

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of :
: INITIAL DECISION
DON WARNER REINHARD : February 12, 2009

APPEARANCES: Brian K. Barry for the Division of Enforcement,
Securities and Exchange Commission

Don Warner Reinhard, pro se

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Don Warner Reinhard (Reinhard) from association with any broker or dealer or investment adviser. He was previously enjoined from violating the antifraud provisions of the federal securities laws, based on his wrongdoing while associated with a registered investment adviser and a registered broker-dealer in trading collateralized mortgage obligations (CMOs).

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on October 27, 2008, 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). The undersigned granted the parties leave to file Motions for Summary Disposition at a December 5, 2008, prehearing conference, pursuant to 17 C.F.R. § 201.250(a), by December 19, 2008, with Responses due on January 30, 2009.¹ Don Warner

¹ The January 30 date was set to accommodate Reinhard's request for delay pending the trial in United States v. Reinhard, No. 4:08-cr-00049-RH-WCS (N.D. Fla.). At the December 5 prehearing conference Reinhard stated that the trial was set to commence on January 5. See 12/05/2008 Tr. at 8, 10. That statement was false. On December 2, based on Reinhard's motion, the court had postponed the trial date to March 16, 2009. United States v. Reinhard, No. 4:08-cr-00049-RH-WCS (N.D. Fla. Dec. 2, 2008).

Reinhard, Admin. Proc. No. 3-13280 (A.L.J. Dec. 5, 2008) (unpublished). The Division of Enforcement (Division) timely filed its Motion for Summary Disposition on December 18, 2008. Reinhard did not file a Motion for Summary Disposition. He late-filed a Response to the Division's Motion on February 3, 2009. The administrative law judge is required by 17 C.F.R. § 201.250(b) to act "promptly" on a motion for summary disposition.

This Initial Decision is based on (1) the Division's December 18, 2008, Motion for Summary Disposition; (2) Reinhard's February 3, 2009, Response; (3) the Division's February 6, 2009, Reply; and (4) Reinhard's Answer, filed December 1, 2008. There is no genuine issue with regard to any fact that is material to this proceeding. All material facts that concern the activities for which Reinhard was enjoined were decided against him in the civil case on which this proceeding is based. Any other facts in his pleadings have been taken as true, pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Reinhard was enjoined on October 3, 2008, from violating the antifraud provisions of the federal securities laws, in SEC v. Reinhard, No. 4:07-cv-00529-RH-WCS (N.D. Fla. Oct. 3, 2008), based on his wrongdoing from January 2002 through August 2003 (the relevant period) while associated with a registered investment adviser and a registered broker-dealer. The Division urges that he be barred from association with any broker-dealer or investment adviser. Reinhard argues that he was not afforded due process in SEC v. Reinhard by the district court and requests a stay of this proceeding pending his appeal (SEC v. Reinhard, 09-10213-C (11th Cir.)).

C. Procedural Issues

1. Exhibits Admitted into Evidence

The following items in the Division's Motion for Summary Disposition at Exhibits A-C are admitted into evidence as Division Exhibits A-C:

December 13, 2007, Complaint in SEC v. Reinhard (Div. Ex. A);

October 3, 2008, Order Granting Permanent Injunction and Other Relief in SEC v. Reinhard (Div. Ex. B); and

December 8, 2008, Order for Entry of Judgment in SEC v. Reinhard (Div. Ex. C).

2. Collateral Estoppel

In his Answer, Reinhard discusses the facts underlying his injunction and states that he has been the victim, not the perpetrator of wrongdoing. However, the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent. See James E. Franklin, 91 SEC Docket 2708, 2713 (Oct. 12, 2007); John Francis D'Acquisto, 53 S.E.C. 440, 444 (1998); Demitrios Julius Shiva, 52 S.E.C. 1247, 1249 & nn.6-7 (1997). Nor does the pendency of an appeal preclude the Commission from action based on an injunction. See Franklin, 91 SEC Docket at 2714 n.15.

II. FINDINGS OF FACT

Reinhard, of Santa Rosa, Florida, was associated with a registered investment adviser, Magnolia Capital Advisors, Inc. (Magnolia), and with a registered broker-dealer, Paragon Financial Group, Inc. (Paragon), during the relevant period. Answer at 1-3. During the relevant period at Magnolia, he recommended to certain clients that they invest in CMOs, and, at Paragon, he received commissions related to the processing of those CMO transactions. Answer at 3. Reinhard was (and is) permanently enjoined from violating the antifraud and other provisions of the federal securities laws – Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 207 of the Advisers Act – and from aiding and abetting violations of Sections 204 and 206(4) of the Advisers Act and Rules 204-2(a)(7) and 206(4)-4(a)(2) thereunder.² Div. Ex. B. Additional sanctions included a third-tier civil penalty of \$120,000 and disgorgement of \$5,857,241.09 plus prejudgment interest of \$2,258,940.58. Div. Ex. C. Official notice pursuant to 17 C.F.R. §§ 201.250(a), .323 is taken of Reinhard's pending appeal of the judgment to the United States Court of Appeals for the Eleventh Circuit, No. 09-10213-C.

