

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 64389/May 4, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14198

In the Matter of	:	
	:	ORDER MAKING FINDINGS AND
DALE J. ENGELHARDT	:	IMPOSING SANCTIONS BY
	:	DEFAULT

The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP) on January 19, 2011, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The United States Postal Service return receipt shows that the OIP, sent by certified mail, was delivered to Dale J. Engelhardt (Engelhardt) at 45 Corte Vidriosa, San Clemente, CA 92673, on January 25, 2011. Engelhardt's Answer was due within twenty days of service of the OIP. See OIP at 3; 17 C.F.R. § 201.220(b).

On March 11, 2011, the Division of Enforcement (Division) filed a Motion for Sanctions Pursuant to Section 15(b) of the Exchange Act with two exhibits (Motion for Sanctions).

I find Engelhardt in default because he failed to: file an Answer; appear at the prehearing conference on February 23, 2011; respond to a dispositive motion; or otherwise defend the proceeding, and I deem the allegations in the OIP to be true. Tr. 5-6; 17 C.F.R. §§ 201.155(a), .220(f), .221(f).

Findings of Fact and Conclusions of Law

Engelhardt, forty-six years old, is a resident of San Clemente, California. OIP at 1. On August 12, 1999, Engelhardt was permanently enjoined from future violations of Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 in SEC v. Environmental Energy, Inc., No. 2:98-cv-006060 (C.D. Cal.). OIP at 2. In addition, the Commission instituted a public administrative proceeding on August 18, 1999, Christian R. Higgins, 70 SEC Docket 1116, which was settled when Engelhardt consented to an order suspending him from association with any broker or dealer for twelve months. Id.

From at least October 2008 through January 2009, Engelhardt was a member of the sales staff of Kensington Resources, Inc. (Kensington), an entity not registered with the Commission, through which Engelhardt and others solicited investors in American Environmental Energy, Inc.

(AEEI), the purported “green energy” company to which investor funds were to be sent. OIP at 1; Motion for Sanctions at 3, Ex. B at 2.

As a result of this conduct, on December 29, 2010, a Judgment of Permanent Injunction and Other Relief was entered in SEC v. Porche, No. 8:10-cv-01165-DOC (C.D. Cal.) (Default Judgment), enjoining Engelhardt from violating Section 5 of the Securities Act and Section 15(a) of the Exchange Act, and from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock.¹ OIP at 2; Motion for Sanctions, Ex. A. On December 20, 2010, the district court entered the Final Order Granting Plaintiff’s Request for Default Judgment (Final Order). Motion for Sanctions, Ex. B.

The allegations in the complaint, which the district court took to be true in the Final Order, alleged that Engelhardt, a sales agent for Kensington, participated in an offering of AEEI stock in which Kensington raised over \$11 million from approximately two hundred investors nationwide. OIP at 2; Motion for Sanctions, Ex. B at 2-3. Engelhardt received almost \$20,000 in commissions through Kensington for his sales of AEEI, an unregistered penny stock, and he was not registered with the Commission or associated with a registered broker-dealer at the time of these sales. OIP at 1-2; Motion for Sanctions at 3, Ex. B at 2.

The district court granted the default based on the allegations in the complaint that Engelhardt: (1) offered or sold securities, where no registration statement was in effect, and interstate transportation or communication or the mail was used in connection with the offer and sale; and (2) made transactions or attempted to induce the purchase or sale of a security when he was not associated with a registered broker-dealer. Motion for Sanctions, Ex. B at 5.

Sanctions

The Division’s Motion for Sanctions requests that Engelhardt be barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (NRSRO). Motion for Sanctions at 6.

Section 15(b)(6)(A) of the Exchange Act authorizes certain sanctions with respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer.² Sanctions include censure, placing limitations on the activities or functions of a person,

¹ The OIP abbreviates the result in SEC v. Porche and alleges that Engelhardt was enjoined from future violations of Sections 5(a) and 5(c) of the Securities Act and Section 15(a) of the Exchange Act.

