INITIAL DECISION RELEASE NO. 310
ADMINISTRATIVE PROCEEDING
FILE NO. 3-12084

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	:	
	:	INITIAL DECISION
ROBERT RADANO	:	March 24, 2006
	:	

APPEARANCES: Kathleen A. Ford and Rami Sibay for the Division of Enforcement, Securities and Exchange Commission

Russell G. Ryan for Respondent Robert Radano

BEFORE: Robert G. Mahony, Administrative Law Judge

INTRODUCTION

The Securities and Exchange Commission (SEC or Commission) initiated this proceeding with an Order Instituting Proceedings (OIP) on October 12, 2005, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that on September 22, 2005, the United States District Court for the District of Columbia entered a final judgment against Respondent Robert Radano (Radano) permanently enjoining him from violating Sections 203(f), 206(1), and 206(2) of the Advisers Act. SEC v. Bolla, No. 1:02CV01506 (CKK) (D.D.C.).

On November 28, 2005, Radano filed his Answer to the OIP. I granted the Division of Enforcement (Division) leave to file a motion for summary disposition at the December 1, 2005, prehearing conference. The Division filed a motion for summary disposition and a declaration by Rami Sibay in support of the motion on December 16, 2005. Radano filed a brief in opposition on January 20, 2006.[1] The Division did not file a reply brief.

[1] The Division's motion for summary disposition will be cited as "(Motion at __.)," and the exhibits attached to the declaration will be cited as "(Ex. __.)." Radano's Answer will cited as "(Answer at __.)," and his brief in opposition will be cited as "(Resp. Br. at __.)."

SUMMARY DISPOSITION

A. Standards for Summary Disposition

Rule 250(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.250(a), provides that any party may make a motion for summary disposition as to any or all allegations in the OIP against a respondent. The 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 noticed pursuant to Rule 323 of the Commission's Rules of Practice. An administrative law judge may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the moving party is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(a), (b). However, findings of fact and conclusions of law made in a prior injunctive action are immune from attack in, as here, a follow-on administrative proceeding. Ted Harold Westerfield, 54 S.E.C. 25, 32 & n.22 (1999).

B. The Division's Motion for Summary Disposition

The Division's motion for summary disposition alleges that there is no genuine issue in regard to any material fact and it is entitled to summary disposition as a matter of law. (Motion at 4-5.) To support its position, the Division attaches three exhibits to the motion for summary disposition:[2]

Exhibit 1: Complaint, SEC v. Bolla et al., No. 1:02CV01506 (CKK) (S.D.N.Y. filed July 31, 2002).

Exhibit 2: Order, SEC v. Bolla et al., No. 1:02CV01506 (CKK) (S.D.N.Y. Sept. 22, 2005).

Exhibit 3: Memorandum Opinion, SEC v. Bolla et al., No. 1:02CV01506 (CKK) (S.D.N.Y. Sept. 22, 2005).

Radano opposes the motion for summary disposition and urges it be denied. (Resp. Br. at 1.) Specifically, Radano asserts the motion for summary disposition contains many factual mischaracterizations of the memorandum opinion underlying the civil injunctive order. (Answer at 1-2; Resp. Br. at 1-2; Ex. 3.) Radano also argues that the Division failed to mention any mitigating facts that may factor in the determination of any sanctions. (Resp. Br. at 2-3.)

While Radano disputes the Division's interpretation and characterization of the memorandum opinion, he does not dispute that a final judgment incorporating the memorandum opinion has been entered against him. Radano also concedes this is not an appropriate "venue to relitigate the district court proceeding." (Resp. Br. at 5.)

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[2] The Division's exhibits are admitted into evidence. 17 C.F.R. § 201.323.

FINDINGS OF FACT

The Commission filed a civil complaint in the United States District Court for the District of Columbia against Radano, along with co-defendants Steven M. Bolla (Bolla), Susan Bolla, and Washington Investment Network (WIN), on July 31, 2002, alleging that each had violated various provisions of the federal securities laws.[3] The complaint alleged that Radano allowed Steven Bolla to associate with WIN for approximately ten months after Bolla was barred from associating with any investment adviser and failed to disclose Bolla's disciplinary history to WIN's clients. (OIP at ¶ II.B.2; Ex. 1 at ¶¶ 24-31, 71-80.) Following a bench trial, Judge Colleen Kollar-Kotelly concluded that Radano willfully aided and abetted WIN's primary violations of Sections 203(f), 206(1), and 206(2) of the Advisers Act. On September 22, 2005, the judge issued an order: (1) enjoining Radano from future violations of Sections 203(f), 206(1), and 206(2) of the Advisers Act;[4] and (2) fining Radano $15,000 in civil monetary penalties.[5] (Exs. 2, 3.)

