INITIAL DECISION RELEASE NO. 494
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15002

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

In the Matter of		
	:	
	:	INITIAL DECISION
JAY T. COMEAUX	:	July 2, 2013

APPEARANCES: David B. Reece, B. David Fraser, Christopher A. Davis, and Janie L. Frank for the Division of Enforcement, Securities and Exchange Commission

Daniel K. Hedges of Porter Hedges LLP, for Respondent Jay T. Comeaux

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision (ID) orders Respondent Jay T. Comeaux (Comeaux) to disgorge $3,386,974.50, reduced by the value of assets under the control of the court-appointed receiver in SEC v. Stanford, No. 3-09-cv-0298-N (N.D. Tex. 2009), plus prejudgment interest. No civil penalty is ordered.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on August 31, 2012, pursuant to Section 8A of the Securities Act of 1933 (Securities Act), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (Advisers Act), and Section 9(b) of the Investment Company Act of 1940 (Investment Company Act). The OIP, pursuant to Comeaux's offer of settlement, made various findings of fact and conclusions of law and imposed cease-and-desist orders and other sanctions on him and ordered additional proceedings to determine what, if any, disgorgement and civil penalties against him are in the public interest. As agreed upon by the parties, this determination is being made by means of summary disposition, pursuant to 17 C.F.R. § 201.250. Jay T. Comeaux, Admin. Proc.

No. 3-15002 (A.L.J. Oct. 22, 2012) (unpublished). Familiarity with the findings of fact and conclusions of law in the OIP is assumed for the purpose of this ID.

The findings and conclusions in this ID are based on the record, including the Division of Enforcement's (Division) Motion for Summary Disposition as to Monetary Relief (Motion), responsive pleadings, and those attachments admitted into evidence, infra.[1] Preponderance of the evidence was applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 97-104 (1981). All arguments and proposed findings and conclusions that are inconsistent with this ID were considered and rejected.

B. Allegations and Arguments of the Parties

The Division argues that Comeaux should be required to disgorge all payments he received from Stanford Group Company (SGC) between January 15, 2005, and February 13, 2009 (Relevant Period), and as such, urges that Comeaux be ordered to pay disgorgement of $7,457,985.83, plus prejudgment interest of $3,893,887.07. In the alternative, the Division urges that Comeaux be ordered to disgorge the payments he received during the Relevant Period from SGC in the form of compensation, commissions resulting from the sale of Stanford International Bank Certificates of Deposit (SIB CDs) by him and others at his direction, and bonuses, totaling $3,386,974.50, plus prejudgment interest of $1,768,372.38. At the very least, the Division urges that Comeaux be ordered to disgorge $1,300,000, the amount of ill-gotten gains he is estopped from denying, plus prejudgment interest of $678,742.69. The prejudgment interest proposed by the Division was calculated from January 1, 2005, through March 28, 2013. The Division also argues that a maximum third-tier civil penalty should be imposed.

Comeaux asserts his inability to pay disgorgement, interest, or penalties and urges that monetary sanctions are inappropriate in light of the public interest factors, his history of cooperation, and the sanctions already imposed against him as part of the offer of settlement. In the event that it is found that monetary sanctions are warranted, Comeaux asserts that disgorgement should be limited to $1,300,000 and that prejudgment interest and civil penalties are not in the public interest.

C. Exhibits Admitted into Evidence

The following items which are included in the parties' pleadings, are admitted:

Declaration of Karyl Van Tassel (Div. Ex. A);

Stanford Financial Receivership, Payment Activity for Jay Comeaux (Div. Ex. KVT-7);

Affidavit of Jay T. Comeaux (Resp. Ex. A); and

Summary Financial Disclosure Statement (Resp. Ex. C).

[1] Comeaux filed a Response to the Division's Motion (Response) on April 29, 2013, and the Division filed a Reply in Support of its Motion (Reply) on May 13, 2013.

Comeaux moves for the issuance of a protective order against disclosure of his Summary Financial Disclosure Statement, Respondent Exhibit C, to the public or any party other than the Division. See 17 C.F.R. §§ 201.322(a), .630(c). The exhibit will be subject to a protective order pursuant to 17 C.F.R. § 201.322. Although the record in an administrative proceeding is presumed to be public, the harm resulting from disclosure of Comeaux's financial situation outweighs the benefits. See 17 C.F.R. § 201.322(b). Disclosure of financial information concerning an individual is presumed harmful. It is specifically limited in various statutes, for example, Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and the Privacy Act, 5 U.S.C. § 552a. There is no benefit from disclosure in this case.

