securities. (Tr. 83). On some securities,

Puccio did not review or very briefly reviewed prospectuses, and had little knowledge of the companies' financial situations. (Tr. 85-87).

Puccio admitted that he made representations about Stratton Oakmont's past without any independent basis for knowledge, as well as statements about the firm's research function and fictitious research analysts. (Tr. 89-98). Puccio admitted to using the sales scripts provided by Stratton Oakmont in whole or in part as the sole basis for information he communicated to customers. (Tr. 103-112). Puccio admitted that on some occasions he falsely identified himself as other registered representatives for the purpose of selling those representative's customers securities. (Tr. 115-17). Puccio admitted to carrying out a management policy to discourage the sales of certain Stratton Oakmont house stocks, as well as crossing sales of stocks. (Tr. 117-18). Puccio admitted that he knew the purpose of crossing customer sales, but he did not reveal this information to his customers. (Tr. 118-19). While at Stratton Oakmont, Puccio did not see anything wrong with discouraging sales, crossing trades or not telling customers about companies' poor earnings, but merely followed management's direction. (Tr. 119-20).

Puccio became disenchanted with Stratton Oakmont when he learned that the firm's principals were selling their interests in the securities of D.V.I. Financial while he was concurrently instructed to present the stock to his customers as a good investment. (Tr. 140). When Puccio voiced his concerns, the principals told him to "do what they say" or else he would not become part of the "inner circle." (Id.).

CONCLUSIONS OF LAW

Section 15(b)(6)(A)(iii) of the Exchange Act provides, in pertinent part, that any person who, at the time of the alleged misconduct, was associated with a broker or dealer and was enjoined from any action, conduct or practice in the purchase or sale of any security, shall be sanctioned if it is found that an appropriate sanction is in the public interest.

Puccio was enjoined from future violation of the antifraud provisions of the federal securities laws in connection with the purchase or sale of securities. Therefore, it is necessary to determine what, if any, sanction is appropriate in the public interest.

PUBLIC INTEREST

In determining appropriate sanctions in the public interest, it is necessary to consider Puccio's conduct, credibility and demeanor in light of the oft-quoted public interest factors enunciated in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981):

> [T]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Further, I must consider the deterrent effect of an appropriate sanction to ensure the protection of investors from conduct by those in situations similar to that of Puccio's:

> If these proceedings are to be truly remedial, they must have a deterrent effect on others in the business who may otherwise be tempted to succumb to the lethal admixture of mindless enthusiasm and overweening greed that so often brings fraud and deceit in its wake. Richard C. Spangler, Inc., 46 S.E.C. 238, 254 n.67 (1976).

The Division recommends that based on these factors, Puccio should be permanently barred from association with any broker-dealer.

<u>The Egregiousness of Puccio's Actions</u>

Puccio's actions while at Stratton Oakmont were particularly egregious, representing a callous abdication of his responsibilities to his customers and other customers of Stratton Oakmont, as well as a complete disregard for the federal securities laws.

While at Stratton Oakmont, Puccio's activities included daily contact with customers and prospective customers where he recommended securities solely based on information in sales scripts, without adequate or reasonable bases for such recommendations. This activity flagrantly violated perhaps the most central duty of a securities salesman, that is to ensure that his representations to clients have a reasonable basis. <u>Lester Kuznetz</u>, 48 S.E.C. 551, 554 (1986), citing <u>Hanly v. SEC</u>, 415 F.2d 589, 595-97 (2d Cir. 1969).8/ Not only did Puccio fail to investigate securities he recommended and fail to disclose his lack of investigation and his ignorance (and the risks arising therefrom) but he also fraudulently misrepresented the investigation and research facilities of Stratton Oakmont upon which he said he relied, which included telling customers about a fictitious "fat, bald and badly dressed" research analyst.

8/ The oft-cited <u>Hanly</u> case provides:

> Brokers and salesmen are 'under a duty to investigate.' . . . Thus, a salesman cannot deliberately ignore that which he has a duty to know and recklessly state facts about matters of which he is ignorant. He must analyze sales literature and must not blindly accept recommendations made therein.
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> [T]he standards by which the actions of [a securities salesman] . . . must be judged are strict. He cannot recommend a security unless there is an adequate and reasonable basis for such recommendation. He must disclose facts which he knows and those which are reasonably ascertainable. By his recommendation he implies that a reasonable investigation has been made and that his recommendation rests on the conclusions based on such investigation. Where the salesman lacks essential information about a security, he should disclose this as well as the risks which arise from his lack of information. <u>Hanly</u>, 415 F.2d at 595-97.

