

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934

Rel. No. 51632 / April 29, 2005

INVESTMENT ADVISERS ACT OF 1940

Rel. No. 2381 / April 29, 2005

Admin. Proc. File No. 3-11536

---

In the Matter of :  
JOSE P. ZOLLINO :  
: :  
: :  
: :  
: :

---

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Conviction

Injunction

Respondent was barred from association with any broker-dealer or investment adviser based on Respondent's conviction and injunction but without a prehearing conference or a reasonable opportunity to review the Division of Enforcement's investigative file. Held, the proceeding is remanded for further consideration.

APPEARANCES:

Jose P. Zollino, pro se.

J. Kevin Edmundson, for the Division of Enforcement.

Appeal filed: October 14, 2004

Last brief received: January 7, 2005

## I.

\_\_\_\_\_ Jose P. Zollino, the former chairman of InverWorld, Inc. ("IW"), formerly a registered investment adviser, and InverWorld Securities, Inc. ("IW Securities" and, collectively with IW, "InverWorld"), formerly a registered broker-dealer, appeals from a decision of an administrative law judge. The law judge barred Zollino from association with any broker-dealer or investment adviser based on Zollino's conviction for conspiracy to commit fraud and money laundering and on his injunction against violations of the antifraud provisions of the securities laws. 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 July 7, 2004, the Commission issued an Order Instituting Proceedings ("OIP") against Zollino alleging that, on May 15, 2002, Zollino pleaded guilty to conspiracy to commit fraud and money laundering. 1/ The OIP further alleged that, on January 7, 2004, Zollino was permanently enjoined from violating antifraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934, and from aiding and abetting violations of the antifraud provisions of the Investment Advisers Act of 1940. 2/ The OIP asserted that Zollino had been convicted and enjoined based on misconduct he committed while associated with InverWorld. 3/

---

1/ United States v. Zollino, SA-01-CR-180 (W.D. Tex. Oct. 28, 2002). According to the OIP, Zollino pleaded guilty to conspiracy to commit fraud in violation of 18 U.S.C. § 371 and money laundering in violation of 18 U.S.C. § 1956. As a result of his criminal conviction, Zollino was sentenced to 144 months in prison and ordered to pay restitution of \$341,787,496. He has been incarcerated since January 2001. According to Zollino, he is appealing the conviction and injunction.

2/ SEC v. InverWorld, Inc., SA-99-CA-0822 (W.D. Tex. Jan. 7, 2004). Zollino was enjoined from violating Securities Act Section 17(a) (15 U.S.C. § 77q(a)), Exchange Act Section 10(b) (15 U.S.C. § 78i(b)), Exchange Act Rule 10b-5 (17 C.F.R. § 240.10b-5), and from aiding and abetting violations of Investment Advisers Act Sections 206(1) and (2) (15 U.S.C. §§ 80b-6(1) and (2)).

3/ According to the OIP, InverWorld invested client funds in "extremely risky and undisclosed investments," which were contrary to InverWorld's representations that the funds would be "primarily invested in safe, secure investments." In addition, the OIP asserts that InverWorld, which had grossly misrepresented the true value of the client investments in monthly account statements, created a complex web of affiliated offshore entities to disguise the true nature of InverWorld's investment activities.

On July 13, 2004, the Division, acting pursuant to Commission Rule of Practice 230, <sup>4/</sup> notified Zollino that it would make its non-privileged investigative file (the "Investigative File") available to him. Shortly thereafter, and in light of his incarceration, <sup>5/</sup> the Division notified Zollino that it would provide him, "as soon as possible," with a copy of the Investigative File at the federal correctional institution where Zollino was then incarcerated. On July 26, 2004, the Division and Zollino jointly moved that the law judge "convert[ ]" an administrative hearing that had been scheduled for August 16, 2004 to a telephonic prehearing conference. The parties supported this request by stating that a prehearing conference was necessary, in light of Zollino's incarceration, to "address the logistical issues related to this matter." As part of this motion, the parties also requested a postponement of the hearing "to allow sufficient time for [Zollino] to file [his] Answer and to review the investigative file" which, at the time of the motion, had not yet been delivered to Zollino.

