UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. JOSEPH F. APUZZO, Defendant.	Civil No. 3:07CV1910(AWT)

RULING ON MOTION FOR OFFICER OR DIRECTOR BAR

On September 8, 2015, a consent judgment was entered in this case in favor of the plaintiff, the Securities and Exchange Commission ("SEC"). The judgment permanently restrained and enjoined the defendant, Joseph Apuzzo ("Apuzzo"), from violation of the relevant provisions of the Securities Exchange Act of 1934 (the "Exchange Act") and rules promulgated thereunder. (See Doc. No. 123.) It also ordered Apuzzo to pay a civil penalty in the amount of $100,000.

The SEC also seeks a permanent officer or director bar against Apuzzo. (See Plaintiff Securities and Exchange Commission's Motion for an Officer and Director Bar Against Defendant Joseph F. Apuzzo (Doc. No. 124.)) An evidentiary hearing was held on the plaintiff's motion on January 12, 2016.

For the reasons set forth below, the SEC's motion for a permanent officer or director bar is being granted.

I. FACTUAL BACKGROUND

For the purposes of the SEC's motion, the parties entered into a stipulation, which the court approved, agreeing that:

> 1. The factual allegations as set forth in the Complaint should be accepted and deemed as true by the [c]ourt, other than with respect to whether Terex Corporation, directly or indirectly through the acts of Mr. Apuzzo, violated the federal securities laws in its public reporting for the fiscal years ending December 31, 2000-2003, though neither party is precluded from offering evidence on this issue; and
>
> 2. The degrees of scienter the court may consider for determining whether a D&O Bar is appropriate shall include reckless or intentional conduct.

(Stipulation and Order (Doc. No. 128) at 1-2.)

Accepting those factual allegations as true, the pertinent facts are as follows. Terex Corporation ("Terex") manufactures equipment, primarily for use in construction, infrastructure, and surface to mining industries. From October 1998 to September 2002, Apuzzo served as the Chief Financial Officer of Terex. From September 2002 to August 2005, Apuzzo served as President of Terex Financial Services, a division of Terex. Prior to joining Terex, Apuzzo worked for a public accounting firm. Apuzzo has an MBA degree in Public Accounting and was licensed as a Certified Public Accountant in the state of New York until sometime after he joined Terex.

In late December 2000 and late December 2001, Apuzzo substantially assisted United Rental's Inc. ("URI") and its Chief Financial Officer, Michael J. Nolan ("Nolan"), "in carrying out two fraudulent sale-leaseback transactions designed to allow URI to recognize revenue prematurely and to inflate the profit generated from URI's sales." (Complaint (Doc. No. 1) ("Complaint") ¶ 11.) The two transactions were similarly structured:

> First, URI sold used equipment to a financing company ("Financing Company") and then leased it back for an 8-month period. To induce the Financing Company to participate in these transactions, URI paid the Financing Company a fee and arranged, through Apuzzo, for Terex to remarket (re-sell) the equipment at the end of the lease period and to guarantee that the Financing Company would receive not less than 96% of the purchase price that it had paid URI for the used equipment (the "residual value guarantee"). At the same time, URI agreed to Apuzzo's conditions that URI indemnify Terex against losses it might incur under its guarantee to the Financing Company, and make substantial purchases of new equipment from Terex.

(Id. ¶ 12.)

Nolan and others characterized these transactions as "minor sale-leasebacks." Under Generally Accepted Accounting Principles ("GAAP"), such a characterization would allow URI to immediately recognize the profit generated by the sale of the equipment if, among other things, (1) "the risks and rewards of ownership were transferred to the Financing Company" and (2) commitments related to the sale were settled and the sales price was fixed and determinable. (Id. ¶ 13.) "If any commitments related to the

sales remained unsettled, the sales price is not deemed to be fixed and determinable, and any gain from the sales must be deferred until the commitments are settled."(Id.) Because URI had agreed with Apuzzo to indemnify Terex for any losses it would incur in the transaction, URI's obligations "were not complete in the reporting period in which the agreements were executed." (Id. ¶ 44.) As a result, URI was prohibited under GAAP from recognizing the revenue from these transactions in the reporting period in which the agreements were executed. URI recognized the revenue nonetheless.

"Nolan and others were able to prevent discovery of URI's continuing obligations under the three-party agreements because they engaged in a concerted effort to hide the interlocking agreements from URI's independent auditor." (Id. ¶ 14.) "In addition, Nolan and others were also able to inflate gains that URI recorded because they were able to hide the indemnification payments to URI made to Terex." (Id.)

