

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 2750 / June 30, 2008

Admin. Proc. File No. 3-12084

In the Matter of

ROBERT RADANO

5501 Kirkwood Drive
Bethesda, Maryland 20816

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Ground for Remedial Action

Injunction

Managing director and sole owner of investment advisory firm was enjoined from committing future violations of the antifraud and investment adviser provisions of the Advisers Act. Held, it is in the public interest to bar respondent from association with any investment adviser subject to a right to reapply after five years.

APPEARANCES:

Robert Radano, pro se. 1/

James A. Kidney, Kathleen A. Ford, and Rami Sibay, for the Division of Enforcement.

1/ Although Radano delivered the oral argument on his own behalf, he was accompanied by James Goldstein, of Goldstein & Hayes, P.C., who filed an appearance. Radano had been represented throughout most of this administrative proceeding by Russell G. Ryan, of King & Spalding LLP, who withdrew his representation on December 10, 2007.

Appeal filed: April 14, 2006
 Last brief received: July 3, 2006
 Oral argument: May 5, 2008

I.

Robert Radano, the managing director and sole owner of Washington Investment Network (“WIN” or the “Firm”), an investment advisory firm registered as an investment adviser in the State of Connecticut, 2/ appeals from the decision of an administrative law judge. The law judge barred Radano from association with any investment adviser, based on a finding that Radano had been enjoined from future violations of antifraud provisions and a provision prohibiting investment advisers from associating with a barred individual, of the Investment Advisers Act of 1940. 3/ We base our findings on an independent review of the record, except with respect to those findings of the law judge not challenged on appeal.

II.

On July 31, 2002, the Commission filed a civil complaint against Radano and his co-defendants Steven M. Bolla, a former principal of WIN, Bolla’s wife, Susan Bolla, and WIN in the United States District Court for the District of Columbia (the “Complaint”). 4/ The Complaint alleged, among other things, that Radano allowed Bolla to continue associating with WIN after Bolla had been barred, and that Radano failed to disclose Bolla’s bar to any WIN clients. The Complaint charged WIN as a primary violator, and Radano with aiding and abetting WIN’s alleged violations, of Sections 203(f), 206(1), and 206(2) of the Advisers Act. 5/ A bench

2/ Radano is also registered as an investment adviser in the State of Connecticut.

3/ 15 U.S.C. § 80b-1 et seq.

4/ SEC v. Steven M. Bolla, Wash. Inv. Network, Susan Bolla, and Robert Radano, 401 F. Supp. 2d 43 (D.D.C. 2005). In connection with these proceedings, both Steven Bolla, who was charged with several violations of the securities laws, and Susan Bolla, who was charged with violations identical to those of Radano’s, settled with the Commission prior to the trial. They consented to the entry by the district court of final judgments enjoining them from violations of the securities laws, and Steven Bolla agreed to pay a \$175,000 fine. See SEC Settles Fraud Charges Against Steven and Susan Bolla, Litigation Rel. No. 18837 (Aug. 18, 2004), 83 SEC Docket 2052.

5/ 15 U.S.C. §§ 80b-3(f), 80b-6(1), and 80b-6(2). Advisers Act Section 203(f) makes it unlawful for any investment adviser to permit a barred person to become or remain an associated person without the Commission’s consent, if the investment adviser “knew, or in the exercise of reasonable care, should have known, of such [bar] order.” 15 U.S.C.

(continued...)

trial was held on July 26-28, 2004. On September 22, 2005, the district court found that WIN violated the Advisers Act provisions alleged and that Radano had aided and abetted WIN's violations. ^{6/} The district court also enjoined Radano from future violations of those provisions and fined Radano \$15,000. ^{7/} Radano appealed the district court's decision to the United States Court of Appeals for the District of Columbia Circuit. ^{8/}

On October 13, 2005, we authorized the institution of administrative proceedings against Radano to determine whether he had been enjoined and, if so, what remedial action would be appropriate in the public interest. On December 16, 2005, the Division of Enforcement (the "Division") moved for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice. ^{9/} On March 24, 2006, the law judge granted the Division's motion for summary disposition, finding that "Radano [did] not contend there [was] any genuine issue in regard to any material fact in this proceeding." ^{10/} The law judge barred Radano from association with any investment adviser. This appeal followed.

