

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 52467 / September 19, 2005

Admin. Proc. File No. 3-11529

In the Matter of

FREDERICK W. WALL
48-23 88th Street
Elmhurst, New York 11373

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Conviction

Respondent was convicted of conspiracy to commit securities fraud, mail fraud, and wire fraud. Held, it is in the public interest to bar respondent from association with a broker or dealer.

APPEARANCES:

Frederick W. Wall, pro se.

Meaghan Cheung, for the Division of Enforcement.

Appeal filed: January 31, 2005
Last brief received: May 2, 2005

I.

Frederick W. Wall appeals from the decision of an administrative law judge. The law judge found that Wall was convicted of conspiracy to commit securities fraud, mail fraud, and wire fraud. ^{1/} The law judge concluded that Wall should be barred from association with any broker or dealer. To the extent we make findings, we base them on an independent review of the record, except with respect to those findings not challenged on appeal.

II.

On December 11, 2000, Wall pleaded guilty in open court to one count of conspiracy to commit securities fraud, mail fraud, and wire fraud. ^{2/} A United States District Court sentenced Wall to thirty months' imprisonment to be followed by supervised release for three years. The court also ordered Wall to pay restitution of \$500,000.

The indictment to which Wall pleaded guilty alleged, among other things, that between 1997 and 1999, Wall, together with various others, "engaged in schemes to defraud" investors through their "participat[ion] in sales of common stock purportedly issued pursuant" to exemptions from the registration requirements of the Securities Act of 1933. Although he was not named in the indictment, the scheme apparently was led by an individual named Bruce Follick, whom Wall had met while working at a broker-dealer, Capital Planning Associates. ^{3/} The indictment also alleged that Wall was president, secretary, and treasurer of First Fidelity Equities, Inc. ("FFE"), one of the issuers involved in the scheme, which was described in the indictment as "purportedly a financial brokerage business." ^{4/}

^{1/} 15 U.S.C. §§ 77q(a) and 77x; 18 U.S.C. §§ 1341 and 1346; and 18 U.S.C. §§ 1343 and 1346.

^{2/} SEC v. Salvatore Tavolocci, et. al., 00 Cr. 554 (S.D.N.Y.).

On June 14, 2000, the Commission filed a civil complaint against Wall for his role in the fraudulent scheme that is the basis of this proceeding. Subsequent to Wall's sentencing in the criminal proceeding, the district court granted the Division's motion seeking voluntary dismissal of the civil complaint as to Wall. Before the law judge, the Division explained its determination to seek dismissal of the civil proceedings as a "resource issue," *i.e.*, that because it planned to seek remedial sanctions through administrative proceedings, "the civil injunctive action served no purpose."

^{3/} Follick pled guilty to three counts of securities fraud related to the same scheme involved in this proceeding and was sentenced to twenty-four months in prison, followed by three years of supervised release, and ordered to pay restitution of \$3,137,635. Follick also was permanently enjoined from future violations of the antifraud provisions of the securities laws, and barred from associating with any broker or dealer. See Bruce Follick, Securities Exchange Act Rel. No. 49655 (May 5, 2004), 82 SEC Docket 3168.

^{4/} Wall was a signatory on one of FFE's bank accounts and withdrew several thousand dollars from its account. During the hearing before the law judge, Wall admitted that he

Wall admits that, at Follick's direction, he initiated efforts to register FFE as a broker-dealer, although these efforts were incomplete at the time the scheme unraveled. According to Wall, he had agreed with Follick to "bring a broker-dealer through the restriction letter process with the NASD. [Follick] had known [Wall] at another company where [he] did that, and that was [his] ostensible purpose there." Wall further testified that he "got some forms to file for people to start taking Series 7 [licensing] tests, and just all corporate and brokerage firm filings." In addition, Wall admits that he accepted \$10,000 from Follick for the purpose of trying to acquire, on Follick's behalf, an existing registered broker-dealer.

