INITIAL DECISION RELEASE NO. 472
ADMINISTRATIVE PROCEEDING
FILE NO. 3-14880

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

In the Matter of	:	INITIAL DECISION
	:	November 6, 2012
JOHN JANTZEN	:	

APPEARANCES: Jennifer D. Brandt for the Division of Enforcement, Securities and Exchange Commission

John Jantzen, pro se

BEFORE: Cameron Elliot, Administrative Law Judge

SUMMARY

This Initial Decision grants the Motion for Summary Disposition filed by the Division of Enforcement (Division), denies the Motion for Summary Disposition filed by Respondent John Jantzen (Jantzen), and bars Jantzen from associating with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, or nationally recognized statistical rating organization (NRSRO) for five years.

PROCEDURAL HISTORY

On May 15, 2012, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP), pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleges that on March 29, 2012, the United States District Court for the Western District of Texas (Court) entered a final judgment permanently enjoining Jantzen from future violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3(a) thereunder in SEC v. Jantzen, No. 1:10-cv-740-JRN (Civil Action). OIP, p. 2.

On June 11, 2012, this Office received Jantzen's Answer to the OIP and a telephonic prehearing conference was held. During the prehearing conference, the parties were granted leave to file motions for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice. The Division filed a Motion for Summary Disposition (Div. Motion) with two

exhibits (Div. Ex. A and Ex. B) on June 21, 2012.[1] Jantzen filed a Motion for Summary Disposition (Resp. Motion) on June 22, 2012, with five exhibits (Resp. Ex. A through Ex. E). On July 6, 2012, Jantzen filed an Opposition to the Division's Motion, and the Division filed a Reply in Support of its Motion (Reply) on July 17, 2012, with one exhibit.[2] The Division did not file an Opposition to Jantzen's Motion, but stated in its Reply that it "opposes the Respondent's Motion for all of the reasons stated in its Motion and this Reply." Reply, p. 1 n.1. Jantzen did not file a reply in support of his Motion. Accordingly, briefing is complete.

SUMMARY DISPOSITION STANDARD

A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. 17 C.F.R. § 201.250(b). The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323 of the Commission's Rules of Practice. 17 C.F.R. § 201.250(a).

The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. See Jeffrey L. Gibson, Exchange Act Release No. 57266 (Feb. 4, 2008), 92 SEC Docket 2104, 2111-12 (collecting cases), petition for review denied, 561 F.3d 548 (6th Cir. 2009). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." See John S. Brownson, Exchange Act Release No. 46161 (July 3, 2002), 55 S.E.C. 1023, 1028 n.12, petition for review denied, 66 F. App'x 687 (9th Cir. 2003).

The findings and conclusions in this Initial Decision are based on the record and on facts officially noticed pursuant to Rule 323 of the Commission's Rules of Practice. See 17 C.F.R. § 201.323. The parties' motion papers and all documents and exhibits of record have been fully reviewed and carefully considered. Preponderance of the evidence has been applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 101-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision have been considered and rejected.

FINDINGS OF FACT

From January 1991 through February 2012, Jantzen was a registered representative with Primerica Financial Services Investments, Inc. (Primerica), an investment adviser registered with

[1] The Division's Exhibit A is an Order granting the Commission's motion for summary judgment in the Civil Action as to all but the amount of a civil penalty to be assessed (Order). The Division's Exhibit B is the Final Judgment in the Civil Action (Final Judgment).

[2] The Division's Exhibit 1 is the Complaint in the Civil Action (Compl.).

the Commission.[3] OIP, p. 1.[4] For a portion of the time in which Jantzen engaged in the conduct underlying the Civil Action, he held the following licenses from the Financial Industry Regulatory Authority, Inc. (FINRA): Investment Company Products/Variable Contracts Limited Representative (Series 6), Investment Company Products/Variable Contracts Limited Principal (Series 26), and Uniform Securities Agent State Law (Series 63). Id.