On February 6, 2007, the United States Court of Appeals for the District of Columbia Circuit affirmed the district court's injunctive decision against Radano, finding that WIN violated Advisers Act Sections 203(f), 206(1), and 206(2) and that Radano aided and abetted these

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- ^{5/} (...continued)
 § 80b-3(f). Advisers Act Section 206(1) makes it unlawful "to employ any device, scheme, or artifice to defraud any client or prospective client." 15 U.S.C. § 80b-6(1). Advisers Act Section 206(2) makes it unlawful "to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." 15 U.S.C. § 80b-6(2).
- ^{6/} SEC v. Bolla, 401 F. Supp. 2d 43.
- ^{7/} Id. at 74. In the same case, the district court enjoined WIN from future violations of the same provisions of the Advisers Act and fined the Firm \$50,000. WIN is not a party to this proceeding. On May 6, 2008, the district court vacated the \$15,000 civil money penalty that it had imposed on Radano. See infra note 17.
- ^{8/} Radano's appeal was filed on November 14, 2005. See SEC v. Wash. Inv. Network and Robert Radano, No. 05-5433 (D.C. Cir.).
- ^{9/} 17 C.F.R. § 201.250. A motion for summary disposition may be granted "if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law." 17 C.F.R. § 201.250(b).
- ^{10/} Robert Radano, Initial Dec. Rel. No. 310 (Mar. 24, 2006), 87 SEC Docket 2304.

violations. 11/ The appeals court also affirmed the district court’s imposition of penalties on WIN and Radano and “uph[e]ld the injunction,” although the appeals court found that the language of the injunction was “insufficiently specific” and “fail[ed] to clarify ‘the act or acts sought to be restrained,’” and thus did not satisfy Federal Rule of Civil Procedure 65(d). 12/ The appeals court was concerned that the injunction was “overly broad” in that “it might subject defendants to contempt for activities having no resemblance to the activities that led to the injunction.” 13/ The appeals court therefore remanded the case to the district court “to amend the injunction to describe more specifically the act or acts sought to be restrained.” 14/

On October 29, 2007, the district court issued an amended injunctive order pursuant to the appeals court’s remand instructions. 15/ As relevant here, the district court ordered that WIN and Radano:

[A]re permanently restrained and enjoined from violating Section 203(f) of the [Advisers Act] by willfully becoming, or being, associated with an investment adviser without the consent of the [Commission] if the [Commission] has issued an order against them suspending them or barring them from being associated with an investment adviser, or by permitting a person who was the subject of [a Commission] order barring or suspending him or her from associating with an investment adviser to become, or remain, a person associated with an investment adviser without the consent of the [Commission] if either WIN or Radano knew, or in the exercise of reasonable care, should have known, of such order. 16/

The district court also ordered that WIN and Radano:

[A]re permanently restrained and enjoined from violating Sections 206(1) and 206(2) of the [Advisers Act] by the use of any means or instruments of interstate

11/ SEC v. Wash. Inv. Network, 475 F.3d 392 (D.C. Cir. 2007).

12/ Id. at 407. As relevant here, Federal Rule of Civil Procedure 65(d) requires an injunctive order to “be specific in terms” and “describe in reasonable detail . . . the act or acts sought to be restrained” The district court order enjoined defendants from “future violations of Sections 203(f), 206(1), and 206(2) of the Advisers Act[.]”

13/ Id.

14/ Id.

15/ SEC v. Steven M. Bolla, Wash. Inv. Network, Susan Bolla, and Robert Radano, 519 F. Supp. 2d 76 (D.D.C. 2007) (amended injunctive order).

16/ Id. at 77.

commerce or by the use of the mails, directly or indirectly: (a) employing any device, scheme, or artifice to defraud any client or prospective client; or (b) engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. 17/

III.

The district court found that Radano and Bolla established WIN in 1997 in anticipation of Commission disciplinary proceedings being brought against Bolla. WIN and Radano, the district court found, were investment advisers. Radano stated in his brief that, “through their contacts with various accountants, [he and WIN] located affluent individuals with significant assets and referred them to a ‘wrap fee’ program sponsored by Lockwood Financial Services, Inc., an SEC-registered broker-dealer and affiliated investment adviser with more than \$6 billion in client assets under management.” According to the district court, “[o]nce the WIN client was set up with Lockwood, Mr. Radano and Mr. Bolla’s . . . primary duty was to monitor the account relationship, to look over the shoulder of the managers on an individual account basis . . . and [ensure] that the account was consistent with . . . the parameters outlined by the client.” 18/ Radano stated in his brief that “[i]n exchange for WIN’s referral of clients to Lockwood and sporadic account monitoring and follow-up contact with the clients, Lockwood paid WIN a quarterly consulting fee from each client’s account for so long as that client stayed with Lockwood.”