On July 27, 2004, the law judge granted the parties' motion and scheduled a prehearing conference for September 30, 2004. On August 2, 2004, Zollino notified the law judge that he still had not received the Investigative File and that he was being transferred to another prison. Consequently, he asked that the prehearing conference be postponed to allow him "sufficient time to review" the Investigative File. On August 17, 2004, the Division filed a motion for summary disposition, in which it requested the entry of an order barring Zollino from association with a broker, dealer, or investment adviser because, according to the Division, "there are no genuine issues of material fact in dispute."

---

<sup>4/</sup> 17 C.F.R. § 201.230(a). Rule 230(a) provides that the Division "shall make available for inspection and copying by any party documents obtained by the Division prior to the institution of proceedings, in connection with the investigation leading to the Division's recommendation to institute proceedings." Rule 230(d) provides that, unless otherwise ordered by the Commission or the hearing officer, the Division "shall commence making documents available to a respondent for inspection and copying . . . no later than 7 days after service of the order instituting proceedings."

Zollino asserts that the Division was required to copy and deliver to him in prison the investigative file within the time specified in Rule 230. However, Rule 230 requires merely that the Division make the files "available for inspection and copying," not that it deliver the documents or copies of the documents to the respondent within that time period. See, e.g., Joseph P. Galluzzi, Exchange Act Rel. No. 46405 (Aug. 23, 2002), 78 SEC Docket 1125, 1127 n.11 and accompanying text (Division complied with Rule 230 by making investigative file available to incarcerated respondent's representative).

<sup>5/</sup> See supra note 1.

Subsequently, in late August 2004, the Division sent to Zollino several boxes containing copies of the Investigative File. According to a declaration Zollino attached to his opposition to the Division's motion for summary disposition, the Investigative File arrived at Zollino's prison on August 27, 2004, and he was permitted by prison officials to review the first of the eight boxes of the file on August 30 and 31, 2004. Zollino declared that, during these two days, he was able to review a bit less than half of the first box. <sup>6/</sup> On September 1, Zollino was notified that he would be transferred shortly to another prison. In connection with that move, all of Zollino's property, including the Investigative File, was taken for delivery to his new prison.

Just prior to his transfer to a new prison, Zollino filed a motion to oppose the Division's motion for summary disposition and to request that the prehearing conference be postponed until he had "sufficient time" to review the Investigative File. Although the law judge found that, "[b]ecause of [Zollino's prison] transfer and constraints of prison management, Zollino has had, [as of the date of the law judge's decision], ten hours to review the file, and has completed review of 45% of the first box" of the Investigative File, the law judge nevertheless refused to hold the previously scheduled prehearing conference or to delay the proceeding as requested by Zollino. On September 23, 2004, the law judge granted the Division's motion for summary disposition, ruling that the information in the Investigative File was immaterial since the disposition of the case was not based on "information that [could] be discovered from" the Investigative File.

### III.

Zollino, who is pro se, does not deny the underlying basis for the law judge's decision to bar him, i.e., his conviction and injunction, and concedes that he is precluded from challenging either in this proceeding. <sup>7/</sup> Rather, he asserts that the law judge's action violated his "due process rights" because, in granting the Division's motion for summary disposition before holding a prehearing conference, the law judge effectively denied him an "opportunity to be

---

<sup>6/</sup> Zollino declared that, as of September 4, 2004 (the date of his opposition to the Division's motion for summary disposition), he had been permitted approximately 10 hours to review the Investigative File, and had completed review of "about 45% of the content of box number one." Zollino also attached a second declaration from a prison official who confirmed that Zollino had been permitted to review just one of the boxes of documents when Zollino was instructed to prepare his belongings for shipment to his new prison. The Division introduced a declaration from a different official at Zollino's prison, who stated that, as of September 1 (the date of the official's declaration), Zollino "has reviewed some, if not all, of the documents sent to him by the Commission."