Radano, age 50, graduated from George Washington University in 1977 with a bachelor's degree in political science. From 1977 through 1985, Radano worked as a congressional aide, along with other various political positions. In 1985, Radano passed the Series 7 examination and became a registered broker with Legg Mason in Washington, D.C. From 1985 through 1997, Radano worked as a Series 7 broker for Legg Mason; Shearson, Lehman, and Hutton; and Washington Investment. In March 1997, Radano passed the Series 65 examination and became a registered investment adviser. (Ex. 3 at 3.)

Radano is registered as an investment adviser in the State of Connecticut and currently the sole owner and principal of WIN. (Answer at 1.) WIN was founded in 1997 and registered as an investment adviser in the Commonwealth of Virginia in 1999 and in Connecticut in June 2000.[6] (Ex. 3 at 2, 5-6.) At its formation, WIN was co-owned by Radano and Susan Bolla, Bolla's wife. Susan Bolla had no prior experience in the securities industry herself. On the advice of counsel, WIN was set up in this manner because of an ongoing SEC investigation of Bolla. (Ex. 3 at 6-7.) Although listed as a principal, Susan Bolla did not render any advisory

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[3] Defendants Steven and Susan Bolla settled with the Commission prior to the bench trial and are not parties to this proceeding. (Ex. 3 at 1.) See Steven M. Bolla, 83 SEC Docket 2176 (Aug. 20, 2004).

[4] Sections 206(1) and 206(2) of the Advisers Act, the antifraud provisions of the Advisers Act, prohibit misstatements or misleading omissions of material facts and other fraudulent acts and practices in connection with the conduct of an investment advisory business.

[5] WIN was also enjoined from future violations of Sections 203(f), 206(1), and 206(2) of the Advisers Act and fined $50,000. WIN is not a party to this proceeding.

[6] WIN is currently registered as an investment adviser in Connecticut, but it is no longer registered in Virginia. (Answer at 1; Ex. 3 at 2.)

services nor did she have any substantive client contact. Radano and Bolla were held out as the public faces of WIN, and WIN's clients believed that Steven Bolla, not Susan Bolla, was a principal of the firm. (Ex. 3 at 8-9.) WIN was formed to allow both Bolla and Radano to earn advisory fees from their clients' participation in a "wrap" program set up by Lockwood Financial Services, Inc. (Lockwood), a broker-dealer and a registered investment adviser.[7] Essentially, WIN operated as a pass-through entity for which advisory fees from Lockwood and another money manager were funneled to a personal checking account controlled by Bolla. (Ex. 3 at 7-8.) All client statements from Lockwood, along with WIN's advisory fee checks, were sent to Bolla's home address. (Ex. 3 at 8.)

At the time of WIN's formation, Bolla was under investigation by the Division for violations of the securities laws in a matter unrelated to WIN or Radano.[8] On June 20, 2000, the Commission issued an order barring Bolla from associating with any investment adviser. (Ex. 3 at 9-10.) Shortly before the bar order was issued, both Steven and Susan Bolla moved from Centreville, Virginia, to Alpharetta, Georgia, and stopped communicating with Bolla's clients for several months. (Ex. 3 at 10-11, 20.) After the bar was imposed on Bolla, Radano, with assistance from Lockwood, transferred Bolla's advisory accounts to himself. (Ex. 3 at 14-15, 17-18.) Bolla eventually referred approximately a dozen of his clients to Radano. (Ex. 3 at 20.)

Despite the bar order, Lockwood continued to send WIN's advisory fee checks to Bolla until November 2000.[9] (Ex. 3 at 18.) With Radano's knowledge, Bolla continued to manage the finances of WIN until March 2001, almost nine months after his advisory bar was issued. (Ex. 3

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[7] Lockwood acted as a third-party administrator for independent investment adviser clients to participate in a "wrap" account that would pool together funds to be invested by prominent money managers. (Ex. 3 at 3-4.) Lockwood charged an overall wrap fee and remitted a portion of the fee to each client's investment adviser, such as WIN. Both Radano and Steven Bolla participated in a similar program with one other money manager, but on a smaller scale. (Ex. 3 at 5.)