At the time of WIN’s formation, Commission staff was investigating Bolla’s conduct with respect to another, unrelated investment advisory firm, and Radano and Bolla feared that those proceedings could lead to Bolla’s being barred. The district court found that, consequently, although Bolla and Radano were “held out as the face of WIN,” 19/ Radano and Susan Bolla

17/ Id. at 78. Radano does not challenge the amended injunctive order. However, on November 13, 2007, Radano moved to set aside that portion of the district court’s final judgment imposing a \$15,000 monetary penalty against him. On May 6, 2008, the district court vacated that portion of its order imposing the monetary penalty against Radano, holding that the “Advisers Act does not authorize the [Commission] to seek, or grant this Court jurisdiction to impose, monetary penalties upon Defendant Radano for his aiding and abetting violations of that Act.” SEC v. Bolla, 2008 U.S. Dist. LEXIS 36401 (May 6, 2008). The district court also stated that the “remainder of the Court’s October 29, 2007 Order shall remain in effect.” Id. The district court’s ruling on Radano’s monetary penalty does not affect our consideration of Radano’s administrative appeal.

18/ Bolla, 401 F. Supp. 2d at 60.

19/ Id. at 49.

were presented as the owners of the Firm, with Susan Bolla as a “nominal” owner. 20/ Despite her ownership interest, Susan Bolla, who had no securities industry experience, had no substantive role at the Firm and, “[a]t most,” performed certain clerical functions such as answering the telephone and filing. 21/ The district court found that WIN’s ownership structure was designed “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.” 22/

The district court found that Bolla had referred a substantial amount of his clients’ assets to Lockwood and that these referrals generated significant advisory fees. At the time that WIN was formed, Radano had no investment advisory clients but hoped to develop a client base through a relationship with Lockwood. WIN was to serve as a “mere pass-through [entity] for the payment” of advisory fees earned by Bolla and Radano. 23/ Bolla was responsible for WIN’s finances; he deposited advisory fees that were received into a WIN checking account he had opened and made payments to himself, Radano, and others, on WIN’s behalf, out of this account. Bolla also apparently was responsible for WIN’s relationship with Lockwood. Bolla and Radano worked in different locations and had only sporadic contact with each other. By the summer of 2000, the district court found, Radano had a “handful of clients,” who generated approximately \$10,000 per year in advisory fees from Lockwood. 24/ Bolla, who had referred \$30-\$40 million in client assets to Lockwood, generated approximately \$150,000 per year in such fees.

By early 2000, Radano was aware that Bolla’s bar was imminent in that Bolla was negotiating a settlement in connection with the Division’s investigation of Bolla. In June 2000, Bolla settled with the Commission by agreeing to be barred from associating with any investment adviser. 25/ Despite entry of the bar, the district court found, Bolla continued to remain associated with WIN until March 2001, and he did so with Radano’s awareness and acquiescence. During this time, Bolla, among other things, continued to handle the Firm’s finances and received

20/ Id. at 64.

21/ Id. at 49.

22/ Id. at 63.

23/ Id. at 49.

24/ Id. at 50.

25/ See James L. Foster, Laurie F. Foster, Steven M. Bolla, and William E. Busacker, Jr., Investment Advisers Act Rel. No. 1881 (June 20, 2000), 72 SEC Docket 2163 (settled order barring Bolla from association with any investment adviser, with right to reapply after five years from date of entry of order).

more than \$79,000 in advisory fees. He also continued to advise and serve as a “point of contact” for WIN clients. 26/

Radano learned of the bar a day or two after it had been entered when Lockwood’s clearing agent notified him that, as a result of the bar, Bolla could no longer be listed as the investment adviser for the WIN/Lockwood clients whose accounts were held in custody by the clearing agent. Although the district court found that Radano took certain action in response to the bar, such as attempting to obtain WIN’s checkbook from Bolla, it concluded that those steps were inadequate to avoid liability. The district court specifically rejected Radano’s claim of good faith based on the efforts he made to notify Lockwood of Bolla’s bar and to get that firm to stop paying Bolla advisory fees. According to the district court, Radano contacted Lockwood “because it was in his economic interest to separate Mr. Bolla from Lockwood as soon as possible.”

Significantly, the district court noted, Radano “took no steps to inform the [Commission] or any other agency of the possible violations” but, instead, allowed Bolla to continue his financial control of the Firm and “gladly accepted certain client referrals” from Bolla. 27/ The district court found that “[r]ather than taking his clients with him and dissolving WIN, Mr. Radano maintained a business association with Mr. Bolla through WIN in the hopes of obtaining some of his valuable book of clients.” 28/ The district court concluded that, “[d]espite his intelligence and experience in the securities industry, Mr. Radano chose the lure of continued business with Lockwood and potential profit from Mr. Bolla’s book of clients over his obligations under [Advisers Act] Section 203(f).” 29/

The district court found further that Radano aided and abetted the Firm’s violations of the antifraud provisions of the Advisers Act by misleading WIN clients and prospective clients about Bolla’s disciplinary record and registration status. The district court found that Radano and WIN owed a “fiduciary” duty to their clients – which gave rise to a duty of disclosure – based on the fact that the clients trusted WIN “to connect them with effective money managers and to keep an eye on their accounts once they were forwarded to Lockwood.” 30/ Alternatively, the district court found that a duty of disclosure was created once “Radano began discussing the whereabouts of Mr. Bolla with WIN clients and prospective clients,” which required him to disclose Bolla’s

26/ Bolla, 401 F. Supp. 2d at 54.