In the Civil Action, the Commission alleged that Jantzen and his wife, Marleen Jantzen (collectively, the Jantzens), engaged in illegal insider trading in the securities of Perot Systems Corp. (Perot Systems) in the days surrounding the September 21, 2009, public announcement that Dell, Inc. (Dell), would acquire Perot Systems through a tender offer transaction. Compl., p. 1. The Commission contended that Marleen Jantzen, an employee of Dell, became aware of the pending transaction in the course of her duties and tipped Jantzen in breach of her duty to keep the information confidential. Id.

The Commission asserted that Jantzen purchased 500 shares of Perot Systems common stock and twenty-four call options in Perot Systems using the couple's joint brokerage account on September 18, 2009, the last day of trading before the public announcement of the tender offer. Id. The Commission further alleged that Jantzen made these purchases while in possession of material, nonpublic information, and, immediately following the public announcement of the acquisition, liquidated his position in the stock and call options and realized a net trading profit of $26,813.58. Id., pp. 1-2.

The Commission and the Jantzens filed cross-motions for summary judgment. Order, p. 1. On February 29, 2012, the Court granted the Commission's motion in part, and permanently enjoined the Jantzens from violating Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3(a) thereunder.[5] Id., p. 27. Marleen Jantzen was also permanently enjoined from violating Exchange Act Rule 14e-3(d). Id., pp. 27-28. The information regarding the tender offer was material as a matter of law as highlighted by the spike in the stock price on the date of the tender offer, and nonpublic, as the Jantzens admitted that information regarding the tender offer was not broadly disseminated to the investing public prior to September 21, 2009. Id., pp.

[3] The Complaint in the Civil Action described Primerica as a "Commission-registered broker-dealer," and the Court's Order stated that Jantzen was a "licensed securities industry professional and registered broker for more than 30 years." Compl., p. 6; Order, p. 19. The OIP states that Primerica is an investment adviser registered with the Commission. OIP, p. 1. According to Primerica, Inc.'s Form 10-K for the fiscal year ended December 31, 2011, of which official notice is taken pursuant to Rule 323 of the Commission's Rules of Practice, Primerica did not become a registered investment adviser until 2011, which is after the conduct at issue in the Civil Action and in this proceeding.

[4] Pursuant to Rule 220(c) of the Commission's Rules of Practice, any allegation in the OIP not denied by the Respondent shall be deemed admitted.

[5] The Findings of Fact, infra, are taken from the Court's Order in the Civil Action, and, as further discussed below, are immune from attack in a follow-on administrative proceeding. See Phillip J. Milligan, Exchange Act Release No. 61790 (Mar. 26, 2010), 98 SEC Docket 26791, 26796-97.

8-9. Marleen Jantzen admitted that she owed a duty of confidentiality to Dell regarding the tender offer. Id., p. 9.

With regard to scienter, Marleen Jantzen was aware of her duty to Dell and had actual knowledge of the material, nonpublic information that she possessed. Id., p. 11. The evidence showing that Marleen Jantzen had tipped her husband was "overwhelming," and there was compelling evidence that Jantzen knew that his transactions in Perot Systems stock were based on misappropriated non-public information. Id., pp. 18-20.

On March 28, 2012, the Court issued its Final Judgment, ordered disgorgement in the total amount of $29,374.20 and imposed civil monetary penalties of $26,920.50 each on John and Marleen Jantzen.[6] Id., p. 26; Final Judgment, p. 7.

CONCLUSIONS OF LAW

Section 15(b)(6) of the Exchange Act instructs the Commission to sanction any person who, at the time of the misconduct, was associated with a broker or dealer, if the Commission finds that the sanction is in the public interest and the person has been enjoined from any action specified in Section 15(b)(4)(C) of the Exchange Act. 15 U.S.C. § 78o(b)(4)(C), (b)(6). Jantzen has been permanently enjoined from future violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3(a) thereunder – that is, "conduct . . . in connection with the purchase or sale of any security," within the meaning of Section 15(b)(4)(C). Accordingly, a sanction will be imposed on Jantzen if it is in the public interest.