Puccio also posed as other registered representatives, making baseless recommendations without informing the customers that he was an imposter. Such blatant misrepresentations regarding his skill, the firm's research capabilities and even his own identity constitute serious violations of the antifraud provisions.9/

Among the most egregious of Puccio's misrepresentations were predictions to customers "of substantial price increases within relatively short periods of time with respect to a promotional and speculative security of an unseasoned company [which] are a 'hallmark' of fraud and cannot be justified." Alfred Miller, 43 S.E.C. 233, 235 (1966). Even if the price predictions were expressed in ranges, or expressed as opinion rather than as guarantees, or made with respect to nonspeculative securities, as Puccio maintains (Tr. 64), the price predictions Puccio admitted nevertheless represent egregiously fraudulent conduct when made without a reasonable basis.10/

Further, Puccio fraudulently failed to tell his customers any negative information about the securities he recommended. In so doing, Puccio ignored information contained in the

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9/ See, e.g., Marbury Management v. Kohn, 629 F.2d 705, 707, 710 (2d Cir. 1980) (misrepresentations about qualifications or expertise in the securities business found violative of the antifraud provisions).

10/ Alfred Miller, 43 S.E.C. at 235 (finding predictions of stock price rise to ranges of 50 to 80 cents and to $1.00 or $1.50 by year-end were fraudulent); SEC v. Hasho, 784 F. Supp. 1059, 1107-09 (S.D.N.Y. 1992) (price predictions expressed in ranges of price found to be fraudulent); Armstrong, Jones & Co., 43 S.E.C. 888, 896 (1968), aff'd 421 F.2d 359 (6th Cir. 1970), cert. denied, 398 U.S. 958 (1970) (predictions expressed as opinion of the potential of the stock, rather than as guarantees, in no way lessens responsibility for making fraudulent predictions), accord, SEC v. Hasho, 784 F. Supp. at 1109 ("The fraud is not ameliorated where the positive prediction about the future performance of securities is cast as opinion or possibility rather than as a guarantee."); Lester Kuznetz, 48 S.E.C. 551, 553 (1986) (a prediction of specific and substantial increases in the price of any security (not just speculative securities) with no reasonable basis is fraudulent).

companies' public filings which was reasonably ascertainable by him. Likewise egregious were instances where Puccio knew of the risk factors associated with companies whose securities he was recommending, but failed to tell his customers about such factors. This activity represented egregiously fraudulent conduct which further violated Puccio's obligation as a registered representative.11/

While Puccio used misrepresentations and omissions to convince customers to purchase securities, he failed to tell them that they would later be discouraged from selling their securities or their sale of securities would be crossed with other customer's purchases. Puccio admitted knowing the fraudulent purpose of such tactics while at Stratton Oakmont,12/ yet he engaged in the practice to the detriment of his customers, including Mr. Campion.

Puccio's violative conduct discussed above was particularly egregious in that it admittedly formed the basis for his ongoing method of operation for over two years. To Puccio, it appears, the sale of securities was a game for which there were few applicable rules. That such an attitude was endemic to the entire firm, its principals and his fellow registered representative does not lessen Puccio's offense. Puccio's duties to his customers as a securities salesman were

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11/ See, e.g., Hanly, 415 F.2d at 595-97; Lester Kuznetz, 48 S.E.C. at 553 (held untrue statements that an investment was relatively safe violated the antifraud provisions); B. Fennekohl & Co., 41 S.E.C. 210, 215-17 (1962) (failure to disclose risks is a failure to state material facts in violation of the antifraud provisions).

12/ Discouragement of unsolicited customer sell orders and the "crossing" of unsolicited sell orders in connection with a manipulative scheme are violative of the antifraud provisions. See, e.g., Hasho, 784 F. Supp. at 1100 (discouraging sales is fraudulent); Lewis H. Ankeny, 29 S.E.C. 514, 516-17 (1949) (failure by dealer to disclose intention not to promptly and properly consummate transaction found a material misstatement); Norris & Hirschberg, Inc., 21 S.E.C. 865, 874 (1946), remanded, 163 F.2d 689 (D.C. Cir. 1947), cert. denied, 333 U.S. 867 (1948), aff'd 177 F.2d 228 (D.C. Cir. 1949) (cross-trading in account for which broker-dealer has fiduciary duties, without disclosing "intramural market" violates antifraud provisions).

his own, and his ongoing, willful breach of those duties while at Stratton Oakmont is reproachable and without excuse.

