

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

In the Matter of : INITIAL DECISION MAKING FINDINGS AND
: IMPOSING SANCTION BY DEFAULT
ALBERT E. GILNER : June 24, 2014

APPEARANCE: Robert K. Levenson for the Division of Enforcement,
Securities and Exchange Commission

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Albert E. Gilner (Gilner) from the securities industry.

I. BACKGROUND

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on May 27, 2014, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The proceeding is a follow-on proceeding based on United States v. Bochinski, No. 1:10-cr-10199 (D. Mass. Oct. 23, 2013), appeal docketed sub nom. Gilner v. United States, No. 13-2367 (1st Cir. Oct. 30, 2013) (Bochinski). Gilner was served with the OIP on May 30, 2014, in accordance with 17 C.F.R. § 201.141(a)(2)(i), and his Answer to the OIP was due within twenty days of service of the OIP on him. See OIP at 3; 17 C.F.R. § 201.220(b). Gilner has not filed an Answer to date. Accordingly, he has failed to answer or otherwise to defend the proceeding within the meaning of 17 C.F.R. § 201.155(a)(2). Therefore, Gilner is in default, and the undersigned finds that the allegations in the OIP are true as to him.¹ See OIP at 3; 17 C.F.R. §§ 201.155(a), .220(f).

II. FINDINGS OF FACT

Gilner, 77, was convicted of conspiracy, wire fraud, mail fraud, and money laundering, in violation of 18 U.S.C. §§ 371, 1341, 1343, 1957; he was sentenced to eighty-four months of incarceration and a three-year term of post-release supervision and ordered to pay, jointly and severally with his co-defendant, \$5,222,757.16 in restitution. Bochinski.

¹ Gilner was advised that if he failed to file an Answer within the time provided, he would be deemed to be in default, and the undersigned would enter an order barring him from the securities industry. See Albert E. Gilner, Admin. Proc. Rulings Release No. 1542, 2014 SEC LEXIS 2137 (A.L.J. June 19, 2014).

From at least November 30, 2004, through at least January 2010, Gilner and another individual collectively induced at least thirty individuals nationwide to invest more than \$6 million in a series of purported high yield investment programs under various names, including the Old Navajo Foundation. Gilner falsely told investors that their funds would be held collectively in an escrow account as collateral for offshore foreign currency exchange trading or used to invest in communications-related business, timber, and gold, and to secure loans. The proceeds of the loans would purportedly be used for purposes such as trading in the stock of European and Asian banks and making loans to third world countries that would be guaranteed by the World Bank. Gilner promised investors returns of at least three to four percent per month, and assured them that their principal would be returned to them within a short amount of time. In reality, there were no such investment programs. Instead, Gilner misappropriated investor funds for personal use.

Gilner acted as an unregistered broker during the relevant period by selling securities in the form of investment contracts. Gilner solicited investors and recruited friends and acquaintances in the Old Navajo Foundation high yield investment program via telephone, e-mail, and in person. Gilner placed an advertisement containing information about the investment opportunity in an investment newsletter of nationwide distribution. Gilner labeled himself as a “facilitator” of the Old Navajo Foundation investment program, sometimes referring investors to the other individual for more information on the program. Gilner represented himself as a fellow investor in the investment program and told several investors that he was involved in other investment programs as well. Gilner made investment recommendations to at least one investor, telling that investor he would decide which of the programs he was involved with was the best fit for that investor. Gilner sometimes offered investors opportunities in other, purportedly higher yielding investment opportunities.

Gilner provided investors with forms to complete at the initiation of an investment, and collected completed forms from investors. He gave investors wire and bank deposit instructions so they could send funds to one of his two accounts. Gilner sent some investors fictitious account statements, confirmations, updates, and investment agreements he personally signed. Investors provided their funds to Gilner, with which he and the other individual purportedly purchased interests in the investments. Gilner collected investor checks personally. Gilner made some payments to investors, but the money came from other investors’ funds.

Gilner used investor funds to purchase two automobiles, fund his personal investment account, and for other personal expenditures.

III. CONCLUSIONS OF LAW

Gilner has been convicted within ten years of the commencement of this proceeding of a felony that “arises out of the conduct of the business of a broker” and “involves the violation of section[s] . . . 1341 [and] 1343 . . . of title 18, United States Code” within the meaning of Sections 15(b)(4)(B)(ii), (iv) and 15(b)(6)(A)(ii) of the Exchange Act.

IV. SANCTION

Gilner will be barred from the securities industry.² This sanction will serve the public interest and the protection of investors, pursuant to Sections 15(b)(4) and 15(b)(6) of the Exchange Act, and

² The fact that Gilner was not a registered broker-dealer or associated with a registered broker-dealer is not a barrier to imposing a broker-dealer and collateral bar. See Vladislav Steven Zubkis, Exchange

accords with Commission precedent and the sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979). As described in the Findings of Fact, Gilner's unlawful conduct was recurring and egregious and involved a high degree of scienter; extending over a period of several years, Gilner's scheme resulted in the misappropriation of millions of dollars. There is a reasonable foreseeable risk that, if he were allowed to resume his former business activities, he would engage in similar criminal conduct. Because of the Commission's obligation to ensure honest securities markets, an industry-wide bar is appropriate.

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b), ALBERT E. GILNER IS BARRED from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.³

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.⁴

Carol Fox Foelak
Administrative Law Judge

Act Release No. 52876 (Dec. 2, 2005), 86 SEC Docket 2618, 2627, recon. denied, Exchange Act Release No. 53651 (Apr. 13, 2006), 87 SEC Docket 2584 (unregistered associated person of an unregistered broker-dealer barred from association with a broker or dealer).

³ Thus, he will be barred from acting as a promoter, finder, consultant, or agent; or otherwise engaging in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock, pursuant to Exchange Act Section 15(b)(6)(A), (C).

⁴ A respondent may also file a motion to set aside a default pursuant to 17 C.F.R. § 201.155(b). See Alchemy Ventures, Inc., Exchange Act Release No. 70708, 2013 SEC LEXIS 3459, at *13-14 & n.28 (Oct. 17, 2013).