

ALJ

ADMINISTRATIVE PROCEEDING
FILE NO. 3-10765

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
March 21, 2003

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

MAR 21 2003

CTFD. NO. 1ST CLASS

In the Matter of

J.W. BARCLAY & CO., INC.
JOHN A. BRUNO
MICHAEL J. WILLS
EDGAR B. ALACAN
EMMANUEL P. CUBE
MAYER DALLAL
DANOO NOOR, SR.
EMANUELE A. SCARSO
MICHAEL B. SCOTT

ORDER GRANTING MOTION OF
DIVISION OF ENFORCEMENT FOR
PARTIAL SUMMARY DISPOSITION
AS TO RESPONDENT MAYER DALLAL

The Securities and Exchange Commission (Commission) instituted this proceeding against Mayer Dallal (Dallal) and others on April 24, 2002, pursuant to Section 8A of the Securities Act of 1933 (Securities Act) and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act). Dallal filed a timely answer.¹ The hearing is scheduled to commence on March 24, 2003.

At a telephonic prehearing conference held on March 19, 2003, the Commission's Division of Enforcement (Division) and Respondent Dallal announced that they had narrowed the issues that remain to be resolved between them at the hearing.

I held another telephonic prehearing conference on March 20, 2003, with the Division and Dallal. The Division moved for partial summary disposition against Dallal on all of the liability issues in the Order Instituting Proceedings (OIP) and on two of the four potential sanctions available under the OIP. See Rule 250(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.250(a). During the March 20, 2003, prehearing conference, I reviewed with Dallal the consequences of consenting to the relief sought by the Division. I am satisfied that Dallal's decision to consent to the Division's motion is knowing, intelligent, and voluntary. Accordingly, I grant the Division's motion for partial summary disposition.

¹ The OIP was amended on March 19, 2003, to correct a minor typographical error.

Matters Resolved By Dallal's Consent
To The Relief Sought In The Division's
Motion For Partial Summary Disposition

I find that there are no genuine issues of material fact and that the following allegations in the OIP are true as to Dallal:²

Dallal has been a registered representative since October 1993. Between June 1997 and October 1998, Dallal was associated with J.W. Barclay & Co., Inc. (Barclay). At the relevant time, Barclay was a registered broker and dealer and a member of the National Association of Securities Dealers.

Between June 1997 and October 1998, Dallal engaged in misconduct in the accounts of several customers. His violations included unauthorized trading, unsuitable trading, and churning. Dallal's acts and omissions involved scienter.

By his misconduct, Dallal willfully violated Section 17(a) of the Securities Act in that he, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly: employed devices, schemes, or artifices to defraud; obtained money or property by means of untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and engaged in transactions, practices, or courses of business which would or did operate as a fraud or deceit upon purchasers of such securities.

By his misconduct, Dallal also willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in that he, in connection with the purchase or sale of securities, by use of the means or instrumentalities of interstate commerce, or by use of the mails or of the facilities of any national securities exchange, directly or indirectly: employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and engaged in acts, practices, or courses of business which would or did operate as a fraud or deceit upon any person.

To protect the public interest, the Division seeks a cease-and-desist order against Dallal, an order barring Dallal from association with any broker or dealer, and an order imposing a civil penalty of \$110,000 against Dallal (Division's Prehearing Brief, dated March 10, 2003). The Division also seeks an order requiring Dallal to disgorge \$93,119, plus prejudgment interest, computed at the rate set forth in Rule 600 of the Commission's Rules of Practice, 17 C.F.R. § 201.600. At the prehearing conference of March 20, 2003, Dallal stated that he did not oppose a cease-and-desist order or an order barring him from association with any broker or dealer. He also

² The findings in this Order are not binding on any other persons in this proceeding or on persons in any other proceeding.

explicitly waived the opportunity to argue that a civil penalty of \$110,000 is not warranted under Sections 21B(b)-(c) of the Exchange Act, and to argue that \$93,119 does not represent a reasonable approximation of the profits accruing to him as a result of his violations.

Matters Still To Be Determined
At The Hearing As To Dallal

Dallal opposes the imposition of any financial sanctions (*i.e.*, disgorgement, prejudgment interest, and a civil monetary penalty) on the grounds that he lacks the ability to pay. See Section 21B(d) of the Exchange Act; Rule 630 of the Commission's Rules of Practice, 17 C.F.R. § 201.630. As required by my Orders of October 22, 2002, and February 19, 2003, Dallal has already provided the Division with a financial disclosure statement and other evidence in support of this defense. At the hearing, Dallal will have an opportunity to testify under oath about his financial circumstances, and the Division will have an opportunity to cross-examine him on that issue. This will be the only hearing issue as to Dallal. The Commission may then, in its discretion, consider the evidence concerning Dallal's ability to pay in determining whether disgorgement, prejudgment interest, and/or a civil penalty are in the public interest.

This Order is interlocutory in character. Cf. Fed. R. Civ. Pro. 56(c). It is not an Initial Decision within the meaning of Rule 360(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(b). By analogy to Fed. R. Civ. Pro. 56(d), the Division and Dallal should view this Order as confirming that certain facts and certain sanctions have been deemed established for the case.



James T. Kelly
Administrative Law Judge