

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 56364 / September 6, 2007

INVESTMENT ADVISERS ACT OF 1940
Release No. 2644 / September 6, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12751

In the Matter of

JAMES X. McCARTY,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against James X. McCarty (“McCarty” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings, Making Findings, and Imposing Remedial Sanctions Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. Respondent failed reasonably to supervise Bradford C. Bleidt ("Bleidt") with a view to preventing and detecting his violations of the federal securities laws during the ten-year period that McCarty supervised Bleidt as a registered representative of various broker-dealers. During this time period, Bleidt defrauded more than 50 brokerage customers by lying about purchases and sales of securities, misappropriating funds, and sending them falsified statements relating to their investment advisory accounts with Bleidt's independent advisory firm.²

Respondent

2. James X. McCarty, age 65, resides in South Dennis, Massachusetts. He was Bleidt's immediate supervisor from at least June 1994 until November 12, 2004. McCarty holds Series 40 and Series 63 securities licenses and has no disciplinary history.

Other Relevant Person

3. Bleidt, age 53, was a registered representative who worked in a Boston, Massachusetts Office of Supervisory Jurisdiction ("OSJ") and was associated with Commonwealth Equity Services, Inc. d/b/a Commonwealth Financial Network ("Commonwealth") from January 18, 1991 until October 9, 2001; with Detwiler, Mitchell, Fenton & Graves, Inc. ("DMFG") from October 9, 2001 to February 12, 2004; and with Winslow, Evans & Crocker ("WEC") from February 12, 2004 to November 12, 2004. Commonwealth has been dually registered as an investment adviser since 1992.

4. On November 12, 2004, the Commission filed a civil injunctive action in the United States District Court for the District of Massachusetts against Bleidt and his investment advisory firm, Allocation Plus Asset Management Company, Inc. ("APAM"), alleging that Bleidt defrauded his investment advisory clients of millions of dollars by leading them to believe their money was invested when in fact he was misappropriating it for his own personal benefit. Many of Bleidt's advisory clients also maintained brokerage accounts with Commonwealth, DMFG, and/or WEC.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² During the same time period, Bleidt defrauded at least another 50 victims, who did not have brokerage accounts, but from whom Bleidt received funds directly in the form of a personal check or wire to Bleidt's independent advisory firm.

5. On July 26, 2005, Bleidt pled guilty to federal charges of mail fraud and money laundering in connection with his fraudulent conduct. On December 5, 2005, Bleidt was sentenced to over 11 years of confinement.

Bleidt's Misconduct

6. From 1991 until November 2004, Bleidt misappropriated over \$31 million from more than 100 victims, many of whom had brokerage accounts at one or more of three broker-dealers. To perpetrate these misappropriations, he asked his customers to request full or partial liquidation of their existing brokerage accounts, and then to write a personal check (or in some cases, send a wire) for the amount liquidated to his investment advisory company, APAM, which did business at the same address as the OSJ. Bleidt falsely represented to these customers that their money would continue to be invested in securities when, in fact, he misappropriated their funds. Bleidt then deposited these funds into an APAM bank account, of which he had sole control. Bleidt used funds from this APAM account for various business enterprises, including operating a Boston radio station, as well as APAM and a related financial planning firm he also owned, Financial Perspectives Planning Services, Inc. ("FPPS"). He also used the customers' misappropriated funds to pay personal expenses such as his children's high school and college tuition. In some instances during the final years of the fraud, Bleidt induced prospective and current investors to give him funds to open or add to an APAM account and simply misappropriated the funds.

7. To further conceal his misappropriations and false representations, Bleidt created and sent defrauded investors falsified performance reports in the name of APAM that vastly overstated the actual value of the accounts, reflected holdings that did not exist, and reflected purchases and sales of securities that he claimed to have made, but never did.

8. As a result of the conduct described above, Bleidt, during the period that he was associated with Commonwealth, DMFG, and WEC, willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

Respondent's Failure to Supervise

9. While Bleidt was a registered representative associated with Commonwealth, DMFG, and WEC, he also owned the independent office in Boston at which the brokerage firms each established an OSJ.