[8] Radano was notified by Bolla that he was going to be barred from associating with any investment adviser in January or February 2000. Bolla signed an Offer of Settlement on March 20, 2000. (Ex. 3 at 9-10.) Thereafter, on June 20, 2000, Bolla was barred from association with any investment adviser, with the right to reapply for association after five years, for fraudulent conduct related to his involvement with the Trustcap Financial Group, Inc. (Trustcap). James L. Foster, 72 SEC Docket 2163 (June 20, 2000).

[9] Radano and Lockwood had a dispute over whether WIN, and Radano specifically, would remain the investment adviser to Bolla's clients in Lockwood's system, but Lockwood eventually relented. Radano complained to Lockwood when it continued to mail fee payments to Bolla. Despite Lockwood's "apparent dilatoriness," the district court noted, "Radano could certainly have taken additional steps to prevent Mr. Bolla's continued financial control of a company that Mr. Radano owned . . . ." (Ex. 3 at 37.)

at 16-18.) Bolla deposited advisory fee checks into a checking account he controlled and made payments, or directed Radano to do so, to third parties. Bolla, subsequent to his advisory bar, remained the point of contact for many of WIN's clients and instructed Radano to act on client requests through the fall of 2000. (Ex. 3 at 17, 20.) Radano was also aware that Bolla continued to provide investment advice to two WIN clients, Nancy DeFelice (DeFelice) and David Meredith (Meredith), with Meredith's daughter, Karen Grotto (Grotto), acting as the administrator of his account. (Ex. 3 at 16, 20-25.)

In October 2000, Grotto contacted Radano in an effort to locate Bolla. Radano initially claimed that Bolla was "out of the office," but later admitted he was no longer with WIN. (Ex. 3 at 20-22.) Radano failed to disclose to Grotto that Bolla was barred from associating with any investment adviser. In April or May of 2001, DeFelice similarly contacted Radano about Bolla. (Ex. 3 at 22-25.) Initially, Radano claimed that Bolla was no longer with WIN, but was pursuing a career in insurance. When confronted by DeFelice that she knew that Bolla was being investigated by the Division, Radano acknowledged Bolla's involvement with the Trustcap investigation. However, Radano did not disclose the bar order. Similarly, Radano contacted other clients of WIN and notified some of them, but not all, that Bolla was leaving the firm due to his trouble with the Commission. Radano failed to specifically disclose the advisory bar to any WIN client. (Ex. 3 at 19-20.)

The district court concluded that Radano, although not registered with the Commission, was an investment adviser within the meaning of the Advisers Act, and thus subject to its provisions. (Ex. 3 at 26-30.) According to the memorandum opinion, as a principal of WIN, Radano violated his fiduciary duty to inform the firm's advisory clients that the Commission had barred Bolla from acting or associating with an investment adviser based on his role in an earlier securities fraud. (Ex. 3 at 38-53.) In addition to failing to make the appropriate disclosures, Radano also affirmatively misled at least two advisory clients, Grotto and DeFelice, about Bolla's role with the firm and status with the Commission. Radano chose to only disclose the fact that Bolla had left the firm, but failed to mention that the reason why Bolla left the firm was that the Commission obtained an antifraud injunction and imposed a bar against him. (Ex. 3 at 49-50.) Failure to make these affirmative statements resulted in Radano's and WIN's violations of Sections 206(1) and 206(2) of the Advisers Act.

The court also concluded WIN was created as "a front for Mr. Bolla to continue to operate with his wife as a mere nominee to officially mask his true interest and control." (Ex. 3 at 34.) Steven Bolla "was a principal – if not *the* principal – of WIN in anything but name." Id. Prior to the imposition of the bar, Radano allowed Bolla "virtually unlimited control of the firm's finances," despite the Division's investigation and the pending settlement agreement with Steven Bolla. (Ex. 3 at 34, 37-38.) After the bar was imposed, Radano allowed Bolla to remain the point of contact for Bolla's old clients. Bolla continued to provide direct advisory services for at least two clients and controlled WIN's finances. He also concealed his involvement by having Susan Bolla act as a nominee principal of the firm. (Ex. 3 at 37-38.) Accordingly, Radano, both actively and passively, failed to prevent Bolla from continuing his association with

both WIN and himself despite his knowledge of the advisory bar. The court concluded that by a preponderance of evidence both Radano and WIN violated Section 203(f) of the Advisers Act.

