

SECURITIES EXCHANGE ACT OF 1934
Release No. 40862 / December 30, 1998

ADMINISTRATIVE PROCEEDING
FILE NO. 3-9566

In the Matter of	:	
	:	ORDER MAKING FINDINGS AND
THOMAS ANTHONY CALISE	:	IMPOSING SANCTIONS BY DEFAULT
	:	

The Securities and Exchange Commission (“Commission”) instituted this proceeding on March 25, 1998. On December 7, 1998, the Division of Enforcement (“Division”) filed a Motion for Default Order (“Motion”), as provided for in Rule 155 of the Commission’s Rules of Practice.¹ 17 C.F.R. § 201.155. I GRANT the Motion insofar as it seeks a default finding, and I admit into evidence the exhibits² attached to the Motion. 17 C.F.R. § 201.320.

I.

Thomas Anthony Calise (“Mr. Calise”) is in default under the Commission’s Rules of Practice because he failed to file an answer or other pleading in response to the Order Instituting Proceedings, and he failed to appear, in person or through a representative, at the prehearing conference on October 1, 1998, of which he had notice. 17 C.F.R. § 201.155.

II.

Accordingly, I find that:

Mr. Calise, age 35, of Justice, Illinois, was a registered representative associated with Mathews, Holmquist & Associates, Inc., in its Chicago, Illinois, branch office from approximately March 1992 through November 1993.

¹ Rule 155 provides that a determination may be made against a party in default based on the consideration of the record and that the allegations in the Order Instituting Proceedings may be deemed to be true.

² Exhibit A, Order Instituting Proceedings; Exhibit B, Office of the Secretary’s letter of March 25, 1998, transmitting the Order Instituting Proceedings; Exhibit C, notes of phone conversation confirming Mr. Calise’s address and requirement that he file an answer dated March 30, 1998; Exhibit D, Order directing Mr. Calise to file an answer; Exhibit E, Plea Memorandum, U.S. v. Thomas Calise, CR-S-96-287 (D. Nev. filed October 15, 1997); Exhibit F, transcript, change of plea hearing, October 15, 1997; Exhibit G, transcript, hearing on motions; Exhibit H, court documents recording judgment in U.S. v. Thomas Calise, 2:96CR00287-010; and Exhibit I, Affidavit of Paul Francis Mabry.

During the period from on or about August 1992, through approximately September 1992, Mr. Calise willfully violated Section 17(a) of the Securities Act of 1933 (the "Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 thereunder in that he, directly or indirectly, by the use of means or instrumentalities of interstate commerce or of the mails, in the offer and in connection with the purchase or sale of securities, including common shares of Teletek, Inc. ("Teletek"), a penny stock, employed devices, schemes or artifices to defraud; obtained money or property by means of and made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in transactions, acts, practices and courses of business which have operated and would operate as a fraud or deceit upon such persons, including persons effecting transactions in such securities.

As part of the conduct referred to above, Mr. Calise participated in a scheme whereby he sold thousands of shares of Teletek stock to his unsuspecting customers in return for undisclosed compensation from affiliates of Teletek, and he encouraged other registered representatives to receive undisclosed payments in return for sales to their customers of Teletek stock.

Mr. Calise was indicted by a federal grand jury in the U.S. District Court for the District of Nevada, and, pursuant to plea negotiations, pled guilty to a criminal charge of conspiracy to commit securities fraud and wire fraud as a result of certain of these and other actions. Mr. Calise filed a signed Plea Memorandum with the U.S. District Court in which he admitted that: (i) he unlawfully, knowingly, and willingly conspired to engage in securities fraud and wire fraud through the sale of Teletek stock to unsuspecting investors in return for bribes; (ii) his fraudulent conduct violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; (iii) he personally sold Teletek stock to his unsuspecting customers in exchange for bribes; (iv) these bribes included thousands of dollars in cash concealed in overnight delivery envelopes, as well as wire transfers; and (v) his unsuspecting customers lost between \$5,000 and \$10,000 on their Teletek stock purchases. (Motion, Exhibit E, 10-11.)

On October 15, 1997, Mr. Calise acknowledged to U.S. District Court Judge Lloyd D. George that he committed the offenses with which he was charged. (Motion, Appendix F, 6-9.) On August 18, 1998, the U.S. District Court rejected Mr. Calise's request to withdraw his guilty plea based on his claim that he was misled and bullied into admitting his guilt.³ (Motion, Exhibit G, 7-9.)