<sup>7/</sup> See, e.g., Galluzzi, 78 SEC Docket at 1129 ("a party cannot challenge his injunction or criminal conviction in a subsequent administrative proceeding").

heard.” Zollino further contends that the law judge's action violated Commission Rule of Practice 221(d), which provides that “[e]xcept where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate, at least one prehearing conference should be held.” 8/ In addition, Zollino complains that he had only a limited opportunity to review the Investigative File before issuance of the law judge’s decision.

Under the circumstances, we have determined to remand this case to the law judge for further consideration. We agree with Zollino that our Rules of Practice contemplate that at least one prehearing conference be held, unless the parties agree that one is not necessary or important considerations make the holding of one “inappropriate.” Zollino expressed an interest in participating in a prehearing conference and the Division appeared to concur in the need for such a conference when, on July 26, 2004, it filed its joint motion to convert the scheduled hearing into a prehearing conference. Moreover, we believe that the need for such a conference -- which can help the parties and the law judge clarify the matters at issue in the proceeding and the procedures to be followed -- was particularly substantial here where the respondent was both without legal representation and incarcerated. 9/

We also question the law judge’s decision to grant summary disposition before Zollino had a reasonable opportunity to review the Investigative File. While it may be unlikely that the Investigative File contains the kind of “extraordinary mitigative evidence” that would be relevant here, 10/ Zollino should have been given the opportunity to review it before filing his response to the Division's motion. As a result, in addition to holding a prehearing conference, the law judge should determine on remand whether Zollino has now had a reasonable opportunity to review the

---

8/ 17 C.F.R. § 201.221(d).

9/ The Division asserts that Rule of Practice 221(b) grants the law judge the discretion to hold “an initial, final, or other prehearing conference,” and that, therefore, she did not err in granting the Division’s motion for summary disposition without first holding a prehearing conference. However, Rule 221(b) grants the law judge the discretion to decide what kind of prehearing conference to hold, not whether to hold one.

10/ John S. Brownson, Exchange Act Rel. No. 46161 (July 3, 2002), 77 SEC Docket 3636, 3640. We held in Brownson that, “[a]bsent extraordinary mitigating circumstances,” an individual who has been convicted of securities fraud “cannot be permitted to remain in the securities industry.” We also held there that, where the respondent fails to present such evidence, he can be barred from the securities industry based on a motion for summary disposition.

Investigative File and whether Zollino should be permitted to present mitigative evidence and additional arguments in response to the Division's motion for summary disposition. We do not intend to suggest any view as to the outcome on remand.

An appropriate order will issue. 11/

By the Commission (Chairman DONALDSON and Commissioners GLASSMAN and GOLDSCHMID); Commissioners ATKINS and CAMPOS not participating.

Jonathan G. Katz  
Secretary

---

11/ Zollino has filed a motion to set aside the Division's brief as untimely because it was filed "on" rather than "by" December 20, 2004. We find no merit in this argument which misconstrues the time computation provisions of Rule 160(a) (17 C.F.R. § 201.160(a)) and the meaning of the term "filed within" set out in Rule 450(a) (17 C.F.R. § 201.450(a)).

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. 51632 / April 29, 2005

INVESTMENT ADVISERS ACT OF 1940  
Rel. No. 2381 / April 29, 2005

Admin. Proc. File No. 3-11536

---

In the Matter of :  
JOSE P. ZOLLINO :  
: :  
: :  
: :  
: :

---

ORDER REMANDING PROCEEDING TO ADMINISTRATIVE LAW JUDGE

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

ORDERED that the disciplinary proceeding against Jose P. Zollino be, and it hereby is,  
remanded for further consideration.

By the Commission.

Jonathan G. Katz  
Secretary