In addition to the injunction, the Division sought to impose $55,000 in civil penalties against Radano. The court found this amount excessive since Lockwood was no longer associated with Radano or WIN, and no investors lost any money as a result of the above violations. (Ex. 3 at 55.) However, given the level of malfeasance, the overall injury, and potential harm to the investing public, a civil monetary penalty of $15,000 was imposed against Radano.

Radano does not contend there is any genuine issue in regard to any material fact in this proceeding.

CONCLUSIONS OF LAW

Section 203(f) of the Advisers Act provides that the Commission may impose a sanction against a person associated with an investment adviser if such a person is enjoined from any action, conduct, or practice specified in Section 203(e)(4) of the Advisers Act. The Commission may censure, impose limitations on the activities of such a person, suspend that person for a period not exceeding twelve months, or bar that person from being associated with an investment adviser if the Commission finds, on the record and after notice and an opportunity for a hearing, that such a sanction is in the public interest.

Section 203(e)(4) of the Advisers Act includes permanent or temporary injunctions by any court of competent jurisdiction "from . . . engaging in any or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security." I find the United States District Court for the District of Columbia is a court of competent jurisdiction and the Final Judgment and Memorandum Opinion is a permanent injunction falling within the meaning of Section 203(e)(4) of the Advisers Act. As such, the only remaining question is what sanctions, if any, are appropriate in the public interest.

SANCTIONS

In determining whether a sanction is in the public interest, the Commission considers the following factors:

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

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). No one factor controls. See SEC v. Fehn, 97 F.3d 1276, 1295-96 (9th Cir. 1996). The

severity of a sanction depends on the facts of each case and the value of the sanction in preventing a recurrence. Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963); Leo Glassman, 46 S.E.C. 209, 211-12 (1975). Sanctions related to registration status of regulated persons or entities are not intended to punish a particular respondent, but to protect the public from future harm. Glassman, 46 S.E.C. at 211-12.

The Division seeks to bar Radano from association with an investment adviser. (Motion at 5-7.) Radano contends a lesser sanction, if any, is warranted.

Radano's Arguments

First, Radano argues that the Division's request for an permanent bar "lacks any sense of proportion and fairness," compared to other enforcement actions against investment advisers. Compare, e.g., McCarthy v. SEC, 406 F.3d 179, 190 (2d Cir. 2000) (two-year suspension not warranted for violations of Advisers Act); with Ian L. Renert, 83 SEC Docket 1643 (July 27, 2004) (permanent bar for fraud resulting in $2.2 million in investor losses and over $700,000 of illicit gains). Although prior contested cases and Commission settlement orders may provide guidance in the determination of sanctions, there is no strict proportionality test. In contrast, the Commission has consistently held that "the appropriate remedial action depends on the facts and circumstances of each particular case and cannot be determined precisely by comparison with the action taken in other cases." Martin J. Cunnane, Jr., 53 S.E.C. 285, 288 (1997) (citing Butz v. Glover Livestock Comm'n Co., 411 U.S. 182, 187 (1973)).

Second, Radano argues that if the Division believed that his conduct was so egregious to warrant a permanent bar, it should have brought proceedings against Lockwood and other investment advisers that Bolla has been associated with since June 20, 2000, in violation of the advisory bar and Section 203(f) of the Advisers Act. However, Lockwood's and other investment advisers' purported misconduct is not properly before me. The Division considers a wide variety of factors in determining whether to recommend initiating an enforcement proceeding. See, e.g., Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions, 76 SEC Docket 296 (Oct. 23, 2001). Accordingly, I decline to question the Division's decision to recommend, vel non, a proceeding against another party, nor do I find it an appropriate mitigating factor as to Radano.

Third, Radano argues that the district court improperly concluded that Section 203(f) of the Advisers Act required Radano to disassociate himself with Bolla before the advisory bar was actually imposed. To the extent that Radano wishes to challenge any part of the district court's decision against him, it must be addressed to the United States Court of Appeals for the District of Columbia. See Blinder, Robinson & Co. v. SEC, 837 F.2d 1099, 1104-07 (D.C. Cir. 1988); Michael Batterman, 84 SEC Docket 1349, 1356 (Dec. 3, 2004).