Jantzen argues that there was "a material misrepresentation of evidence" in the Civil Action and the Commission failed to provide him with exculpatory evidence. Resp. Motion, pp. 1-3. Jantzen contends that an email used as evidence was mischaracterized – specifically, the email did not state that Dell was acquiring Perot Systems as it was characterized by the Commission, but instead simply stated that Dell was investigating a transaction with Perot Systems. Id., p. 2. Jantzen also asserts that a July 2009 public news article regarding Dell was mischaracterized. Id. Finally, Jantzen argues that the Commission failed to properly document or provide evidence regarding a meeting between Commission representatives and Don Mann, a Dell executive and Marleen Jantzen's boss. Jantzen believes that information obtained from that meeting may be exculpatory. Id., pp. 2-3.

By alleging that evidence was mischaracterized or missing from the record, Jantzen is essentially disputing the facts found against him in the Civil Action. It is well established, however, that findings and conclusions made in the underlying action are immune from attack in a follow-on administrative proceeding. See Milligan, 98 SEC Docket at 26796-97; Ted Harold Westerfield, Exchange Act Release No. 41126 (Mar. 1, 1999), 54 S.E.C. 25, 32 n.22 (collecting cases). The Commission does not permit a respondent to relitigate issues that were addressed in

[6] The Jantzens were held jointly and severally liable for the disgorgement, which represented the profits gained from their illegal trading and $2,453.70 in prejudgment interest. Final Judgment, p. 7.

previous proceedings against the respondent. See William F. Lincoln, Exchange Act Release No. 39629 (Feb. 9, 1998), 53 S.E.C. 452, 455-56; see also Demitrios Julius Shiva, Exchange Act Release No. 38389 (Mar. 12, 1997), 52 S.E.C. 1247, 1250 ("[A]ny substantive or procedural objections that [Respondent] has with respect to the civil proceeding should have been directed to the federal appeals court."). Accordingly, Jantzen's claims regarding the evidence presented in the Civil Action are rejected, the Division's Motion for Summary Disposition is granted, and Jantzen's Motion for Summary Disposition is denied.[7]

SANCTION

A. A Five-Year Associational Bar is Warranted

The appropriate remedial sanction is guided by the well-established public interest factors listed in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); Vladimir Boris Bugarski, Exchange Act Release No. 66842 (Apr. 20, 2012), 103 SEC Docket 53374, 53378. They include: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood of future violations. Steadman, 603 F.2d at 1140. Deterrence should also be considered, and the sanction may not be punitive. Steven Altman, Exchange Act Release No. 63306 (Nov. 10, 2010), 99 SEC Docket 34405, 34435. The inquiry into the appropriate remedial sanction is flexible and no one factor is controlling. Chris G. Gunderson, Exchange Act Release No. 61234 (Dec. 23, 2009), 97 SEC Docket 24040, 24048; Conrad P. Seghers, Investment Advisers Act of 1940 (Advisers Act) Release No. 2656 (Sep. 26, 2007), 91 SEC Docket 2293, 2298, aff'd, 548 F.3d 129 (D.C. Cir. 2008).

The Division requests that I bar Jantzen from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or NRSRO. Motion, p. 1. Jantzen argues that a permanent bar would be excessive and that a twenty-four-month bar, beginning on the date that he separated from FINRA, would be an appropriate sanction. Resp. Motion, p. 8. In support of his position, Jantzen offers examples of cases and Commission settlements where respondents received bars of less than five years for their misconduct. Id., p. 4-5. Jantzen contends that the misconduct that occurred in each of those cases was more egregious than the facts of this case, and argues that the Steadman factors do not

[7] With respect to Jantzen's argument that the Commission failed to provide him with exculpatory evidence, I addressed that claim in a July 5, 2012, Order (July Order). Jantzen filed a motion seeking records related to an April 6, 2010, meeting among Commission representatives, Don Mann, and John Wander of "VE Law Firm." The Division filed a response stating that it had produced the entire non-privileged investigative file to Jantzen during the underlying litigation, it had no information responsive to Jantzen's request, and, even if such information did exist, the materials would be privileged. I denied Jantzen's motion without prejudice, instructing Jantzen that he needed to make a "plausible showing" that the information sought was both "favorable and material" to his defense before any further investigation into his allegations was justified. July Order, p. 2. Jantzen did not make such a showing in his Motion, nor did he submit a renewed motion for my consideration.

support a permanent bar. Id. Although I am unconvinced of the relevancy or applicability of the cases cited by Jantzen, as will be explained in greater detail below, Jantzen has made a persuasive showing with respect to some of the Steadman factors. Based on my review of the record, I find an associational bar of five years to be in the public interest.