27/ Id. at 65.

28/ Id.

29/ Id.

30/ Id. at 69.

disciplinary record. 31/ The district court found that Radano was “reticent and reserved” about revealing Bolla’s bar to the Firm’s clients because he wanted them to maintain their relationship with WIN by transferring their accounts from Bolla to him. 32/

The district court found that Radano, in failing to tell clients about Bolla, provided an “inaccurate, skewed version of WIN as an investment entity.” 33/ Although the district court noted that Radano told clients that Bolla was no longer affiliated with the Firm, it considered such disclosure inadequate because there is a “substantial difference between telling an investor that a principal had ‘left the firm’ and notifying [him] that the principal ‘has been barred.’” 34/ As the district court noted, when “[c]onfronted with the fact that his/her investment adviser had been barred, the reasonable investor would likely question the firm, wondering whether the other investment advisers could also be trusted to fulfill their ethical obligations.” 35/

Although the district court found that Radano misled at least a dozen WIN clients or prospective clients, it focused on his actions with respect to two of Bolla’s WIN clients who testified at the trial. The district court ruled that Radano “made material misstatements or omissions of a material fact on behalf of WIN to actual WIN clients and prospective clients [for whom] he personally was seeking to be named investment adviser” when he failed to disclose Bolla’s disciplinary history to them. 36/ For example, when one of those clients, who had been a client of Bolla’s at WIN, contacted Radano four months after Bolla had been barred, the client testified that Radano did not disclose Bolla’s disciplinary history to her, but instead informed her that Bolla was out of the office and had moved on. Similarly, another former client of Bolla’s at WIN testified that Radano failed to disclose Bolla’s disciplinary history to her when she contacted Radano more than nine months after Bolla’s bar. Instead, Radano informed her that Bolla was going to pursue the insurance side of the business, which she understood to mean that Bolla was still working at the Firm.

Finding that Radano “opted to pursue the potential financial gain resulting from easy transfers of accounts over the hard acknowledgment that his business partner had been barred,” the district court concluded that Radano breached his duty of disclosure and, thereby, aided and

31/ Id. at 70.

32/ Id. at 73.

33/ Id. at 71.

34/ Id. at 72.

35/ Id.

36/ Id. at 68.

abetted WIN's violations of Advisers Act Sections 206(1) and (2). 37/ In doing so, the district court found that Radano acted with intent, and therefore satisfied the requisite scienter standard, in that his "hopes of retaining those clients that Mr. Bolla had introduced to WIN trumped his good judgment and his fiduciary duty to them." 38/

The district court found that an injunction was warranted because there was "compelling evidence" of a reasonable likelihood that Radano would commit future violations. 39/ In particular, the district court found that Radano's violations were "flagrant, deliberate, and part of a pattern." 40/ Finding "troubling" Radano's efforts "to shift blame, hide behind corporate structures, and minimize the vital, material information at issue," the district court concluded that an injunction was necessary because of Radano's willful conduct and his continuing refusal to acknowledge his fiduciary duties. 41/

In affirming the district court decision, the appeals court found, among other things, that WIN was an investment adviser because it "had an obligation to advise new clients regarding various investment options and a continuing obligation to monitor each client's investment account." 42/ As an investment adviser, the Firm had a "fiduciary duty" 43/ to disclose to its clients that Bolla, "the principal figure directing WIN's activities," 44/ had been barred. The appeals court agreed with the district court that "Radano, driven by self-interest, intentionally breached his fiduciary obligations and those of WIN" in violation of the antifraud provisions. 45/ The appeals court further found that Bolla continued to manage the Firm's finances after he had been barred and that Radano was "complicit in the arrangement . . . even going so far as to make a fee payment to Bolla on behalf of WIN." 46/

37/ Id. at 72.

38/ Id. at 73.

39/ Id. at 74.

40/ Id.

41/ Id.

42/ Wash. Inv. Network, 475 F.3d at 399.

43/ Id. at 405.

44/ Id. at 396.

45/ Id. at 406.

46/ Id. at 402.

IV.