Failure to Respond to Red Flags Regarding Bleidt's Financial Situation

10. While under Respondent's supervision at all three broker-dealers, Bleidt was pursuing other business interests. Respondent was aware that he conducted outside business activities, including two investment advisory businesses and ownership in a radio station. Respondent also was aware that one of the investment advisory businesses, FPPS, was not profitable and that Bleidt was providing cash infusions to keep it afloat. These cash infusions

from Bleidt to FPPS and Bleidt's outlay of funds for his radio station activities and ownership were misappropriated funds. McCarty accepted Bleidt's explanation that the source of his money was a "trust fund," without any evidence of the existence of the trust fund and the dollar amounts therein. As Bleidt's supervisor, McCarty was responsible for conducting further investigation into whether Bleidt was violating the securities laws when such "red flags" appeared. McCarty did not discharge his supervisory duties and failed to investigate the red flags presented by Bleidt's ability to fund significant cash requirements and willingness to fund a losing business. If Respondent had investigated these red flags, it is likely that he could have prevented or detected the fraud.

Failure to Follow Written Procedures at DMFG Regarding Opening and Review of Incoming Mail

11. Incoming mail at the OSJ was sorted – unopened and unreviewed – into registered representatives' mailboxes during the entire time that McCarty supervised Bleidt. The lack of review of incoming mail enabled Bleidt to receive checks and related correspondence from Respondent's customers who had liquidated their brokerage accounts. These checks were typically in amounts mirroring the amounts liquidated and were sent to Bleidt for the purpose of continuing to invest in securities. McCarty did not follow DMFG's written supervisory procedures for the opening and review of incoming mail, which required central mail opening at the OSJ. Numerous suspicious checks and correspondence arrived at Bleidt's office throughout the entire period of his fraud. Had McCarty followed DMFG's policy of reviewing all incoming mail, he would have encountered one or more "red flag" pieces of mail and it is likely that he could have prevented or detected the fraud.

Failure to Follow Written Procedures at Commonwealth and DMFG Regarding Annual Audits of Registered Representatives

12. McCarty was not conducting the formal annual audits of each registered representative required by Commonwealth's and DMFG's written supervisory procedures, which involved an interview of the representative and a review of certain books and records. Commonwealth's written procedures dictated that McCarty was to audit each individual representative annually using a checklist, and then Commonwealth was to review those inspections during its own audit of the OSJ. Similarly, DMFG's written procedures required annual interviews of each representative and/or an inspection of certain books and records. Had McCarty conducted the formal audits required by Commonwealth's and DMFG's procedures, it is likely that he would have uncovered evidence of Bleidt's misconduct and could have prevented or detected the fraud.

Conclusions

13. Section 15(b)(6) of the Exchange Act, incorporating by reference Section 15(b)(4)(E) of the Exchange Act, authorizes the Commission to sanction a person who is associated, or at the time of the alleged misconduct was associated, with a broker or dealer for

failing reasonably to supervise, with a view to preventing violations of the federal securities law, another person who commits such a violation, if that person is subject to the person's supervision. McCarty was responsible for supervising Bleidt. Similarly, Section 203(f) of the Advisers Act, incorporating by reference Section 203(e)(6) of the Advisers Act, authorizes the Commission to sanction a person who is associated, or at the time of the alleged misconduct was associated, with an investment adviser for failing reasonably to supervise, with a view to preventing violations of the federal securities law, another person who commits such a violation, if that person is subject to the person's supervision.

14. Because Bleidt violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and McCarty failed to adequately investigate red flags of Bleidt's fraud and failed to follow Commonwealth's and DMFG's written supervisory procedures, McCarty failed reasonably to supervise Bleidt within the meaning of Section 15(b)(6) of the Exchange Act, incorporating by reference Section 15(b)(4)(E) of the Exchange Act, and within the meaning of Section 203(f) of the Advisers Act, incorporating by reference Section 203(e)(6) of the Advisers Act.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent McCarty's Offer.

Accordingly, pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act, it is hereby ORDERED that:

A. Respondent McCarty be, and hereby is, barred from association in a supervisory capacity with any broker, dealer, or investment adviser.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

B. It is further ordered that Respondent shall pay disgorgement of \$1 and a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission, on the following schedule:

- (a) within ten days of the entry of the Order, a payment of \$20,001;
- (b) within 90 days of entry of the Order, a payment of \$7,500;
- (c) within 180 days of entry of the Order, a payment of \$7,500;
- (d) within 270 days of entry of the Order, a payment of \$7,500;

(e) within 360 days of entry of the Order, a payment of \$7,500;

Such payments shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies McCarty as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to David P. Bergers, Regional Director, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, Massachusetts 02110.

C. It is further ordered that the disgorgement and penalties referenced in paragraph B above shall be paid into the Fair Fund created pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 in In the Matter of Commonwealth Equity Services, LLP d/b/a Commonwealth Financial Network, Administrative Proceeding File No. 3-12749 (34-56362). Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that he shall not, after offset or reduction in any Related Investor Action based on Respondent's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by offset or reduction of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Nancy M. Morris
Secretary