The egregiousness of Jantzen's conduct does not weigh in favor of imposing a severe sanction. To be sure, Jantzen was permanently enjoined from violating the antifraud provisions of the federal securities laws, and the Commission has repeatedly stated that, "conduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest of sanctions." Gunderson, 97 SEC Docket at 24049 (internal citation omitted). However, Jantzen's misconduct did not involve any of his clients, the individuals he supervised, or any identifiable third party. Resp. Motion, pp. 6-7. While it is true that the Court stated that "the trading profits almost doubled the [Jantzens'] liquid net worth," and was a "substantial haul," the Court also noted that Jantzen's actions were not "as egregious as in other insider trading cases," presumably in reference to the fact that the Jantzens only realized a trading profit of $26,813.58. Final Judgment, pp. 2-3.

With respect to scienter, the Court held that the evidence against Jantzen "show[ed] a high degree of scienter," because, as a licensed securities broker, he "certainly knew what he was doing." Motion, p. 3; Order, p. 23. The Division points to the acts Jantzen took to conceal the insider trading and cover up the misconduct. Motion, p. 7; Final Judgment, pp. 2-3 ("Particularly compelling evidence of culpability includes the premeditated creation of an alibi for their illegal trading . . . and falsifying a document (John's diary) to attempt to concoct a defense to the insider trading."). Given the significance of the findings made by the Court, Jantzen's scienter supports imposing a severe sanction.

On the other hand, the isolated nature of Jantzen's misconduct weighs in favor of imposing a more lenient sanction. The Commission has not alleged that Jantzen engaged in any other acts of insider trading, nor does Jantzen have a record of any securities violations during his prior twenty years as a licensed securities professional. Answer, p. 4; Motion, p. 8; Final Judgment, p. 4. Jantzen has submitted a letter of reference from Doug Sorchila (Sorchila), an individual who has known Jantzen since 1999 and has conducted annual inspections of Jantzen's office at Primerica. Resp. Motion, Ex. D. Sorchila represents that Jantzen's regulatory conduct was exemplary and he presented no compliance issues. Id.

Moreover, I find Jantzen to be sincere in his assurances against future violations and believe that he has recognized the wrongful nature of his conduct. Jantzen has offered an affidavit that he submitted to the Court in the Civil Action, which states that he "will never again put [him]self in a position where the SEC or anyone else can question [his] actions." Resp. Motion, Ex. E., p. 2. Jantzen represents that if he is permitted to register with FINRA in the future, he would cease owning and trading in individual stocks or options to eliminate the possible perception of any wrongdoing. Resp. Motion, p. 7. Jantzen also states "I emphatically affirm that this will never happen again." Id.

The Division argues that Jantzen's lack of contrition is illustrated by his attempt to use this administrative proceeding to relitigate the facts of the Civil Action. Motion, p. 4. Jantzen's

points of disagreement with the underlying case are, however, outweighed by his conduct following judgment against him. Jantzen has stated that he "fully appreciate[s] the critical importance of the securities laws," and "acknowledge[s] and accept[s] the decision made in the Final Judgment." Answer, p. 1. More important than Jantzen's words are his actions – Jantzen submitted payment of the disgorgement amount of $29,374.20 on April 12, 2012, and paid the civil monetary penalty of $53,841 for himself and his wife on June 21, 2012. Resp. Motion, p. 3; Opposition, p. 2.