<u>Recurrent Nature of Puccio's Conduct</u>

In the first months of his securities career, while employed at ICI, Puccio violated the state securities laws of Oklahoma. While Puccio settled the matter and paid a fine of $500, he had trouble remembering the violative conduct, his role in the conduct, his payment of the fine, and the terms of the agreement. Puccio did acknowledge, however, that the conduct was wrongful. (Tr. 52-55; D. Ex. 23).

After leaving ICI and joining Stratton Oakmont, Puccio's egregious conduct as described above spanned over two years and included at least twenty instances of baseless price predictions (Tr. 66-77), the use of many Stratton Oakmont sales scripts which contained material misrepresentations and omissions (Tr. 99-114), constant fraudulent discouragement of customer sell orders (Tr. 117),13/ the crossing of customer trades on at least twenty occasions (Tr. 122, 143), and the impersonation of other registered representatives at least four times (Tr. 115-16).

Following his employment at Stratton Oakmont and upon joining Josephthal, Lyon & Ross (hereinafter "Josephthal"), Puccio recalled not telling customers about the risky nature of investments, and solely used a "fact sheet" when recommending securities, as well as not conducting any research himself. (Tr. 153-55). Puccio engaged in this conduct, despite his

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13/ The discouragement of unsolicited customer sell orders was encouraged by Stratton Oakmont in order to fraudulently maintain the price of certain house stocks.

prior realization that some of Stratton Oakmont's sales techniques and information on which he relied there were not in the best interests of his clients. (Tr. 140).

Degree of Scienter

Scienter is "a mental state embracing an intent to deceive, manipulate or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 194 n.12 (1976). The vast majority of the circuit and district courts have found recklessness sufficient to state a claim under the antifraud provisions. Puccio's conduct, however, often went beyond recklessness and included intentional, willful and wanton disregard for his duties to his customers.

While Puccio's failure to conduct any independent research may have only amounted to recklessness, his unreasonable price predictions, discouragement of customer's sales, crossing of trades, and material misrepresentations as to Stratton Oakmont's research capabilities and even his own identity represented willful and wanton participation and complicity in the "boiler room" tactics perpetrated by himself and Stratton Oakmont.

Puccio claims that he "improperly, but unknowingly, followed the training and direction of the three principals of [Stratton Oakmont]." (Post-Hearing Brief on Behalf of Respondent Puccio, at 23; See Tr. 141, 150).14/ Further, Puccio claims he was "indoctrinated into a sales methodology by the principals of [Stratton Oakmont] and he presented information to his clients that was part of this methodology. [He] did not understand at that time that he was violating the securities rules or harming his clients." (R. Brief at 23-24). Puccio's claims of naivete' or that he was acting solely under the influence of his employer are without merit in

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14/ "Post-hearing Brief on Behalf of Respondent Puccio" shall hereinafter be referred to as "R. Brief."

mitigating his degree of scienter. Rather, Puccio's reliance solely on his employer for information, even if he believed it, and his blindly following of their instructions to perpetrate fraudulent acts, establishes the willfulness of his conduct. His adherence to Stratton Oakmont policies and practices were directly contrary to duties the Puccio knew or should have known he owed to his customers.15/

Assurances Against Future Violations

Puccio voluntarily consented to the entry of a permanent injunction against future violations of the antifraud provisions of the federal securities laws. In so consenting, Puccio understood that violation of the provisions of the injunction would place him in peril of civil and criminal sanctions for contempt of court. (D. Ex. 21).

As further assurance against future violations, Puccio stated that upon leaving Stratton Oakmont and joining the Josephthal firm, he "learned how to do the business the right way. And learning what I learned at that firm, I was lead to believe that I was mislead by being at the firm Stratton Oakmont." (Tr. 149). Further Puccio stated that he "was smart enough to leave [Stratton Oakmont] to go on." (Tr. 150). Yet, while at Josephthal, Puccio did not indicate to customers the risk associated with the stock, nor did he do any research himself about stocks he recommended, relying solely on the brokerage's "facts sheet." (Tr. 154-55). Obviously, Puccio's learning experience at Josephthal missed the basics, as he was still unaware of his strict duty to reasonably investigate the securities he was recommending and to