Under Sections 203(e) and (f) of the Advisers Act, consistent with the public interest, we may impose remedial sanctions against a person associated with an investment adviser if, among other things, the associated person has been enjoined from engaging in or continuing any conduct or practice in connection with any activity of an investment adviser. 47/

We find that Radano was enjoined for conduct or practices related to the activity of an investment adviser. We also find that WIN was an investment adviser, and Radano a person associated with an investment adviser, within the meaning of the Advisers Act. As relevant here, Advisers Act Section 202(a)(11) defines an investment adviser as “any person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities” 48/ WIN received compensation for offering its clients investment advice in connection with the clients’ participation in certain wrap fee programs. As the appeals court found, all of this evidence left “no doubt WIN had an ongoing obligation to give investment advice and did not merely act as a referral service.” 49/ We conclude, as did the appeals court, that, “[b]ecause WIN’s business entailed advising clients in choosing among different investment managers who had distinct investment styles, and because it also advised clients in regard to ‘asset allocation,’ WIN’s activities easily [fell] within the [Advisers] Act’s definition of investment adviser.” 50/

In addition, Advisers Act Section 202(a)(17) defines a “person associated with an investment adviser” as “any partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser” 51/ As WIN’s managing director and owner, and based on his role in advising WIN clients, Radano falls within the statutory definition of a person associated with an investment adviser. 52/ Based on our

47/ 15 U.S.C. §§ 80b-3(e)(4) and 80b-3(f).

48/ 15 U.S.C. § 80b-2(a)(11). Advisers Act Section 202(a)(16) defines “person” as “a natural person or a company.” 15 U.S.C. § 80b-2(a)(16).

49/ Wash. Inv. Network, 475 F.3d at 400.

50/ Id.

51/ 15 U.S.C. § 80b-2(a)(17).

52/ Although Radano does not claim before us that he was not associated with an investment adviser, he argued before the district court that neither he nor WIN was an investment adviser within the meaning of the statute. Instead, he described himself and WIN as

(continued...)

finding that Radano was enjoined and that he was associated with an investment adviser, we are authorized to impose remedial sanctions if we believe they are warranted by the public interest. In doing so, we look to the district court's findings, as affirmed by the appeals court.

Radano concedes that he was enjoined based on findings of violation and that he cannot challenge those findings in this proceeding. ^{53/} Radano also does not dispute that Bolla remained associated with the Firm after he was barred. Rather, Radano challenges the bar imposed by the law judge as "unwarranted and excessive," arguing that "his conduct bore no resemblance to the kinds of egregious frauds that typically result in the career death of a lifetime bar." He further asserts that "there were numerous mitigating facts that the [law judge] either overlooked or erroneously disregarded as insignificant."

In determining the need for remedial sanctions under Advisers Act Section 203(f), we consider the factors identified in Steadman v. SEC. ^{54/} These factors include the egregiousness of a 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 or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations. Based on our consideration of those factors, and under all the circumstances of this case, we have determined that the public interest requires that Radano be barred subject to a right to reapply after five years.

Radano's violations were egregious and demonstrated a high degree of scienter. Radano neglected his "obligations under [Advisers Act] Section 203(f)" apparently in favor of the

^{52/} (...continued)
 "consultants" to Lockwood. In rejecting that characterization, the district court observed that it has long been held that "persons who manage . . . the funds of others for compensation are 'investment advisers' within the meaning of the statute," Bolla, 401 F. Supp. 2d at 59 (quoting Abrahamson v. Fleischner, 568 F.2d 862, 870 (2d Cir. 1977)) (internal quotations omitted), and concluded that "the record is replete with indicia that WIN and Mr. Radano fall within the definition of 'investment adviser' and were bound in their dealings by the parameters of the Advisers Act." Id. at 59-60.

^{53/} Although Radano generally does not challenge the court's findings, he takes issue with the Division's contention that he "fabricated" a document to establish that, soon after entry of Bolla's bar, Radano had severed Susan Bolla's ownership interest in WIN. At oral argument, Radano again forcefully denied fabricating the document in question. We note that our sanctioning analysis herein is not dependent in any way on whether or not Radano fabricated the document.

^{54/} 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

“potential profit from Mr. Bolla’s book of clients.” 55/ To that end, Radano permitted Bolla to continue his association with WIN for nine months after the entry of the bar against Bolla. 56/ During that time, Radano allowed Bolla to continue managing WIN’s finances, to continue receiving checks from Lockwood, and to continue depositing those checks into Bolla’s WIN checking account. The appeals court noted that, while “Radano’s failure in this regard might be dismissed as mere managerial incompetence,” his conduct “rose to the level of a violation of [Advisers Act S]ection 203(f) once the bar order took effect and Radano still took no steps on behalf of WIN to prevent Bolla’s continuing control over WIN and its finances.” 57/

The district court found that Radano also accepted client referrals from Bolla and maintained his business association with Bolla through WIN “in the hopes of obtaining some of [Bolla’s] valuable book of clients.” 58/ Radano, however, failed to disclose Bolla’s disciplinary history to WIN clients and to Radano’s prospective clients. The appeals court noted that the district court “found Radano, driven by self-interest, intentionally breached his fiduciary obligations and those of WIN, ‘well aware that he could potentially increase his salary fifteen-fold’ by taking over Bolla’s accounts.” 59/ Indeed, Radano misled over a dozen of these clients by concealing from them the fact that Bolla had been barred. 60/ Noting that the district court found that WIN had acted with scienter “based solely on Radano’s motives as WIN’s managing director,” the appeals court stated that “[i]n a situation like that presented here, where a small firm, acting solely through the agency of a single individual, has intentionally deceived, manipulated, or defrauded its clients, the conclusion is unavoidable that the individual in question has knowledge of the firm’s wrongdoing.” 61/

55/ 401 F. Supp. 2d at 65.

