

ADMINISTRATIVE PROCEEDING
FILE NO. 3-12386

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
December 22, 2006

In the Matter of	:	
	:	
WARREN LAMMERT,	:	ORDER DENYING MOTION
LARS SODERBERG, and	:	FOR SUMMARY DISPOSITION
LANCE NEWCOMB	:	

The hearing in this proceeding is scheduled to commence February 20, 2007. Under consideration is Lance K. Newcomb's (Newcomb) September 29, 2006, Motion for Summary Disposition, the Division of Enforcement's October 20 Response, and Newcomb's October 25 Reply. The Order Instituting Proceedings (OIP) alleges that Newcomb, while employed by Janus Capital Management LLC (JCM), an investment adviser, violated, or willfully aided and abetted and caused violations by JCM of the antifraud and other provisions of the securities laws, in connection with market timing and frequent trading in mutual funds managed by JCM. The OIP alleges that customers of two brokerage firms were allowed to engage in market timing and frequent trading in one or more Janus-managed funds, contrary to representations in the funds' prospectuses such that JCM violated the antifraud provisions and Investment Company Act (ICA) Section 17(d) and Rule 17d-1.

Newcomb urges that the OIP be dismissed as to him, arguing as follows: (1) the mutual funds' prospectuses did not, in fact, prohibit market timing and frequent trading, so there was no primary violation; (2) he merely carried out the instructions of Respondents Lammert and Soderberg concerning the allegedly violative trading, lacked scienter, and did not render substantial assistance to any primary violation; and (3) ICA Section 17(d) is a complicated and confusing provision and there is no precedent for applying it to market timing.

Newcomb has not demonstrated that there is no genuine issue with regard to any material fact pertaining to the violations against him, and his motion for summary disposition must be denied, pursuant to 17 C.F.R. § 201.250. His analysis of the phrases quoted in the OIP from a JCM-managed fund prospectus is an insufficient basis to determine the lack of a primary violation. A hearing is necessary to determine the issues of primary antifraud violations by JCM, scienter and substantial assistance. Likewise, a hearing is necessary to determine whether JCM violated ICA Section 17(d) and, if so, whether Newcomb aided and abetted and caused the violation.

IT IS SO ORDERED.


Carol Fox Foelak
Administrative Law Judge