

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 637/February 4, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-12559

In the Matter of	:	
	:	
TRAUTMAN WASSERMAN &	:	
COMPANY, INC.,	:	ORDER DENYING MOTION TO
GREGORY O. TRAUTMAN,	:	CORRECT MANIFEST ERRORS OF FACT
SAMUEL M. WASSERMAN,	:	
MARK BARBERA,	:	
JAMES A. WILSON, JR.,	:	
JEROME SNYDER, and	:	
FORDE H. PRIGOT	:	

I issued an Initial Decision in this proceeding on January 14, 2008. On January 24, 2008, Gregory O. Trautman (Trautman) filed a motion, pursuant to Rule 111 of the Securities and Exchange Commission's (Commission) Rules of Practice, seeking to correct manifest errors of fact allegedly made in the Initial Decision, and "if appropriate, reopening the hearing to admit into evidence a sworn Financial Disclosure Statement of Trautman." (Motion at 1.)

The Division of Enforcement's (Division) brief in opposition, filed on January 31, 2008, contains fifteen pages refuting in detail each of the alleged manifest errors of fact and also addressing other issues set out in the five and one-half page Motion (Opposition). In addition to denying the Motion, the Division requests that I specify how the prejudgment interest on disgorgement ordered in the Initial Decision, is calculated. (Opposition at 14-15.)

Alleged Manifest Errors of Fact in the Initial Decision

Trautman alleges that the following constitute manifest errors of fact:

Page 10 of the Initial Decision:

No authority cited for the statement that orders submitted after 4:00 p.m. are called late orders.

Page 21 of the Initial Decision:

Citation does not support statement that Trautman Wasserman & Company, Inc. (TWCO), made efforts to falsify and conceal its late trading activities.

Citation does not support the finding that Trautman advocated that funds should allow TWCO capacity regardless of language in their prospectuses.

Page 22 of the Initial Decision:

Citation does not support the finding that Trautman represented to Jeff Augen that TWCO's late trades were legal.

Citation does not support the finding that Trautman knew that TWCO entered orders after 4:00 p.m. but before the funds posted their NAVs for the day, yet failed to obtain a legal opinion on TWCO's mutual fund activities.

Citation does not support the finding that Trautman failed to follow-up and obtain copies of a legal opinion and Commission "no-action letter" that he was told found TWCO's mutual fund trading an acceptable legal practice.

Citation does not support the finding that Trautman suggested continued late-trades after the New York Attorney General issued subpoenas and that he stated to Wilson that TWCO might have acted illegally.

Page 31 of the Initial Decision:

Trautman's testimony should make his two unsworn financial statements, in evidence, sworn, or he should be permitted to submit a sworn financial statement.

Page 32 of the Initial Decision:

There is no evidence that Trautman obtained any "ill gotten gains."

The Motion also contends that the Initial Decision does not find that Trautman violated Rule 22c-1, adopted under Section 22(c) of the Investment Company Act of 1940 (Investment Company Act), and that various calculations are incorrect.

Ruling

The Motion contains arguments that belong in a petition for review of the Initial Decision filed pursuant to Rule 360 of the Commission's Rules of Practice. In response, the Opposition contains a detailed analysis of the record, better suited for deciding a petition for review. This proceeding, however, is not at the appeal stage. The issue under Rule 111 is a preliminary one, that is whether the Initial Decision contains manifest errors of fact. Rule 111(h) of the Commission's Rules of Practice specifies that "a motion to correct is properly filed under this Rule only if the basis for the motion is a patent misstatement of fact in the initial decision." A patent misstatement is something that is "readily visible or intelligible: obvious." Merriam-Webster's Collegiate Dictionary, 849 (10th ed. 2001). The Motion sets out a series of disagreements that Trautman has with my interpretation of the evidence, none of which rises to

the level of a patent misstatement of fact. A finding that Trautman willfully aided and abetted and caused violations of Investment Company Act Rule 22c-1 is at page 25 of the Initial Decision. I DENY the Motion because it fails to show that the Initial Decision contains any manifest error of fact.

Rule 410 of the Commission's Rules of Practice permits a party to seek Commission review of the Initial Decision. Rule 410(c) allows a person, who has filed for review and who asserts an inability to pay disgorgement, interest, or penalty, to file a sworn financial statement. Trautman failed to provide sworn financial statements to the Division before the hearing or to introduce a sworn financial statement as part of his direct case at the hearing. Moreover, if Trautman files a petition for review and claims an inability to pay, he can seek to file a sworn financial statement pursuant to Rule 410(c). I DENY the alternative request in the Motion to reopen the record for the receipt of additional evidence because there is no showing of a manifest error of fact in the Initial Decision.

The Division calculated the prejudgment interest on \$1,373,799.75, the amount Trautman was ordered to disgorge from October 31, 2003, to January 14, 2007, the date the Initial Decision was issued, as \$415,871.79. (Opposition, Prejudgment Interest Report attached.) The Division calculated the prejudgment interest on \$25,000, the amount Samuel M. Wasserman was ordered to disgorge from October 31, 2003, to January 14, 2007, as \$7,567.94. (Opposition, Prejudgment Interest Report attached.)

Rule 600 of the Commission's Rules of Practice provides:

Prejudgment interest shall be due from the first day of the month following each such violation through the last day of the month preceding the month in which payment of disgorgement is made. The order shall state the amount of prejudgment interest owed as of the date of the disgorgement and that disgorgement shall continue to accrue on all funds owed until they are paid.

Interest on the sum to be disgorged shall be computed at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), and shall be compounded quarterly.

I DENY the Division's request that I quantify the amount of prejudgment interest payable on the disgorgement amounts ordered because there is no showing of a manifest error of fact in the Initial Decision.¹

Brenda P. Murray
Chief Administrative Law Judge

¹ Given Rule 600, the parties will be able to calculate the amount of interest.