56/ The appeals court construed Advisers Act Section 203(f) to prohibit “investment advisers from standing aside passively while a barred individual takes control of the firm” Wash. Inv. Network, 475 F.3d at 401-02.

57/ Id. at 402.

58/ 401 F. Supp. 2d at 65.

59/ Wash. Inv. Network, 475 F.3d at 406.

60/ Radano asserted at oral argument that the “vast majority” of WIN clients were informed of Bolla’s bar, except for the two clients who testified at the trial. The record does not support this assertion.

61/ Id. at 402.

We have stated previously that an “investment adviser is a fiduciary in whom clients must be able to put their trust.” ^{62/} The district court found that Radano, as an investment adviser, had a fiduciary relationship with WIN’s clients, and that these clients trusted Radano to advise them regarding the assets they had invested through WIN. Radano betrayed that trust when he withheld material information in his conversations with WIN clients and was not forthcoming about Bolla’s bar, thus leaving them with an inaccurate and skewed impression of the Firm. We note that the appeals court stated that “WIN’s evasiveness in these conversations constituted fraudulent behavior in violation of [Advisers Act S]ection 206.” ^{63/} We also recognize that an investment adviser has an affirmative duty of “utmost good faith, and full and fair disclosure of all material facts,” as well as an affirmative obligation “to employ reasonable care to avoid misleading” his clients. ^{64/} This Radano did not do. Nor was Bolla “an incidental player in WIN’s business.” ^{65/} According to the appeals court, “[w]hen such a critical player in an investment advisory firm is barred from the business on account of misconduct, the firm has a fiduciary duty to disclose that fact to its clients, and in particular to clients who previously dealt exclusively with that individual.” ^{66/}

Radano asserts that “no investor suffered any harm as a result of anything [he] did or failed to do.” He further asserts, in this connection, that the “wrap fee sponsor to which [he] referred investors was a solid and reputable one that achieved exceptional good results for those referred to it.” The quality of the investment advice received by WIN clients, however, is not the issue in this case. Rather, the issue is whether those clients were notified about Bolla’s bar so that they could make an informed decision about whether to continue their relationship with the

^{62/} Ahmed Mohamed Soliman, 52 S.E.C. 227, 231 (1995). Cf. Hammon Capital Mgmt. Corp., 48 S.E.C. 264 (1985) (revoking investment adviser’s registration and barring its president from association with any investment adviser where the firm failed to disclose a change in its business address and failed to file required annual reports for three years).

^{63/} Wash. Inv. Network, 475 F.3d at 404.

^{64/} SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963) (internal citations omitted). See also Michael Batterman, 57 S.E.C. 1031, 1043 (2004) (noting investment adviser’s “affirmative duty” to disclose material facts and “affirmative obligation” to exercise reasonable care to avoid misleading clients), aff’d, No. 05-0404 (2d Cir. 2005) (unpublished).

^{65/} Wash. Inv. Network, 475 F.3d at 405.

^{66/} Id.

Firm, notwithstanding the bar. ^{67/} Radano's failure to provide that notification prevented clients from making such an informed decision. ^{68/} The appeals court noted that "Radano did not take formal steps on behalf of WIN to inform WIN's clients of the bar order, along with an explanation of how the bar order might affect their interests and a neutral discussion of the options these clients might have." ^{69/} Instead, the appeals court observed, Radano "resorted to dodgy statements that obscured the truth." ^{70/} Thus, when Radano was faced with the choice between complying with regulatory requirements and expanding his client base, he chose the latter. Radano did not fulfill his duty to inform WIN clients of Bolla's bar because of the risk that such disclosure could harm Radano's business interests. Radano's determination to place his own interest squarely ahead of those of his and the Firm's clients evidences a troubling lack of integrity that is inconsistent with the high standards to which investment advisers, and the persons associated with them, are subject. Although Radano's clients did not lose money as a result of his fraudulent conduct, that conduct was motivated, as the district court held, by a desire to retain or gain clients, and thereby generate for himself additional client referral fees. As such, Radano's

^{67/} Radano cites further, as a mitigating factor, that Bolla's bar was public information, readily available on the Commission's website and in other unspecified public sources. We do not consider this very compelling, for WIN clients had no reason to check such sources for information about Bolla or other Firm personnel. Rather, they were entitled to rely on WIN and Radano to bring such information to their attention. The availability of the information is not at issue here. It was Radano's responsibility to disclose the information, not the clients' burden to discover it. As the appeals court stated, the "existence of the bar order may have been public information, but it was not information that was so widely disseminated that an average small investor could be expected to be aware of it." Wash. Inv. Network, 475 F.3d at 405.