"Apuzzo substantially assisted URI, Nolan and others in their efforts to disguise the interlocking agreements and to conceal the indemnification payments URI made to Terex." (Id. ¶ 15.) Apuzzo signed agreements that disguised URI's continuing risks and financial obligations under the agreements. Additionally, Terex, with Apuzzo's knowledge and/or approval, issued "issued inflated invoices on URI's purchase of new

equipment from Terex that concealed URI's indemnification payments to Terex and thus allowed URI to inflate its gains on the sale-leaseback transactions." (Id.)

In the December 2000 transaction, URI sold a fleet of equipment to the Financing Company for $25.3 million and leased it back for 8 months. Terex and the Financing Company entered into a "remarketing agreement," signed by Apuzzo, in which Terex agreed to re-sell the equipment at the end of the lease period, pay the Financing Company no less than 96% of the price paid, and buy any unsold equipment at the end of the remarketing period. URI, in turn, promised "to purchase from Terex approximately $20 million of new equipment before the end of the 2000 calendar year, and to pay Terex approximately $5 million immediately to cover Terex's anticipated losses from its residual value guarantee to the Financing Company." (Id. ¶ 18.) Apuzzo and Nolan agreed that the indemnification payments to Terex would be made as "undisclosed 'premiums' to be paid on URI's purchase of new equipment from Terex." (Id. ¶ 28.) "[O]n December 29, 2000, with Apuzzo's knowledge and approval, Terex issued two invoices that reflected an aggregate price of $25 million for new equipment that Terex internally valued at $20 million." (Id. ¶ 29.) Terex recorded $20 million of that payment as revenue and $5 million as "a reserve to be used to cover

Terex's anticipated losses under its residual value guarantee." (Id. ¶ 30.)

"URI and Terex also executed a 'backup' remarketing agreement, which Apuzzo also signed, under which URI effectively assumed Terex's remarketing obligations and guarantees to the Financing Company and agreed to cover any losses to Terex over the $5 million advance payment through guaranteed future purchases." (Id. ¶ 18.) Apuzzo prepared an initial draft of this backup agreement, which explicitly described the residual value guarantee. However, in response to Apuzzo's initial draft, "Nolan and others provided Apuzzo a draft agreement that deleted all explicit references to the Financing Company and URI's agreement to remarket the fleet" and changed the language that had explicitly described the residual value guarantee so that it did not. (Id. ¶ 21.) Apuzzo signed the revised backup agreement.

Also, Apuzzo ordered an appraisal of the equipment and knew that Terex would lose millions of dollars reselling the equipment without the indemnification provision. However, when Apuzzo was asked to provide a "valuation letter" that could be given to URI's auditor, "Apuzzo offered to provide an appraisal letter that not only failed to disclose the appraisal values that Terex had determined, but affirmatively and misleadingly asserted that 'nothing had come to [his] attention' to cause Apuzzo to believe that the overall equipment valuations

regarding the equipment 'could not be achieved in a transaction between a willing buyer and willing seller.'" (Id ¶ 26.)

As Apuzzo would have reasonably expected, towards the end of 2002, Terex was struggling to re-sell the equipment within the anticipated $5 million shortfall. On December 31, 2002, URI and Terex entered into a contract, signed by Apuzzo even though he was no longer the Chief Financial Officer, that extended the remarketing and purchase agreements that were set to expire. In that contract, URI also agreed "to make an $8 million 'prepayment,' to be applied as a 'surcharge' on the purchase of additional equipment from Terex in the following 6 months. The contract specified that Terex could keep the prepayment even if URI failed to make those additional purchases." (Id. ¶ 32.)

On January 2, 2003, the Financing Company notified Apuzzo and URI that a reimbursement of $8.3 million was to be paid that day. Terex made the payment to the Financing Company, and the next day URI made a final indemnification payment to Terex of $8.7 million.