The indictment further alleged that, in order to sell the common stock, Wall and others established a series of boiler rooms from which unregistered salespeople -- some of whom Wall had been involved in recruiting -- made fraudulent misrepresentations and omitted material facts to prospective investors to induce them to purchase securities in what the indictment described as "sham private placement" offerings. In particular, the indictment alleged that the unregistered salespeople provided investors with private placement memoranda that failed to disclose that more than 50% of the funds raised would be used to "pay extraordinary undisclosed compensation to the brokers, and to enrich unlawfully the principals of the issuer." Additionally, the indictment alleged that the salespersons falsely represented to prospective investors that the issuers were successful businesses and would conduct an initial public offering "in a short period of time following the investor's purchase of common stock in the private placement." The indictment alleged that the scheme resulted in investors purchasing approximately \$2.36 million in securities issued in connection with the sham private placements.

During an allocution conducted by the district court in connection with Wall's guilty plea, Wall admitted that he engaged in a variety of activities that facilitated the scheme, including filing incorporation papers for one of the companies involved and initiating efforts to register that company as a broker-dealer with NASD. Wall also admittedly knew that the salespersons he helped to recruit were never registered and sold, according to Wall, "a lot of securities illegally," by using "false statements" to induce public investors to buy stock in what Wall described as "bogus" companies, "just fronts." ^{5/} Wall also admittedly "receiv[ed] salary money from [the] illegal operation," *i.e.*, what was described to him by Follick as "overrides" or a percentage of the unregistered brokers' commissions. ^{6/} Although Wall claims that he was

"ran" the company.

^{5/} The district court set the amount of Wall's restitution based on what it determined was the amount of customer "losses" caused by the "the three [sales] people who were recruited . . . by Wall."

^{6/} Before the district court, Wall sought to characterize these amounts as something other than "overrides" because, in his words, an "[o]verride is a percentage of a commission that a broker earns normally, but these were not registered brokers." We do not believe that the registration status of the salespersons is determinative of whether these amounts were overrides. Regardless of how the amounts are characterized, Wall admitted before

unaware of the illegal nature of the enterprise for much of the time he was associated with it, he admits that, even after learning the truth about the scheme, he remained involved "for a while."

The district court judge found that "[Wall] played a significant role [which was] more substantial than many of the others." Rejecting Wall's claim that he was ignorant of the illegal nature of the enterprise, the judge stated that, "based on what [the judge knew] of the operation . . . I don't think anybody who participated could have thought that this was an innocent operation for any period of time" On June 29, 2004, we authorized the institution of administrative proceedings to determine whether remedial sanctions were warranted in the public interest based on Wall's conviction.

III.

Exchange Act Section 15(b)(6)(A)(ii) 7/ authorizes the sanctioning of a person associated or seeking to become associated with a broker or dealer, if that person was convicted, within ten years of commencement of the proceeding, of an offense specified in Section 15(b)(4)(B) of the Exchange Act. 8/ The law judge found, and Wall does not dispute, that Wall had been convicted of offenses enumerated in Section 15(b)(4)(B), within the requisite period. Based on that finding, and the surrounding circumstances, the law judge determined that Wall should be barred.

Wall, who is pro se, makes various arguments in challenging the law judge's decision to bar him. None of these arguments has merit. Wall denies soliciting any sales or supervising those who did and claims that he "never acted as a stockbroker" in connection with the scheme. It is clear, however, that one need not be directly involved in securities sales to be deemed a person associated with a broker or dealer for purposes of Exchange Act Section 15(b)(6). 9/

the district court "receiving moneys" from Follick's operation which he "suppose[d]" constituted "illegal money."

7/ 15 U.S.C. § 78o(b)(6)(A)(ii).

8/ 15 U.S.C. § 78o(b)(4)(B). Among the offenses enumerated in Section 15(b)(4)(B) are "any felony or misdemeanor [that] involves the purchase or sale of any security . . . or conspiracy to commit any such offense."

9/ Section 3(a)(18) of the Exchange Act defines a person associated with a broker or dealer as "any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under the common control with such broker or dealer, or any employee of such broker or dealer" Section 3(a)(4) of the Exchange Act defines the term "broker" as "any person engaged in the business of effecting transactions in securities for the account of others." We previously have indicated that these provisions should be construed broadly and that exemptions from registration requirements that flow from them should be "narrowly drawn in order to promote both investor protection and the integrity of the brokerage community." Persons Deemed Not

Wall's status as an associated person is established based upon the significant role he played in furthering the scheme's success, for which he shared in the scheme's profit. Wall's role included efforts to incorporate and register as a broker-dealer one of the issuers involved, and to act as that issuer's president. He also attempted to acquire an existing registered broker-dealer, and was involved in the recruitment of salespersons into the scheme.