The conduct that underlies Reinhard's injunction was his trading in CMOs on behalf of clients while associated with Magnolia and Paragon during the relevant period. Answer, passim. The injunction was entered following a default against Reinhard for failure to answer the Commission's Complaint in SEC v. Reinhard. Div. Ex. B at 1. Reinhard was served with the Complaint on February 13, 2008. Div. Ex. B at 1, Div. Ex. C at 1-2. Although he never answered the Complaint, Reinhard filed numerous motions and participated in a prehearing conference before the court entered the permanent injunction against him on October 3, 2008. Div. Ex. C at 1-4. Reinhard filed additional motions before participating in the December 8, 2008, bench trial that addressed the issues of disgorgement, prejudgment interest, and civil penalties. Div. Ex. C at 4-5, 7-8. The court summarized Reinhard's dilatory tactics in its December 8, 2008, Order for Entry of Judgment. Div. Ex. C. These started with attempting to evade service of process: when the process server came to his residence on February 13, 2008, Reinhard answered the door but then slammed it; the process server left the summons and complaint on the front porch; Reinhard falsely claimed that he did not know how the papers got

² The court ordered the injunction on default for failure to answer the Commission's complaint following four months of dilatory maneuvers by Reinhard. Div. Exs. B, C. The court ordered the disgorgement, interest, and civil penalty following a one-day bench trial on December 8, 2008. Div. Ex. C.

there when he found them six days later. Div. Ex. C at 1-2, 6-7. Thereafter he filed numerous motions for continuance and other motions intended to delay the proceedings. Div. Ex. C at 2-4.

III. CONCLUSIONS OF LAW

Reinhard has been permanently enjoined “from engaging in or continuing any conduct or practice in connection . . . with the purchase or sale of any security” within the meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act and Sections 203(e)(4) and 203(f) of the Advisers Act.

IV. SANCTION

The Division requests broker-dealer and investment adviser bars. As discussed below, Reinhard will be barred from association with a broker-dealer or an investment adviser because of the seriousness of his violation, taking account of the facts and circumstances of his conduct.

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. See Section 15(b)(6) of the Exchange Act. The Commission considers factors including:

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) (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. Marshall E. Melton, 56 S.E.C. 695, 698 (2003). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. See Schield Mgmt. Co., 87 SEC Docket 848, 862 & n.46 (Jan. 31, 2006).

In proceedings based on an injunction, the Commission examines the facts and circumstances underlying the injunction in determining the public interest. See Melton, 56 S.E.C. at 698. “An injunction, by its very nature, is predicated on conduct that . . . violate[s] laws, rules or regulations.” Id. at 709. The Commission considers an antifraud injunction to be particularly serious. Id. at 710. The public interest requires a severe sanction when a respondent’s past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. See Richard C. Spangler, Inc., 46 S.E.C. 238, 252 (1976).

B. Sanctions

Reinhard’s conduct was egregious and recurrent during a period of at least eighteen months. At a minimum, a reckless degree of scienter is a necessary element of his violations of

the antifraud provisions of the Securities, Exchange, and Advisers Acts. Reinhard has not given assurances against future violations or recognition of the wrongful nature of his conduct. Rather, he maintains that he has been the victim, not the perpetrator of wrongdoing.

Reinhard's occupation, if he were allowed to continue it, will present opportunities for future violations. Reinhard's violations are recent. The degree of harm to investors and the marketplace is quantified in his ill-gotten gains of \$5,857,241.09 that the court ordered disgorged. Further, as the Commission has often emphasized, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. See Christopher A. Lowry, 55 S.E.C. 1133, 1145 (2002), aff'd, 340 F.3d 501 (8th Cir. 2003); Arthur Lipper Corp., 46 S.E.C. 78, 100 (1975). A broker-dealer bar is also necessary for the purpose of deterrence.

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b), DON WARNER REINHARD IS BARRED from associating with any broker or dealer.

IT IS FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-3(f), DON WARNER REINHARD IS BARRED from association with any investment adviser.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

Carol Fox Foelak
Administrative Law Judge