In December 2001, Apuzzo participated in a similar sale-leaseback transaction having the same parties. The transaction was structured in the same way, so as "to conceal the interlocking nature of the three-party transaction." (Id. ¶ 41.) "Just as with Terex I, in which the transaction documents were edited to remove references to the interlocking agreements,

Apuzzo signed the Terex II Remarketing Agreement knowing that it contained no disclosures regarding URI's commitment to reimburse or indemnify Terex." (Id. ¶ 42.) "Moreover, Apuzzo understood that URI continued to want the agreements to be kept separate. On December 19, 2001, Apuzzo received an email from the Terex sales manager engaged in the negotiations with URI, specifically noting that the URI sales manager wanted the transactions 'on two separate documents.'" (Id.) As was the case with the first transaction, Terex knew that the equipment being sold to the Financing Company was priced above fair market value and that Terex would lose money in its deal with the Financing Company. Accordingly, "[b]efore agreeing to provide the Financing Company with the guarantee, Terex insisted that URI agree to indemnify Terex for this anticipated loss." (Id. ¶ 43.) "Apuzzo received internal email communications disclosing the materially lower appraisals of the used equipment and the imposition of a $4 million 'premium' on the sale of $24 million of new equipment to URI (covering the corresponding shortfall expected from Terex providing the Financing Company with the residual value guarantee)." (Id.) Terex issued "inflated invoices showing the aggregate purchase price of the new equipment to be $28 million, without disclosure of the purported 'premium' being charged. As before, the disguising of the indemnification payment was done with Apuzzo['s] knowledge." (Id. ¶ 45.)

"While Terex sales managers negotiated directly with their URI counterparts concerning many of the details of the transaction, Apuzzo was involved throughout the process, in discussions with Nolan, monitoring email communications, and maintaining control over the final terms of the agreement." (Id. ¶ 46.) "As with the Terex I transaction, Apuzzo improperly recorded revenue from the sale to URI to improve Terex's reported year-end financial results." (Id.)

II. LEGAL STANDARD

Section 21(d)(2) of the Exchange Act provides in pertinent part that when the SEC brings an action to enjoin violations of the Exchange Act,

> the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who violated section 78j(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 78l of this title or that is required to file reports pursuant to section 78*o*(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.

15 U.S.C. § 78u(d)(2). The six non-exclusive factors set forth in SEC v. Patel, 61 F.3d 137 (2d Cir. 1995), "indicate where evidence of unfitness might be found in a defendant's misconduct." SEC v. Bankosky, 716 F.3d 45, 48 (2d Cir. 2013); see also id. at 48-49 (holding application of the Patel factors to be appropriate in light of the revision to section 21(d)(2)

permitting the ban if the person's conduct demonstrates "unfitness" as opposed to "substantial unfitness," as required by the earlier version of the provision, which Patel interpreted). The six Patel factors are as follows:

> (1) the "egregiousness" of the underlying securities law violation; (2) the defendant's "repeat offender" status; (3) the defendant's "role" or position when he engaged in the fraud; (4) the defendant's degree of scienter; (5) the defendant's economic stake in the violation; and (6) the likelihood that misconduct will recur.

Patel, 61 F.3d at 141 (citing Jayne W. Barnard, When is a Corporate Executive "Substantially Unfit to Serve"?, 70 N.C.L.REV. 1489, 1492-93 (1992)). These factors are not "the only factors that may be taken into account" and it is not "necessary to apply these factors in every case." Id. Additionally, an officer or director bar may be imposed even if all six factors are not present. See e.g., id., 61 F.3d at 142 ("it is not essential for a lifetime ban that there be past violations"). Here, because Apuzzo engaged in his misconduct before the 2002 revisions to section 21(d)(2), it is appropriate to use the "substantial unfitness" standard.

The SEC argues that the egregiousness of Apuzzo's violation, his role or position when he engaged in the fraud, his high degree of scienter, and the likelihood that misconduct will recur merit a permanent officer or director bar in order to protect the investing public. The court agrees.

A. Egregiousness of Underlying Securities Law Violation

The fraudulent accounting scheme perpetrated by Nolan and others at URI, which Apuzzo aided and abetted, was particularly egregious, as was Apuzzo's conduct in aiding and abetting that scheme.

The court agrees with the SEC's description fo the scheme perpetrated by Nolan and others at URI:

> URI's fraudulent scheme to recognize revenue prematurely and to inflate the amount of profit from URI's sales was implemented in two consecutive year-end accounting periods. Both involved deliberate efforts by senior URI officers to conceal from, among others, URI's auditors the true nature of the overall arrangement in order to artificially improve URI's financial results and meet the company's projections to the financial community. As a result, URI materially misstated its financial condition and operating results in filings with the Commission. Nolan and John Milne, another senior officer at URI, pleaded guilty to criminal charges relating to their roles in the fraudulent scheme. Additionally, Nolan, Milne, URI and Terex were each named as defendants in separate SEC civil enforcement actions that were resolved through consent judgments.