Citing the five-year statute of limitations contained in 28 U.S.C. Section 2462, Wall argues that, because the fraudulent conduct at issue occurred more than five years before proceedings were instituted, the "charges are past the statute of limitation[s] and should be dismissed." ^{10/} Although Section 2462 has been held to apply to certain sanctions imposed in Commission administrative proceedings, that section does not apply if a different period is "otherwise provided by Act of Congress." As we have held, "[b]ecause the Congress has authorized us to commence a proceeding to determine whether a convicted person's association is in the public interest up to ten years from the date of conviction, Section 2462 is not applicable to this proceeding." ^{11/}

Wall next argues that we are prohibited from bringing this administrative proceeding because the underlying misconduct already has been the basis of criminal and civil proceedings. Wall is mistaken. As noted above, the Exchange Act expressly provides, and we have repeatedly held, that the existence of a conviction is a proper basis for imposition of remedial sanctions in the public interest. ^{12/}

Wall further claims that the prosecution engaged in "evidence obstruction and witness tampering" in the underlying criminal proceedings. He also complains that staff of the Division

to be Brokers, Exchange Act Rel. No. 22172 (June 27, 1985), 33 SEC Docket 685, 686. See also Books and Records Requirements for Brokers and Dealers, Exchange Act Rel. No. 40518 (Oct. 9, 1998), 68 SEC Docket 546, 549 n.14.

^{10/} Section 2462 states, in pertinent part:

Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued

^{11/} William F. Lincoln, 53 S.E.C. 452, 457 (1998). We also noted in Lincoln that, "[e]ven if Section 2462 applied . . . it is the date of [the] conviction, not the conduct underlying the conviction, which is relevant." Id. See also Michael J. Markowski, Exchange Act Rel. No. 44086 (Mar. 20, 2001), 74 SEC Docket 1537 (limitations period under Section 2462 begins to run "when the party instituting the proceeding has a 'complete and present cause of action,'" i.e., on the date of the injunction, conviction, or underlying misconduct that provides the basis for the proceeding under Exchange Act Section 15(b)(6)(A)).

^{12/} See Lincoln, 53 S.E.C. at 459 (rejecting argument that, because respondent already had been convicted criminally, administrative proceeding constituted a second prosecution and/or punishment for the same underlying activity).

of Enforcement failed to provide him with evidence concerning those proceedings, including certain transcripts of testimony given by one of his co-defendants, which Wall claims the staff possessed. ^{13/} Wall argues that, due to the staff's failure to provide him this evidence, he was unable to establish his lack of awareness of the illegal nature of the scheme and what he asserts was his resulting lack of scienter. The staff denied possessing the evidence Wall sought, and the law judge ruled that, in any event, because Wall sought to use the evidence to attack his underlying conviction, it would be inadmissible in the administrative proceeding. We agree with the law judge that Wall cannot use this proceeding to challenge collaterally his underlying conviction. ^{14/}

Wall also contends that the law judge improperly excluded evidence that he acted to notify the authorities of the scheme in 1998, shortly after he determined that it was "illegitimate." Wall claims that he decided, "after" a meeting with the Federal Bureau of Investigation in December 1998, "to meet with the D.A. and [an] FBI agent for a proffer session," presumably regarding the scheme. He further contends that, to support this claim before the law judge, he "offered his 12/98 FBI interview as evidence of all the facts," but that the law judge "refused it in order to claim [he] never went to the authorities."

^{13/} 17 C.F.R. § 201.230. Rule of Practice 230 requires the Division to make available for inspection and copying by any party to a disciplinary proceeding documents "obtained by the Division prior to the institution of the proceedings, in connection with the investigation leading to the Division's recommendation to institute proceedings." The record includes a letter from the Division to Wall dated April 1, 2004 transmitting the "complete transcripts" in its files.