^{68/} Radano attempts to minimize the severity of his misconduct by claiming that only two WIN clients were alleged to have been misled, and that those clients were not his but Bolla's clients. Although it discussed in detail Radano's communications with two WIN clients, the district court found expressly that Radano failed to disclose Bolla's bar to the approximately one dozen WIN clients that Bolla referred to him and to whom Radano spoke directly. The district court also held that Radano's motivation in doing so was to maintain existing, or establish new, client relationships. The district court found that Radano's "affirmative representations to certain clients triggered" a "duty to inform his clients or prospective clients of Mr. Bolla's bar in a truthful and accurate manner." 401 F. Supp. 2d at 70.

^{69/} Wash. Inv. Network, 475 F.3d at 402.

^{70/} Id. at 403.

behavior constituted a fundamental breach of the high standards to which, as a securities professional associated with an investment adviser, he was subject. 71/

Nor are we moved by Radano's claim that when, after a three-year investigation, Bolla's bar was entered, Radano acted without prompting to sever WIN's ties to Bolla. In our view, Bolla's bar order, of which Radano was informed by Lockwood's clearing agent shortly after it was entered, should have been sufficient prompting for Radano to sever WIN's ties to Bolla or, failing that, for Radano to act to disassociate himself and his clients from an illegal arrangement. Yet, for another nine months, Radano chose to continue Bolla's association apparently in the hopes of gaining Bolla's clients, and the fees they generated, for himself. The appeals court observed that, "[b]ecause Bolla had, prior to the bar order, held himself out as one of WIN's managing directors, WIN needed to take immediate steps to terminate its relationship with Bolla. Radano's actions as the managing director of WIN make clear WIN did not." 72/ Instead, "Radano was complicit in the arrangement, treating it as part of a necessary transition . . ." 73/ We note in this connection that, to the extent Radano sought to end Bolla's relationship with Lockwood after entry of the bar, he apparently acted because it was in his economic interest to do so, in the belief that Lockwood would redirect the fees generated by Bolla's clients to Radano instead.

Radano acted with scienter over an extended period and with a troubling lack of respect for regulatory requirements. Radano's failure to sever his and the Firm's ties to Bolla and his failure to disclose Bolla's disciplinary status to WIN clients constitute serious misconduct. By permitting Bolla's continued ties to the Firm, Radano undermined our efforts to protect the public by excluding Bolla from the investment advisory industry. Such behavior, which has the potential to weaken significantly the effectiveness of the Commission's enforcement program, cannot be tolerated. 74/

71/ See Marc N. Geman, 54 S.E.C. 1226, 1261 (2001) (finding that chief executive officer of investment adviser aided and abetted the firm's fraud against wrap account customers by failing to disclose information about the firm's trading practices and, thereby, impermissibly furthered the firm's own "best interests at the expense of its customers"), aff'd, 334 F.3d 1183 (10th Cir. 2003).

72/ Wash. Inv. Network, 475 F.3d at 402.

73/ Id.

74/ Radano asserts that the Division took no enforcement action against other, large institutional investment advisers, such as Lockwood, that continued to associate with Bolla after entry of the bar. Radano repeated this assertion at oral argument, referring to himself as a "consultant" rather than an investment adviser and stating that the "small consultant takes the entire pounding." See supra note 52. As discussed, Radano's and

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Radano maintains that, as a result of the Commission's investigation and injunctive proceeding, and the resulting legal fees, he has already been "severely punished and deterred." 75/ Radano asserts further that this was his "first disciplinary infraction," that it occurred over a "relatively short period" approximately seven years ago, and that it arose from relationships that have long since terminated, and thus are unlikely to occur again. 76/

74/ (...continued)

WIN's status as investment advisers was determined in the injunctive proceeding and is not now before us. To the extent that Radano is arguing here that he was subject to selective prosecution, we note that, to prevail on such a claim, Radano must establish that he was singled out for enforcement action while others similarly situated were not, and that his prosecution was motivated by arbitrary or unjust considerations such as his race, religion, or the desire to prevent his exercise of a constitutionally protected right. See, e.g., United States v. Huff, 959 F.2d 731, 735 (8th Cir. 1992); Eagletech Commc'ns, Inc., Exchange Act Rel. No. 54095 (July 5, 2006), 88 SEC Docket 1225, 1231. Radano has failed to allege or prove any of these elements, and we find that Radano was not the victim of improper selective prosecution. Moreover, while the record before us does not permit a determination of why proceedings were brought against some but not others involved in this case, such determinations are within the "discretion of the prosecutor." As we have stated previously, "[a] refusal to prosecute is a 'classic illustration of a decision committed to agency discretion' and agency decisions about the best use of staff time are a matter for prosecutorial judgment." Dolphin and Bradbury, Inc., Exchange Act Rel. No. 54143 (July 13, 2006), 88 SEC Docket 1298, 1318 (citations omitted), aff'd, 512 F.3d 634 (D.C. Cir. 2008).