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15/ "Brokers and salesmen are 'under a duty to investigate, and their violation of that duty brings them within the term 'willful' in the Exchange Act.'" Hanly v. SEC, 415 F.2d 589 (2d Cir. 1969) (quoting Dlugash v. SEC, 373 F.2d 107, 109 (2d Cir. 1967)); SEC v. Hasho, 784 F. Supp. 1059, 1108 (S.D.N.Y. 1992) (defendant's argument that he was naive and relied upon information from employer did not negate intent, but rather establishes it).

communicate risks to customers. In light of this, I cannot conclude that, independent of the possible repercussions under the injunction, Puccio would not engage in similar violative conduct if given the opportunity,

Recognition of Wrongful Conduct

Puccio acknowledged at the hearing:

> Seeing what I [Puccio] have done in the past and what they [Stratton Oakmont] have done, I see it was definitely a wrong situation; but at the time, this is what I was being told and lead to believe. (Tr. 141).

Further, Puccio contends that at the time of his conduct he was only twenty-three years old, very naive and "didn't know the business." (Id.) However, as discussed above, this recognition of "a wrong situation" at Stratton Oakmont did not translate to better conduct at Josephthal, where he admitted to again fail to independently investigate stocks he was recommending. It thus remains unclear whether, even though he is older and has worked in a different brokerage firm where he was "retrained", Puccio understands the duties he would owe to customers if he were again employed in the securities industry.

Puccio's contrition is also undermined in part by his argument that he, as a naive young broker, was somehow victimized by Stratton Oakmont's management. The argument indicates that sanctions imposed on Puccio should be less severe because of his lack of individual responsibility in the conduct at Stratton Oakmont. (R. Brief at 8). While a broker-dealer and its principals have independent duties to reasonably supervise registered representatives and ensure the overall compliance of its sales efforts with the securities laws, the individual registered representative's responsibilities are clearly defined and important. The strict duties imposed on registered representatives to deal fairly and honestly with customers are fundamental

to the protection of investors, and cannot be avoided, or penalties for violation of those duties lessened, because someone told the representative to engage in violative conduct or because every one else in an office was engaged in the same violative conduct. Puccio's reliance on such arguments indicates that his perception of individual responsibility for the egregious fraudulent conduct shown in this proceeding is still not present.

Likelihood of Future Violations

Puccio was not employed in the securities industry at the time of the hearing. While the "debt reorganization" field in which he is presently employed may be rife with fraudulent conduct, there is no evidence that Puccio or his employer is engaging in or has engaged in any fraudulent conduct in connection with "debt reorganization."

It is apparent that his present career is significantly less lucrative than his past employment in the securities industry. His present employment yields a salary of only approximately $35,000 (Tr. 48, 161), substantially less that his over $100,000 in compensation each year at Stratton Oakmont and his compensation at Josephthal which was roughly thirty percent less. (Tr. 60, 123-24, 152). This disparity certainly makes the securities industry a more attractive career opportunity for Puccio, and indeed indicates that significantly more money can be earned in the securities business if the duties imposed under the securities laws are flouted or ignored.

The likelihood of future violations is diminished in part by the fact that Puccio is enjoined from engaging in violative conduct. It may be assumed that the permanent threat of civil and criminal penalties under contempt charges should provide a significant disincentive for Puccio to engage in violative conduct if he reenters the securities business.

Deterrence

"Boiler room" operations such as that operated by Stratton Oakmont need "bodies" to carry out their activities. It is apparent from the environment Puccio described that broker-dealers like Stratton Oakmont neither want nor need experienced securities salesmen; rather, they seek those who can engage prospective customers in aggressive cold calls, read scripts, discourage sales and generally "play along" in the game. While Puccio worked at Stratton Oakmont, the large majority of his fellow employees were in their twenties with little securities industry experience. To impose a lesser sanction than warranted by his conduct because of Puccio's age, inexperience and reliance on his employer would only encourage others similarly situated to flout the duties imposed on them by the federal securities laws. Further, any lesser sanction than warranted would encourage unscrupulous boiler room operators to use and manipulate young, inexperienced brokers for their fraudulent purposes, with the expectation that such registered representative could abdicate their duties to customers with little fear of serious sanction.