II. FINDINGS OF FACT

For purposes of this ID and pursuant to the offer of settlement, the findings and facts set forth in the OIP are deemed true and incorporated herein.

Comeaux received ill-gotten gains of $3,386,974.50 between January 15, 2005, and February 13, 2009. These ill-gotten gains are comprised of $1,141,362.90 of compensation, $1,133,186.59 of commissions, and $1,112,425.01 of bonuses[2] causally related to the sale of SIB CDs by Comeaux and those within his control. Div. Ex. A at 5-7.

Comeaux currently has $1,435,236 in assets frozen and subject to the control of a court appointed receiver. Resp. Ex. A at 2; Response at 11; Reply at n.1. He has not had access to these assets, or the income generated from them, but has paid taxes on the income each tax year since the assets were frozen. Resp. Ex. A at 2. The undersigned has reviewed Respondent Exhibit C, which includes information relating to Comeaux's net worth, and concluded that he does have the financial ability to pay disgorgement plus prejudgment interest.

III. SANCTIONS

The Division requests disgorgement plus prejudgment interest and a maximum third-tier civil money penalty. As discussed below, Comeaux will be ordered to disgorge $3,386,974.50 plus prejudgment interest, less the value of any assets subject to the control of the court-appointed receiver, as determined at the time of entry of a final order in this matter. No civil monetary penalty is warranted.

A. Disgorgement

Sections 8A(e) of the Securities Act, 21B(e) and 21C(e) of the Exchange Act, 203(j) of the Advisers Act, and 9(e) of the Investment Company Act authorize disgorgement of ill-gotten gains from Comeaux. Disgorgement is an equitable remedy that requires a violator to give up

[2] The $1,112,425.01 is comprised of $778,736.70 representing the quarterly bonuses related to the sale of SIB CDs plus $333,688.31 of bonuses directly related to the sale of SIB CDs. Div. Ex. A at 6-7.

wrongfully-obtained profits causally related to the proven wrongdoing. See SEC v. First City Fin. Corp., Ltd., 890 F.2d 1215, 1230-32 (D.C. Cir. 1989); see also Hateley v. SEC, 8 F.3d 653, 655-56 (9th Cir. 1993). It returns the violator to where he would have been absent the violative activity.

The Commission has the authority to order disgorgement of salary. Rita J. McConville, Exchange Act Release No. 51950 (June 30, 2005), 85 SEC Docket 3127, 3151 n.64. However, it has distinguished between amounts earned through legitimate activities and those connected to violative activities, and it falls on the Division to show what a reasonable approximation of the salary was unjust enrichment. See Gregory O. Trautman, Securities Act Release No. 9088A (Dec.15, 2009), 97 SEC Docket 23492, 23529-32 (finding that all of respondent's salary was not a reasonable measure of his unjust enrichment, but that fifty percent was related to illegitimate revenues earned through violative conduct).

The amount of the disgorgement ordered need only be a reasonable approximation of profits causally connected to the violation. See Laurie Jones Canady, Exchange Act Release No. 41250 (Apr. 5, 1999), 69 SEC Docket 1468, 1487 n.35 (quoting SEC v. First Jersey Sec., Inc., 101 F.3d 1450, 1475 (2d Cir. 1996)), petition for review denied, 230 F.3d 362 (D.C. Cir. 2000); see also SEC v. First Pac. Bancorp, 142 F.3d 1186, 1192 n.6 (9th Cir. 1998) (holding disgorgement amount only needs to be a reasonable approximation of ill-gotten gains); accord First City Fin. Corp., Ltd., 890 F.2d at 1231-32.

The Division asserts that Comeaux should be ordered to disgorge $7,457,985.83 plus prejudgment interest. Div. Ex. KVT-7. This amount is inappropriate because it includes payments to Comeaux from SGC that were earned through legitimate activities. The portions earned through legitimate activities do not have a causal relationship to Comeaux's wrongdoing and, therefore, requiring they be disgorged would be punitive, not equitable.