While it is true that continued employment in the securities industry would provide Jantzen with the opportunity for future violations, overall, a temporary associational bar will serve as a sufficient deterrent to any future misconduct. Two recent cases, one involving slightly less serious misconduct and one involving slightly more serious misconduct, resulted in a three-year bar and a seven-year bar, respectively. See Thomas C. Bridge, Securities Act of 1933 Release No. 9068, Exchange Act Release No. 60736, (Sep. 29, 2009), 96 SEC Docket 20805 (imposing three-year bar for negligent conduct resulting in $40,000 disgorgement order and $39,000 civil penalty); Ran H. Furman, Initial Decision Release No. 459-A (Jun. 20, 2012), 103 SEC Docket 55386 (imposing seven-year bar for materially misreporting $3.9 million in revenue in financial reports). I find that a bar between these two durations, or five years, is appropriate. See Martin B. Sloate, Exchange Act Release No. 38373 (Mar. 7, 1997), 52 S.E.C. 1233 (imposing five-year bar from association with a broker or dealer for purchasing or soliciting purchases of securities while in possession of material, non-public information).

B. Legal Standard for Collateral Bars

The requested collateral bars will be granted except as to municipal advisors. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), enacted July 21, 2010, added collateral bar sanctions to Section 15(b)(6)(A) of the Exchange Act and Section 203(f) of the Advisers Act. The new sanctions authorize the Commission to simultaneously suspend or bar an individual who has engaged in certain unlawful conduct from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or NRSRO. Prior to Dodd-Frank, collateral sanctions were generally authorized only on a piecemeal basis, i.e., only when an individual sought association with the particular branch of the securities industry at issue. Teicher v. SEC, 177 F.3d 1016, 1020-21 (D.C. Cir. 1999) (the Commission could not impose sanctions as to any specific branch until it could "show the nexus matching that branch"). The issue here is whether Dodd-Frank's broader collateral bar can be applied to Jantzen, whose misconduct ended before the enactment of Dodd-Frank.

The question of retroactive application of Dodd-Frank essentially reduces to the question of whether such application would impair vested rights. John D. Friedrich, Advisers Act Release No. 3394 (Apr. 6, 2012), 103 SEC Docket 53102; see also Ojeda-Terrazas v. Ashcroft, 290 F.3d 292, 297 (5th Cir. 2002) (describing two-step analysis under Landgraf); Wayde M. McKelvy, Exchange Act Release No. 65423 (Sept. 28, 2011), 102 SEC Docket 46319; Glenn M. Barikmo, Initial Decision Release No. 436 (Oct. 13, 2011), 102 SEC Docket 47146. Jantzen had no such vested right to associate with brokers, dealers, investment advisers, municipal securities dealers, or transfer agents. See Friedrich, 103 SEC Docket at 53105.

The situation is more complicated with respect to municipal advisors and NRSROs. There is no associational bar or similar provision predating Dodd-Frank with respect to municipal advisors, nor was there a formal associational bar with respect to NRSROs. See, e.g., Commissioner Kathleen L. Casey, Address to Practising Law Institute's SEC Speaks in 2011 Program (Feb. 4, 2011) (noting the absence of these two bars before Dodd-Frank). In 2006, before Dodd-Frank's enactment, there existed a statutory provision for revoking the registration of an NRSRO if any person associated with it was found to have been enjoined as Jantzen has. 15 U.S.C. § 78o-7(d)(1)(A) (2006). Jantzen's misconduct postdated the enactment of this provision. As to association with municipal advisors, but not with NRSROs, therefore, Jantzen possessed a right approximating an "immediate fixed right of present or future enjoyment." Fernandez-Vargas v. Gonzales, 548 U.S. 30, 44 n.10 (2006).

ORDER

It is ORDERED that, pursuant to Rule 250 of the Commission's Rules of Practice, the Division's Motion for Summary Disposition is GRANTED, and Jantzen's Motion for Summary Disposition is DENIED; and

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, John Jantzen is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, or NRSRO for five years.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice. See 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. See 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 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 motion to correct 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 occurs, the Initial Decision shall not become final as to that party.

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Cameron Elliot
Administrative Law Judge