(Plaintiff Securities and Exchange Commission's Post-Hearing Memorandum in Support of Motion for Entry of Officer and Director Bar Against Defendant Joseph F. Apuzzo (Doc. No. 138) at 10.)

Apuzzo's role in substantially assisting the perpetration of that scheme was not only essential but required him to take a number of significant, affirmative steps. Apuzzo assisted Nolan and others in hiding URI's risks and continuing obligations relating to the sale-leaseback transactions, and he did so by

signing documents that, as discussed below, he knew were designed to disguise the interlocking nature of the agreements.

Apuzzo assisted URI in concealing the fact that the prices at which URI had sold the equipment were inflated above fair market value, and Apuzzo and Nolan agreed to conceal the indemnification payments as "premiums" to be paid on URI's purchase of new equipment from Terex. Apuzzo requested the preparation by Terex personnel of the $25 million invoice to URI, which Apuzzo knew did not disclose that $5 million was for a purpose other than the sale of the new equipment. In addition, Apuzzo knew, based on the appraisal he had sought, that the values were inflated, yet he was willing to provide a letter he knew was false to URI's auditors stating that "'nothing ha[d] come to [his] attention' to cause Apuzzo to believe that the overall equipment valuations regarding the equipment 'could not be achieved in a transaction between a willing buyer and willing seller.'" (Complaint ¶ 26.)

Also, after it became apparent that the initial indemnification payment would not cover the entirety of Terex's loss, "[o]n December 31, 2002, Apuzzo signed a 'Contract' between URI and Terex which purported to extend the remarketing and purchase agreements between the two companies that would otherwise expire." (Id. ¶ 32.) "[T]he contract provided that URI 'agrees' to make an $8 million 'prepayment,' to be applied as a

'surcharge' on the purchase of additional equipment from Terex in the following 6 months." (Id.) "The contract specified that Terex could keep the prepayment even if URI failed to make those additional purchases." (Id.) "Apuzzo knew . . . that the contract purporting to characterize URI's $8 million payment as a 'prepayment' and 'a surcharge' on the purchase of new additional equipment was intended to disguise the real purpose of the payment." (Id. ¶ 33.)

Similarly, in December 2001 Apuzzo signed the remarketing agreement in connection with the second sale-leaseback transaction with the Financing Company with full knowledge that the remarketing agreement also failed to disclose URI's continuing obligations to reimburse and indemnify Terex and approved the arrangement under which URI agreed to indemnify Terex for any losses resulting from its arrangement with the Financing Company. The transaction documents made no reference to the interlocking agreements. "Apuzzo understood that URI continued to want the agreements to be kept separate[;] [o]n December 19, 2001, Apuzzo received an email from the Terex sales manager engaged in the negotiations with URI, specifically noting that the URI sales manager wanted the transactions 'on two separate documents.'" (Id. ¶ 42); see also Pl.'s Ex. 19 ("Here's the newest version of the sales order. At Doug[']s

request he wanted the sales order and trade package on two separate documents.").

As with the first transaction, the indemnification payment was disguised as an undisclosed "premium" on the purchase of new equipment. Apuzzo received internal communications discussing the payment of a $4 million "premium" on the purchase of $24 million in new equipment. (See Pl.'s Ex. 18) ("I'm sure by now you know the deal with United Rentals is going forward. Some of the details are attached. Basically, $24 million of new equipment. A $4 million price premium for a total of $28 million and a commitment for an additional $1 million of TLC equipment for purchase in 2012. . . . Joe has been in the loop through the process and in contact with Mike Nolan. They are supportive of the transaction.") "While Terex sales managers negotiated directly with their URI counterparts concerning many of the details of the transaction, Apuzzo was involved throughout the process, in discussions with Nolan, monitoring email communications, and maintaining control over the final terms of the agreement." (Complaint ¶ 46.)

Apuzzo asserts that he proactively informed Terex's auditors, PricewaterhouseCoopers ("PwC"), about the existence of and details concerning the first transaction during the negotiations and that he also made Terex's senior management aware of the transaction while it was being negotiated. Thus, he

contends, they had an opportunity to identify the risks and insist on changes to the structure of the transaction. What Apuzzo describes as "transparency" on his part is illusory. As a threshold matter, as Terex's auditors, PwC's concern was with how Terex, not URI, was accounting for the transaction; there is no evidence that Terex's Chairman and CEO had any involvement in assessing the merits of the transaction; and the involvement of Jeffery Gershowitz, Terex's in-house counsel who reviewed documentation at Apuzzo's request, was limited to reviewing certain documents to ensure that the documents reflected the terms of the deal as described to him by Apuzzo. In this context, Apuzzo's limited disclosures are more damning than mitigating because he failed to disclose material details regarding the nature of the sale-leaseback transaction. When the PwC audit partner in charge of the Terex account asked Apuzzo directly if he knew how URI planned to account for the first transaction, Apuzzo replied in substance that he "had no idea," (Agens Dep. Tr. 53:9), even though Apuzzo knew that URI's principal purpose in undertaking the transaction was to increase revenue for that year.