^{14/} See Joseph P. Galluzzi, Exchange Act Rel. No. 46405 (Aug. 23, 2002), 78 SEC Docket 1125, 1129 n.20 (criminal conviction that provides basis for administrative proceeding cannot be challenged in administrative proceeding); John S. Brownson, Exchange Act Rel. No. 46161 (July 3, 2002), 77 SEC Docket 3636, 3641 (criminal conviction cannot be collaterally attacked in subsequent administrative proceeding), pet. denied, No. 02-73194 (9th Cir. 2003). To the extent that Wall wished to challenge the district court's decision against him, he was free to appeal to the court of appeals. See Michael Batterman, Investment Advisers Act Rel. No. 2334 (Dec. 3, 2004), 84 SEC Docket 1349, 1356 (challenges to decision of district court are properly addressed to appellate court). By pleading guilty, however, Wall waived his right to appeal.

Wall also appears to argue that the civil and criminal actions against him allowed the Division to engage in "forum hunting." However, simultaneous investigations by the United States Attorney and the Commission are not prohibited. It has been held that "[e]ffective enforcement of the securities laws requires that the SEC and Justice be able to investigate possible violations simultaneously." SEC v. Dresser Industries, Inc., 628 F.2d 1368, 1377 (D.C. Cir.), cert. denied, 449 U.S. 993 (1980). Moreover, the securities laws "explicitly empower the SEC to investigate possible infractions of the securities laws with a view to both civil and criminal enforcement, and to transmit the fruits of its investigations to Justice in the event of potential criminal proceedings." Id. at 1376.

There is no indication in the record that Wall ever tried to introduce evidence of any 1998 FBI interview, or that such an interview occurred. While Wall tried to introduce a summary of a November 27, 2000 interview he gave to the United States Attorney's Office, that summary does not indicate that Wall was in any way responsible for helping the government uncover the scheme. 15/ In fact, Wall expressly admitted that, notwithstanding his knowledge that he was part of, in his words, "an illegal operation," he failed to report his actions and those of his co-conspirators because at the time, according to Wall, he was "desperate for money, going to job interviews, and he really didn't give it top priority."

15/ Although not admitted into evidence as part of the official record, the law judge separately collected this and other documents she refused to admit so that, on review, it could be determined whether the law judge's determination to deny admission was correct. Having reviewed the document, which summarizes certain of the circumstances related to the criminal proceedings, we agree with the law judge that the summary was irrelevant to this proceeding, and was properly excluded from the record.

IV.

The Commission has previously held that absent "extraordinary mitigating circumstances," an individual who has been convicted cannot be permitted to remain in the securities industry. 16/ There are no such circumstances here.

Throughout these administrative proceedings and, it appears, during the earlier criminal proceedings, Wall has tried to minimize the significance of his misconduct -- asserting that he was convicted on a "vague conspiracy only" and insisting that he is a victim of government misconduct. 17/ Wall described his role in the scheme as a "part-time job that [he] was supposed to file paperwork on that [he] barely showed up to, and [he] quit when [he] found out that [Follick] was a dirt ball."

Wall's efforts to downplay his role in the scheme are belied by the record, including his own testimony. For example, Wall expressly admitted helping Follick assemble a sales force and setting up and operating one of the issuers, a purported broker-dealer. Wall also expressly admitted awareness of the illegal character of the scheme before ending his involvement. As he testified, "[b]efore [he] left, [he] realized" that there were securities "that people were doing dirty things with" and that "the place began to stink." Notwithstanding such knowledge, Wall did not merely fail to report the fraud, as he later acknowledged he should have done, he continued to accept a portion of the proceeds from the scheme because, according to Wall, Follick "hadn't paid [him] in a long time."