³ The motion was made against the advice of Mr. Calise's counsel who sought to withdraw from representation. (Motion, Exhibit G, 4-7.) At the time he made the request, Mr. Calise's co-defendants had been found guilty following a two week trial. As part of that prosecution, the Division introduced a great deal of evidence against Mr. Calise to prove the overall conspiracy. (Motion, Exhibit G, 5-6.)

On August 18, 1998, U.S. District Court Judge Lloyd D. George sentenced Mr. Calise to five years of probation, subject to six months of home detention with electronic monitoring, and ordered him to pay restitution of \$7,824.25. (Motion, Exhibit G, 17-19, 21-22 and Exhibit H.)

III.

The traditional considerations for determining an appropriate sanction are:

the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

In 1997, the Commission determined that, where appropriate, Section 15(b)(6) of the Exchange Act empowered it to impose sanctions barring persons from association not only with a broker or dealer but also from association with a municipal securities dealer, investment adviser, or investment company ("collateral bar"). Meyer Blinder, 65 SEC Docket 1970 (Oct. 1, 1997). In deciding whether to impose a collateral bar, the Commission directed that consideration be given foremost to whether the misconduct is of the type that, by its nature, "flows across"⁴ various securities professions, and whether the egregiousness of respondent's misconduct demonstrates the need for a comprehensive response in order to protect the public. Meyer Blinder, 65 SEC Docket at 1981 (Oct. 1, 1997).

The Division recommends that Mr. Calise should be subject to a collateral bar and fined \$20,000. Citing Meyer Blinder; See also Victor Teicher, 67 SEC Docket 0542 (May 20, 1998); First Jersey Securities, Inc., 67 SEC Docket 0938 (May 29, 1998).

Mr. Calise, who appeared pro se, chose not to introduce any evidence as to what sanction was appropriate.⁵

⁴ Bribery, like fraud, would seem to be conduct that could "flow across" all aspects of the securities industry. However, the Commission has held that fraudulent conduct which violated Section 10(b) of the Exchange Act, Rule 10b-9 thereunder, and Section 17(a)(2) and (3) of the Securities Act did not "flow across" other securities professions as specified in Meyer Blinder. Richard H. Morrow, 67 SEC Docket 2706 at 2715, 2718-19 (Sept. 2, 1998). Mr. Morrow recklessly sold limited partnership interests after the offering deadline had expired, and did not disclose to clients that he received compensation for the sales. The Commission reversed the sixty day collateral bar imposed in the initial decision and suspended Mr. Morrow from association with any broker or dealer for one year, and entered a cease and desist order against him.

⁵ Mr. Calise had court appointed counsel in the criminal case. I do not draw any adverse conclusions from the fact that did not defend himself or actively participate in this proceeding.

I reject the Division's recommendation. The cases the Division cited in support of its recommendation establish that the Commission has the authority to apply a collateral bar, but the determination whether one is required to protect the public interest is based on an assessment of each individual situation. Here Mr. Calise's circumstances are markedly different from those in which the Commission has seen fit to impose a collateral bar.

The Commission imposed a collateral bar in Meyer Blinder where:

Given the nature and scope of Blinder's misconduct, we find it appropriate to impose a collateral bar on him. Blinder repeatedly violated the federal securities laws and, in the process, caused great harm to investors. He was convicted of securities fraud and racketeering and was made subject to a civil injunction entered against him. . . . Blinder used Blinder Robinson to orchestrate major frauds and manipulations, as well as registration, disclosure, and pricing violations. He lashed out -- both figuratively and literally -- against those who sought to bring him to justice. His schemes resulted in substantial enrichment to Blinder at the expense of the investing public. . . . The sum of Blinder's actions, and his fundamental lack of appreciation of the seriousness of his misconduct, persuade us that it is likely that Blinder will continue, if allowed, to commit further securities law violations. . . . Blinder engaged in egregious conduct that reflects on his fitness to work in the securities industry generally, and he should be sanctioned to the fullest extent permitted under the federal securities laws.

Meyer Blinder, 65 SEC Docket at 1981 (Oct. 1, 1997).

In Victor Teicher, the Commission imposed a collateral bar against Mr. Frankel who had been convicted of securities fraud for trading on the basis of material, non-public information that he knew had been misappropriated, conspiracy, and mail fraud.