Mitigating Factors

Puccio argues that the sanction imposed on him should be proportionate to the sanctions imposed on other persons associated with Stratton Oakmont during the time of Puccio's employment. In support of the argument, Puccio points out that the Division sought a permanent bar from association with a broker-dealer for only Puccio and the firm's founder, Jason Belfort

(Belfort), and lesser sanctions were imposed on others associated with Stratton Oakmont.16/ (R. Brief at 6-7).

I reject Respondent's argument that imposition of a sanction greater that a suspension for one year would be inequitable and against the public interest, in light of the sanctions imposed on other persons associated with Stratton Oakmont and sanctions imposed in entirely separate proceedings. The determination of a sanction appropriate in the public interest is a fact specific inquiry which cannot be accomplished through comparison to other proceedings.17/ Further, the duties imposed on a firm's principals and supervisory personnel are often dissimilar to those imposed on registered representatives, thereby defeating any comparison Puccio suggests.

I also reject what the Division has termed a "selective prosecution" argument advanced by Puccio. It is irrelevant to the determination of an appropriate sanction that the Division has not charged the other eighty registered representatives who worked at Stratton Oakmont with

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16/ In the case of Belfort, Puccio represents that he was permanently barred without a right to reapply. Further, Puccio represents that Kenneth Greene (Greene), a Stratton Oakmont executive vice president, was barred from the securities industry with a right to reapply after five years; Daniel Porush (Porush), another principal, was suspended for one year from serving in a supervisory capacity with a broker-dealer; and a registered representative named Cliff Sharfman was enjoined from employment in the securities industry for one year. (R. Brief at 6-7).

17/ In Dlugash v. SEC, 373 F.2d 107, 110 (2d Cir. 1967), the court rejected as irrelevant respondent's argument that other parties in the proceeding received less severe sanctions, since the sanctions imposed were well within the Commission's discretion. Further, the Commission has expressly stated that "it is well established that respondents who offer to settle may properly receive lesser sanctions than they otherwise might have received . . . ," thereby frustrating any attempt to compare the sanctions imposed on Belfort, Greene and Porush with those sought to be imposed on Puccio. David A. Gingras, 50 S.E.C. 1286, 1294 (1992). The sanctions imposed on Stratton Oakmont's principals resulted from Offers of Settlement accepted by the Commission upon its issuance of the order instituting administrative proceedings against them. Stratton Oakmont, Inc., 56 SEC Docket 822 (1994).

Puccio. Further, since Puccio consented to the entry of an injunction against him, he knowingly subjected himself to administrative sanctions pursuant to Section 15(b)(6) of the Exchange Act. The fact that he was one of many brokers who allegedly engaged in violative conduct can in no way now limit Puccio's level of culpability before the Commission for his own conduct.

In mitigation of his conduct which the Division asserts warrants a permanent bar from association with a broker-dealer, I have considered (1) Puccio's voluntary disassociation with Stratton Oakmont after realizing that one of the firm's policies was contrary to his customer's interest; (2) his relative youth in light of permanent bar;18/ (3) his at least partial acknowledgement of wrongdoing; and (4) the assurance against future antifraud violations compelled by compliance with the permanent injunction entered against him.

In light of the foregoing, it is in the public interest that Puccio be barred from association with any broker-dealer, with a right to reapply for such association after five years.

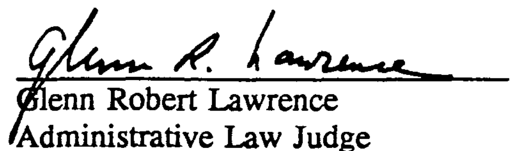
ORDER

Based on the findings and conclusions set forth in this decision,19/ I order that Richard J. Puccio be barred from association with any broker or dealer, with a right to reapply for such association after five years.

18/ After an appropriate period of time away from the securities industry, it may be expected that Puccio, with the benefit of maturity and general business experience, may be able to appreciate the duties owed to customers by securities salesmen.

19/ I have considered all of the proposed findings, proposed conclusions and arguments or contentions of the parties, and I accept those that are consistent with this decision.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice (17 C.F.R. 201.17(f)). Pursuant to that rule, this initial decision shall become the final decision of the Commission as to each party who has not filed a petition for review pursuant to Rule 17(b) within 15 days after service of the initial decision upon him, unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to a party. If a party timely files a petition for review, or the Commission acts to review as to a party, the initial decision shall not become final as to that party.



Glenn Robert Lawrence
Administrative Law Judge

Washington, D.C.
July 10, 1995