² Exchange Act Section 15(b) applies to persons acting as a broker or dealer or associated with an unregistered broker or dealer. See Vladislav Steven Zubkis, 86 SEC Docket 2618, 2627 (Dec. 2, 2005).

suspension for a period not exceeding twelve months, or barring any such person from being associated with a “broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or [NRSRO], or from participating in an offering of penny stock” if the Commission finds that the sanction is in the public interest. Section 15(b)(6)(A) and certain portions of Section 15(b)(4) enumerate the types of conduct that are grounds for imposing a sanction.

The criteria for making public interest determinations are:

[t]he egregiousness of the [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 conduct, and the likelihood that the [respondent’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); see also Joseph J. Barbato, 53 S.E.C. 1259, 1282 n.31 (1999); Donald T. Sheldon, 51 S.E.C. 59, 86 (1992), aff’d, 45 F.3d 1515 (11th Cir. 1995). Deterrence is also a factor to be considered. See McCarthy v. SEC, 406 F.3d 179, 189 (2d Cir. 2005.)

Engelhardt’s conduct was egregious. He played a significant role in a scheme that sold over \$11 million of unregistered AEEI stock to over two hundred investors nationwide through its website and boiler room, indicators that the investments were sold to a broad segment of the general public. Motion for Sanctions at 3, Ex. B at 2. The district court noted that the alleged conduct was outrageous, and that such “fraudulent, illegal, and unethical conduct involving enormous sums of money shocks the conscience.”³ Motion for Sanctions, Ex. B at 6. The district court concluded that:

The allegations suggest a carefully-planned and implemented strategy to defraud investors by Defendants’ claims to investors that they were funding a “green energy” company when they were, instead, misappropriating funds to fund their lavish lifestyles.

Motion for Sanctions at 5, Ex. B at 7.

Engelhardt’s illegal conduct was recurrent and occurred from at least October 2008 through January 2009. OIP at 1; Motion for Sanctions at 3. Engelhardt chose not to file an answer to the OIP, to respond to the complaint in SEC v. Porche, or to participate in this administrative proceeding or the civil action, and he has neither acknowledged that his conduct was wrong nor offered assurances against future violations.

³ Disgorgement against defendants Joseph P. Porche, CEO of Kensington, and Gary K. Juncker, senior vice president and a member of the sales staff, was expected to be \$11 million and \$419,000, respectively. Motion for Sanctions, Ex. B at 2, 6.

Finally, the record indicates a high likelihood that Engelhardt's future participation in the securities industry will present opportunities for future violations. As the district court noted, Engelhardt was already enjoined from violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 when he committed the violations that were the subject of the injunction issued in SEC v. Porche. Motion for Sanctions, Ex. B at 2, 7.

This record contains persuasive evidence that it is in the public interest to bar Engelhardt from broad participation in the securities industry. Prior to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), signed into law on July 21, 2010, Section 15(b)(6)(A) permitted the Commission only to bar a person from being associated with a broker or dealer. However, even prior to Dodd-Frank, Engelhardt's conduct subjects him to "statutory disqualification" pursuant to Exchange Act Section 3(a)(39) and also effectively prohibits him from association with an investment adviser, municipal securities dealer, and transfer agent. Therefore, these portions of the collateral bar authorized by the Dodd-Frank amendments do not attach new legal consequences to Engelhardt's pre-Dodd-Frank conduct. See Landgraf v. USI Film Products, 511 U.S. 244, 245, 269-70 (1994); John W. Lawton, Initial Decision No. 419 (April 29, 2011).

Amended Section 15(b)(6) of the Exchange Act also includes two newly created associational bars: municipal advisor and NRSRO. Because such bars did not exist at the time of Engelhardt's conduct, I find that they attach new legal consequences and are impermissibly retroactive. Id.

Order

I GRANT the Division of Enforcement's Motion for Sanctions; and

I ORDER, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, that Dale J. Engelhardt is barred from association with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent.

Brenda P. Murray
Chief Administrative Law Judge