The conduct of . . . Frankel was particularly egregious . . . He not only facilitated the theft of confidential material from a law firm but, when discovered, . . . destroyed evidence, lied under oath, and otherwise obstructed justice in an attempt to escape liability . . . [Frankel] acted with the highest degree of scienter . . . [D]uring the hearing, he offered no firm assurances that he would not commit future violations, although he was given a number of opportunities to offer such assurances.

Victor Teicher, 67 SEC Docket at 0549 (May 20, 1998).

Robert Brennan is the subject of a collateral bar based on the findings of an administrative law judge and the findings by a U.S. District Court judge who, following a forty-one day bench trial, permanently restrained and enjoined Mr. Brennan from violating the anti-fraud provisions of the securities statutes. Mr. Brennan had committed repeated flagrant and deliberate violations of the securities statutes; he was completely without remorse for the proven violations; he gave untruthful testimony under oath; and it was almost certain that he would continue to violate the

securities statutes if allowed to participate in the industry. In addition, Mr. Brennan had been named in numerous regulatory proceedings. First Jersey Securities, 67 SEC Docket at 0946-47 (May 29, 1998).

Mr. Calise's felony conviction at age 35 for accepting bribes is unfortunate and serious. Mr. Calise's illegal conduct occurred in sales of one penny stock over a two month period that caused two investors to lose a total of \$7,824.25. The underlying criminal action was the only felony ever charged to Mr. Calise and he pled guilty. (Motion, Exhibit G, 14.) Pursuant to the plea agreement in that case, Mr. Calise cooperated with the government in a related criminal proceeding. (Motion, Exhibit G, 14, 19.) The isolated nature of the illegal activities and the absence of a disciplinary record in the securities industry indicate a low probability of future violations. Steadman v. SEC, 603 F.2d 1126, 1139 (5th Cir. 1979), aff'd, 450 U.S. 91 (1981). It is a mitigating circumstance that the U.S. District Court Judge in the criminal case did not incarcerate Mr. Calise. Further in sentencing Mr. Calise, he followed the recommendation of the probation department and did not impose a fine on him.⁶ (Motion, Exhibit G, 18-19, 21.) Judge Lloyd, who questioned Mr. Calise, found him highly intelligent, imposed a lenient sentence, and apparently thought him capable of rehabilitation. Judge Lloyd addressed Mr. Calise as follows:

I think you're certainly a comprehending individual, more so than many defendants. I think you understand the problem. It's unfortunate that there was an involvement that brings about the imposition of a felony conviction, but it's never too late to become what one would want to become. You've made it clear that you're able to generate a substantial amount of income. And that is, I'm sure, because you are blessed . . . with . . . a high level of intelligence.

(Motion, Exhibit G, 20-21.)

The Division cited a co-conspirator's recollection that Mr. Calise referred to the cash bribes as "fun tickets" as a cynical joke by Mr. Calise that supports its recommendation that he poses a risk to the investing public in each of the securities professions. (Motion, Exhibit I.) Without further explanation or some description of the context in which the remark was made, I do not find it as damning in its implication as the Division. In summary, this record is unpersuasive that a \$20,000 fine and/or a collateral bar -- the most severe sanction the Commission can impose -- are necessary and appropriate to protect participants in all aspects of the securities industry and to deter Mr. Calise and others from future illegal actions.

⁶ The Division recommended a collateral bar in Alan E. Rosenthal, 67 SEC Docket 2694 (Sept. 1, 1998) where the administrative action was based on an underlying felony conviction. However, the Commission reduced the sanction imposed in the initial decision -- a bar from association with a broker dealer and from participating in a penny stock offering -- to a bar with the right to apply to re-enter the securities industry in three years. The Commission found it significant that "the trial judge imposed relatively lenient criminal sanctions." Id. at 2698.

Based on a consideration of all the evidence of record, I will bar Mr. Calise from association with any broker or dealer, from participating in an offering of penny stock, and from association with a member of a national securities exchange or registered securities association. This severe sanction will prevent Mr. Calise from participating in that part of the securities industry in which he acted illegally.

IV.

I ORDER that Thomas Anthony Calise is barred from association with any broker or dealer, from participating in an offering of penny stock, and from association with a member of a national securities exchange or registered securities association.

Brenda P. Murray
Chief Administrative Law Judge