75/ We note that the injunctive and administrative remedies serve different purposes, one to restrain further violative activity, and the other to determine whether it would be in the public interest to restrict a respondent's activities in the securities industry. See A.J. White & Co., 45 S.E.C. 459, 463 (1974).

76/ Radano, citing largely settled cases, argues that all relevant precedent precludes the sanction of a lifetime bar in this proceeding. Those cases generally are inapposite because their facts are distinguishable from those of this case. For example, Radano cites to Groh Asset Mgmt., Inc., Advisers Act Rel. No. 2308 (Sept. 30, 2004), 83 SEC Docket 3285, 3289, a settled case in which an investment adviser and its president, without admitting or denying the Commission's findings, consented to a censure and the imposition of a \$45,000 fine, and agreed to cease and desist from committing future violations of the Advisers Act, where respondents disseminated to potential clients false and misleading advertising that overstated the firm's assets. We note that fraud violations typically warrant the most severe sanctions. See, e.g., Marshall E. Melton, 56 S.E.C. 695, 713 (2003) (asserting that "ordinarily, and in the absence of evidence to the contrary, it will be in the public interest" to, among other things, "bar from participation in the securities

(continued...)

We have considered all of these factors, as well as certain other circumstances, including that the record did not “identify any actual losses to investors resulting from” Radano’s misconduct and that the income he derived from WIN was “relatively small.” ^{77/} Although we agree with the law judge that a bar is amply justified in this instance, given Radano’s “otherwise unblemished career in the securities industry,” ^{78/} and based on our consideration of the entire record, we have determined to couple that bar with a right to reapply after five years. In our view, a bar subject to a right to reapply after five years should “impress upon [Radano] the seriousness of his” misconduct and “reduce the likelihood of any recurrence.” ^{79/} Moreover, requiring Radano’s removal from the industry for a substantial period of time will protect investors and “help to ensure his compliance with” the applicable Advisers Act provisions in the event he is subsequently permitted to return to the industry. ^{80/} We believe that such a bar will serve to protect the public by, among other things, authorizing the Commission staff “to monitor

^{76/} (...continued)

industry . . . a respondent who is enjoined from violating the antifraud provisions” of the federal securities laws); Geman, 54 S.E.C. at 1228 (barring chief executive of investment adviser that defrauded wrap account clients). Nonetheless, it is well established that the determination of the appropriate sanction depends on the facts and circumstances of each case and is not dependent on the sanctions imposed in other cases, even if those other cases present similar facts. See Butz v. Glover Livestock Comm’n Co., 411 U.S. 182, 187 (1973); Batterman, 57 SEC at 1042.

^{77/} The Rockies Fund, Inc., Exchange Act Rel. No. 54892 (Dec. 7, 2006), 89 SEC Docket 1517, 1529, appeal filed, No. 07-1438 (D.C. Cir. Oct. 29, 2007).

^{78/} Martin B. Sloate, 52 S.E.C. 1233, 1236 (1997).

^{79/} Steven E. Muth, Securities Act Rel. No. 8622 (Oct. 3, 2005), 86 SEC Docket 1217, 1250.

^{80/} Leslie A. Arouh, 57 S.E.C. 1099, 1121 (2004) (imposing bar subject to a right to reapply after two years based on finding that respondent engaged in a fraudulent scheme). See also Abraham & Sons Capital, Inc., 55 S.E.C. 252 (2001) (barring, with a right to reapply after five years, president of investment adviser who, among other things, defrauded clients).

and require conditions under which” any association by Radano with an investment adviser will be permitted in the future. 81/

An appropriate order will issue. 82/

By the Commission (Chairman COX and Commissioners ATKINS and CASEY).

Florence E. Harmon
Acting Secretary

81/ Muth, 86 SEC Docket at 1250.

82/ We have considered all of the contentions advanced by the parties. We have rejected or sustained these contentions to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 2750 / June 30, 2008

Admin. Proc. File No. 3-12084

In the Matter of

ROBERT RADANO

5501 Kirkwood Drive
Bethesda, Maryland 20816

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Robert Radano, be, and he hereby is, barred from association with any investment adviser subject to a right to reapply after five years.

By the Commission.

Florence E. Harmon
Acting Secretary