Also, Apuzzo did not inform either PwC or Gershowitz that URI did not want to disclose the direct link between the interlocking agreements because such disclosure would be harmful to URI's accounting; did not inform either about Apuzzo's role

in structuring the transactions; and did not inform either that inflated valuations of the used equipment were being used. This information was very significant for purposes of understanding the true nature of the transactions, so Apuzzo's limited disclosures to Terex's auditors and members of its senior management do not diminish the egregiousness of his conduct.

B. Role When Engaged in the Fraud

The SEC contends that the fact that Apuzzo engaged in such egregious conduct while serving as the Chief Financial Officer of Terex, a major public company, weighs in favor or the officer or director bar. The court agrees.

As discussed above, Apuzzo's role in substantially assisting the perpetration of the scheme carried out by Nolan and others at URI was essential; Apuzzo arranged Terex's involvement, and without that involvement the Financing Company would not have entered into the transactions. Serving as an officer or director of a public company is a significant position of trust and Apuzzo repeatedly took significant, affirmative steps that constituted a betrayal of that trust. While Apuzzo points to the fact that the fraud took place at URI, not Terex, the fact that URI's Chief Financial Officer, Nolan, and others perpetrated the scheme at URI does not mean that Apuzzo's misconduct was less serious, only that their

misconduct was even more serious -- as is reflected by the fact that criminal convictions resulted.

C. Degree of Scienter

"Scienter, as used in connection with the securities fraud statutes, means intent to deceive, manipulate, or defraud." S.E.C. v. First Jersey Sec., Inc., 101 F.3d 1450, 1467 (2d Cir. 1996). The evidence shows that Apuzzo knew that URI was engaging in accounting fraud, and having that knowledge, willingly and substantially assisted URI's fraudulent conduct.

Apuzzo was a licensed CPA and an experienced accountant, whose experience included nine years at a large public accounting firm. At that public accounting firm he spent at least five years in the audit group. Although Apuzzo took pains to emphasize during his testimony at the evidentiary hearing that the principles related to revenue recognition and the rules that govern whether a transaction involves a sale or lease can be "very complicated" (Hr'g Tr. 64:10-19), as the CFO of Terex, Apuzzo had a firm understanding of basic accounting principles. Also, the December 26, 2000 email drafted by Apuzzo that became the model for the back-up remarketing agreement showed that he had a firm understanding of the details of the transaction. Apuzzo also knew that URI's principal purpose in undertaking the transaction was to increase revenue for that year, and knew the accounting ramifications of URI inflating the valuation of the

equipment. Thus, when Nolan and others provided to Apuzzo a revised draft remarketing agreement that deleted all explicit references to the Financing Company and URI's agreement to remarket the equipment and Nolan told Apuzzo that the version of the remarketing agreement initially prepared by Apuzzo would "be bad for [URI's] accounting on the transaction," (Nolan Dep. Tr. 36: 7-12), Apuzzo knew that Nolan and others were attempting to hide URI's continuing risks and obligations in connection with the sale-leaseback transaction and also knew the implications of keeping that information from URI's auditors. (The finding with respect to Nolan's statement is based on the testimony of Nolan, and Apuzzo appropriately urges the court to scrutinize Nolan's testimony with great care and view it with particular caution. The court has done so and concludes that Nolan's testimony is entitled to greater weight than the testimony of Apuzzo.)

Based on the facts found herein, the court does not find credible Apuzzo's assertion that he did not have a complete understanding of the accounting ramifications associated with the structure of the transactions because he simply did not think about anything other than what were the implications of the transactions for Terex. In addition, one fact not mentioned above is that Gershowitz testified during his deposition that he had questions about the transactions:

> [I]t seemed to me odd why Terex needed to be in the middle of the transaction in the first place if the risk was being shifted. Basically if [the Financing Company] was asking something of Terex and Terex was asking something of URI, which back stopped it essentially, why did we even need to be in the middle of the transaction. It just seemed to be from kind of a logical perspective a superfluous inclusion in the deal.