At the hearing before the law judge, Wall presented the testimony of three witnesses who, according to Wall, "speak for the public when the[y] want their honest broker [i.e., Wall] back." 18/ We do not find their testimony to be persuasive regarding Wall's request for leniency. Eugene DeFranco, a Wall brokerage client during the early 1980s, testified that there was nothing "questionable or untoward or anything that might be considered negative to the public that [he] experienced with" Wall. William Dunn, who rented Wall a room for "two or three years," testified that he knew of nothing Wall had done that was "untoward, dishonest, slightly dark." Both DeFranco and Dunn had no involvement with, or knowledge about, the matters related to the criminal proceeding, other than what they heard from Wall. The one witness who did have direct knowledge regarding the circumstances surrounding the criminal proceedings was Greg Murray, who had been introduced to Follick by Wall and, thereafter, sold securities in the scam private placements. While Murray testified that he believed that the operation Follick was running was "legitimate," he also readily admitted that he was instructed to use a false name in selling the securities. Like Wall, Murray was convicted of securities fraud as a result of his involvement in the scheme, and sentenced to twenty-seven months in prison.

Our determination of whether a remedial, disciplinary sanction is in the public interest

16/ Brownson, supra note 14, at 3640.

17/ Wall also claims to have been "framed by the mob."

18/ Wall presented no other witnesses.

depends "on the particular circumstances and entire record of the case." 19/ Among the factors we consider are the seriousness of the violation, its age, and the harm it caused investors and the marketplace; the isolated or recurrent nature of the violation; the respondent's state of mind at the time of the violation, his recognition of the wrongful nature of his conduct, and the sincerity of his assurances against future violations. 20/

A consideration of those factors here supports the determination to impose a bar. 21/ Wall engaged in significant misconduct over several months. His actions furthered a fraudulent scheme that resulted in substantial investor losses. 22/ While Wall has tried to portray himself as a minor player in the scheme, and largely unaware of its criminal character, the district court concluded otherwise, finding that Wall played a "significant role" and rejected his claim of ignorance.

By engaging in the conduct that provided the basis for his criminal conviction, Wall acted with a high degree of scienter and demonstrated a complete disregard for the fundamental standards of honesty and fair dealing that govern those who are employed in the securities industry. His actions caused significant harm to investors. The illegal scheme he facilitated resulted in securities sales of more than two million dollars, and he himself was ordered to pay \$500,000 in restitution. Despite his conviction and imprisonment, Wall continues to try to

19/ Marshall E. Melton, Investment Advisers Act Rel. No. 2151 (July 25, 2003), 80 SEC Docket 2812, 2814.

20/ See id. at 2814. See also Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd, 450 U.S. 91 (1981).

21/ Wall suggests that, in being barred, he is being treated more harshly than others who have engaged in more serious misconduct. He also asserts that, other than his conviction, he has a "spotless" disciplinary record. As indicated herein, we believe that Wall's misconduct -- participating in a criminal conspiracy to commit securities, mail, and wire fraud -- amply justifies his exclusion from the securities industry. We further note that the appropriate sanction depends on the facts and circumstances of each case, and cannot be readily compared to those imposed in other cases. See Butz v. Glover Livestock Comm'n Co., 411 U.S. 182, 187 (1973).

22/ In this connection, we note that Wall was ordered to pay \$500,000 in restitution. See supra n.5.

minimize the significance of his misconduct. Moreover, he has expressed the desire to re-enter the securities industry if given the opportunity. 23/ Under the circumstances, we believe that the public interest warrants that he be permanently barred from association with any broker or dealer. 24/

An appropriate order will issue.

By the Commission (Chairman COX and Commissioners GLASSMAN, ATKINS, CAMPOS, and NAZARETH)

Jonathan G. Katz

Secretary

23/ Wall indicates in his brief that he would be willing to "settle" these administrative proceedings by agreeing to be suspended from association with any broker or dealer for two years. As discussed, we believe that the facts support a bar from the securities industry.

24/ We have considered all of the arguments advanced by the parties. We reject or sustain them to the extent that they are inconsistent or in accord with the views expressed herein.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 52467 / September 19, 2005

Admin. Proc. File No. 3-11529

In the Matter of

FREDERICK W. WALL
48-23 88th Street
Elmhurst, New York 11373

ORDER IMPOSING REMEDIAL SANCTION

On the basis of the Commission's opinion issued this day, it is

ORDERED that Frederick W. Wall be, and hereby is, barred from association with any broker or dealer.

By the Commission.

Jonathan G. Katz
Secretary