Finally, Radano objects to the Division characterizing his appeal of the Final Judgment as evidence of his lack of remorse. A defendant in a Commission civil proceeding has the right to appeal any adverse decision to the court of appeals. Although Radano is pursuing an appeal, the Commission is not precluded from imposing sanctions, if appropriate, under Section 203(f) of the Advisers Act. See Joseph P. Galluzzi, 78 SEC Docket 1125, 1130 n.21 (Aug. 23, 2002).

Steadman Factors

The district court found that WIN was created by Radano to allow Bolla to continue to operate and receive advisory fees despite a Division investigation and expected bar from association with an investment adviser. The court concluded that the scheme was "flagrant, deliberate, and part of a pattern." (Ex. 3 at 54.) While no investors were found to be harmed financially, Radano put WIN's clients at risk in order to have access to Lockwood and the advisory fees the relationship generated. Radano failed to exercise his fiduciary duty toward WIN's clients to fully inform them of the advisory bar in order to retain them as clients. The fact no investors lost money was a factor the court used to determine a civil penalty of $15,000 against Radano, compared to $55,000 requested by the Division, was appropriate. It nonetheless does not excuse Radano's misconduct.

Except for the instant district court proceeding, Radano argues that he has never been sanctioned by the Commission or any other regulatory body. Radano's misconduct, however, was not isolated in nature. Radano did attempt to separate from Bolla by the summer of 2000, but he allowed Bolla to control WIN's finances for an additional nine months after the bar. Although only two witnesses testified that Radano misled them about Bolla's status with the Commission, the record indicates that Radano failed to affirmatively notify at least a dozen other WIN clients of the permanent bar. Thus, Radano's violations of the Advisers Act occurred repeatedly over at least a ten-month period.

Although Radano's appeal of the Final Judgment is not a proper factor in determining whether a sanction is appropriate in the public interest, his recognition, if any, of the wrongfulness of the violative conduct enjoined by the district court may still be considered. The court rejected Radano's view that the duty to notify his and WIN's clients of the bar rested with Lockwood. The fact Bolla's bar was public information and listed on the Commission's Web Site, similarly did not waive Radano's obligation to exercise his fiduciary duty in disclosing material information to WIN's clients. Radano's lack of understanding of his fiduciary duty toward WIN's clients evidences a lack of recognition of the obligations investment advisers have under the Advisers Act. Radano argues it is unlikely that he will commit future violations of the securities laws in the future, yet he fails to provide sufficient assurances of this assertion. Radano has not proposed or implemented any changes in how he will operate in the future to avoid future violations of the Advisers Act, other than noting he is no longer associated with Bolla or Lockwood.

Radano argues that nowhere in the court's memorandum opinion is the phrase "a high degree of scienter" mentioned. However, in finding Radano acted with scienter, the court specifically rejected his defenses that he acted in good faith when he terminated his and WIN's relationship with Bolla. In contrast, the court concluded that "the material omissions and misstatements at issue in this case were intentional on the part of Mr. Radano." (Ex. 3 at 52.) The court also concluded that Radano acted willfully in violating the most basic of fiduciary duties by attempting to "shift blame, hide behind corporate structures, and minimize the vital, material information at issue . . . ." (Ex. 3 at 54-55.) Although Radano notified Lockwood of Bolla's bar, the court noted it was in his interest to do so in order to receive advisory fees from Bolla's clients. (Ex. 3 at 52-53.) Therefore, the court concluded that his violations were "flagrant, deliberate, and part of a pattern."

I recognize that the injunctive proceeding has severely curtailed Radano's ability to associate with investment advisers. I further recognize that the imposition of a permanent injunction and $15,000 civil penalty were based upon events that occurred almost six years ago, and he has no prior disciplinary history. The court characterized Radano as the "junior partner" in his relationship with Bolla and, at the time of the bar, Radano had received only $10,000 in yearly fees while Bolla had received $150,000 in yearly fees. Nevertheless, I cannot ignore the findings and conclusions of the district court that Radano's conduct was "flagrant, deliberate and part of a pattern," and that there was a reasonable likelihood he would commit future violations of the Advisers Act. Based on the factors discussed above and the evidence in the record, I conclude a permanent bar is in the public interest as the appropriate sanction.

ORDER

IT IS ORDERED that the Division of Enforcement's motion for summary disposition against Respondent Robert Radano is GRANTED; and

IT IS FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, Respondent Robert Radano is barred from association with any investment adviser.

This Initial Decision 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 the Initial

Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Robert G. Mahony
Administrative Law Judge