(Gershowitz Dep. Tr. 37:24- 38:8.) Gershowitz raised that concern in his conversations with Apuzzo. Gershowitz described Apuzzo's response as follows:

> I think basically it was along the notes that URI can't give it. I don't recall if he ever explained the reasons why. I don't remember the reasons why, but it was just kind of a fact that United Rentals couldn't give it to [the Financing Company], but we could give it to [the Financing Company] and it was a no risk transaction to us, if you will, because everything we were promising to [the Financing Company] would be promised back to us by United Rentals. So it was a riskless transaction to us that helped everybody complete the transaction they wanted to complete.

(Id. 38:13-23.) Thus, the lawyer Apuzzo had asked to review the documents actually raised with him the issue of how the pieces of the transaction fit together, and Apuzzo had to think about the issue to provide a response to Gershowitz.

Likewise, Apuzzo knew the details of the second sale-leaseback transaction and knew that its purpose and structure was the same as the first transaction. He signed the remarketing agreement with the Financing Company knowing that the agreement was designed to conceal URI's obligations to reimburse and indemnify Terex for any losses incurred, and he also knew that the valuations of the equipment would cause Terex to incur

losses for which it would be indemnified by means of payments from URI disguised as an undisclosed "premium" on the purchase of new equipment. The court concludes that, already knowing the accounting ramifications of the first transaction, Apuzzo knew the ramifications of the second transaction as well.

D. Likelihood of Recurrence

Apuzzo is not a repeat offender, but the court concludes that there is a likelihood of recurrence. Accordingly, the court must "articulate the factual basis for a finding of the likelihood of recurrence." Patel, 61 F.3d at 142. Otherwise, the conclusions stated below would be more generalized.

After reviewing the record in this matter and presiding over the hearing at which Apuzzo testified, the court concludes that this defendant has manifested an inability to recognize the wrongfulness of conduct that is comparable in nature to the misconduct in which he engaged. In the court's view, there are several, interrelated indicators of this inability. They are (1) his failure and apparent inability to articulate why his conduct was wrong (if not egregious), which -- the court concludes -- explains his lack of contrition; (2) his disavowal, during cross examination by counsel for the SEC, of an ability to "put two and two together" (Hr'g Tr. 69:22) and realize that others are engaged in misconduct, coupled with his view that he is only called upon to reach such a conclusion when others tell

him explicitly that they are engaged in misconduct; (3) his apparent predisposition to focus on the individual acts he took in isolation, to the exclusion of considering them in context and the cumulative effect of those acts; (4) his minimization of the degree to which he bears some responsibility for assisting Nolan and others at URI in carrying out the fraudulent sale-leaseback transactions, notwithstanding the fact that he did not initiate or orchestrate the accounting fraud; (5) his apparent lack of understanding of what it means to be transparent in his dealings with others, including his use of a double standard under which he and others are on an equal footing with respect to his expectation that they will detect misconduct, despite the fact that he is withholding material information from them; and (6) his obvious lack of candor at a number of points as he testified, under oath, in court.

Apuzzo has entered into a consent judgment with the SEC, and he has paid a fine. Also, as Apuzzo points out, he has agreed to an injunction that is broader than what the SEC sought in the Complaint. Such actions are typically an indicator that a defendant is truthfully acknowledging his wrongdoing and is contrite. Here, however, the court concludes that such an inference is negated because of the indicators discussed above. Apuzzo also notes that a significant period of time has passed since the conduct at issue, and that he has essentially endured

a bar for the duration of the SEC's prosecution of this matter. However, what is more significant is that, notwithstanding the fact that Apuzzo has had such an extended period of time to reflect on his conduct, he still has an inability to recognize the wrongfulness of the conduct in which he engaged. In coming to this conclusion, the court has considered, and does not find reassuring, the portion of Apuzzo's testimony during the hearing that he contends reflects that he has taken responsibility for his misconduct.

Officers and directors of public companies hold positions of trust. Apuzzo's inability to recognize the wrongfulness of the egregious conduct in which he engaged (which would carry over to comparable misconduct) and his lack of candor even when under oath, suggest that he is likely to fail to live up to the trust with which such a position is endowed.

IV. CONCLUSION

For the reasons set forth above, Plaintiff Securities and Exchange Commission's Motion for an Officer and Director Bar Against Defendant Joseph F. Apuzzo (Doc. No. 124) is hereby GRANTED.

It is so ordered.

Signed this 4th day of May 2016, at Hartford, Connecticut.

/s/
Alvin W. Thompson
United States District Court