It is reasonable to conclude that Comeaux's misconduct unjustly enriched him by $3,386,974.50, the amount of ill-gotten gains that are causally related to the violative activities during the Relevant Period. This amount includes reasonable approximations of payroll compensation, commissions, and bonuses directly related to the sale of SIB CDs by Comeaux and others at his direction.

Rule 600 of the Commission's Rules of Practice, 17 C.F.R. § 201.600, provides that interest on the sum to be disgorged shall be due from the first day of the month following each violation through the last day of the month preceding the month in which payment of disgorgement is made. 17 C.F.R. § 201.600(a). Interest on the sum to be disgorged is computed at the underpayment rate of interest established by the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), and shall be compounded quarterly. Prejudgment interest in this matter will be calculated from March 1, 2009.

Disgorgement shall be fixed at $3,386,974.50 plus prejudgment interest at the rate established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), compounded quarterly, pursuant to 17 C.F.R. § 201.600(b). Pursuant to the OIP, the disgorgement amount shall be reduced by the value of Comeaux's assets, determined at the time

of entry of a final order in this matter, that are subject to the control of the court-appointed receiver.

B. Civil Money Penalty

Sections 21B of the Exchange Act, 203(i) of the Advisers Act, and 9(d) of the Investment Company Act authorize the Commission to impose civil money penalties for willful violations of the Securities, Exchange, Advisers, or Investment Company Acts or rules thereunder. In considering whether a penalty is in the public interest, the Commission may consider six factors: (1) fraud; (2) harm to others; (3) unjust enrichment; (4) previous violations; (5) deterrence; and (6) such other matters as justice may require. See Sections 21B(c) of the Exchange Act, 203(i)(3) of the Advisers Act, and 9(d)(3) of the Investment Company Act; New Allied Dev. Corp., 52 S.E.C. 1119, 1130 n.33 (1996); First Sec. Transfer Sys., Inc., 52 S.E.C. 392, 395-96 (1995); see also Jay Houston Meadows, 52 S.E.C. 778, 787-88 (1996), aff'd, 119 F.3d 1219 (5th Cir. 1997); Consol. Inv. Servs., Inc., 52 S.E.C. 582, 590-91 (1996).

It is undisputed that Comeaux violated the antifraud provisions, so his violative actions "involved fraud [and] reckless disregard of a regulatory requirement" within the meaning of Sections 21B(b)(3) of the Exchange Act, 203(i)(2)(C) of the Advisers Act, and 9(d)(2)(C) of the Investment Company Act.

However, penalties are not in the public interest in this case. Penalties in addition to the other sanctions imposed on Comeaux are unnecessary for the purpose of deterrence. See Sections 21B(c)(5) of the Exchange Act, 203(i)(3)(E) of the Advisers Act, and 9(d)(3)(E) of the Investment Company Act; see also H.R. Rep. No. 101-616 (1990). The Division requests that Comeaux be ordered to pay third-tier penalties, while Comeaux argues that civil monetary penalties are unnecessary. Penalties are not in the public interest because, although Comeaux's violative acts involved fraud and resulted in the risk of substantial losses to other persons and gains to himself, mitigating factors are present. See Sections 21B(b)(3) of the Exchange Act, 203(i)(2)(C) of the Advisers Act, and 9(d)(2)(C) of the Investment Company Act. Substantial penalties have already been imposed against Comeaux; he consented to a cease-and-desist order and a permanent industry bar and is being ordered to pay disgorgement plus prejudgment interest. These sanctions are more than sufficient to serve as deterrence from committing the violations proven in this proceeding. Further, Comeaux has not previously violated the federal securities laws; he has recognized the wrongful nature of his conduct; he has been permanently deprived of the ability to work in the securities industry and, therefore, future employment will not present opportunities for him to violate the securities laws; and he was not a principal actor in the creation and concealment of the Ponzi scheme operated by R. Allen Stanford, the owner of his former employer.

VI. ORDER

IT IS ORDERED that, Respondent Exhibit C, Jay T. Comeaux's Summary Financial Disclosure Statement, shall be maintained under seal by the Securities and Exchange Commission's Office of the Secretary;

IT IS FURTHER ORDERED that, pursuant to Sections 8A(e) of the Securities Act, 21B(e) and 21C(e) of the Exchange Act, 203(j) of the Advisers Act, and 9(e) of the Investment Company Act, Jay T. Comeaux disgorge $3,386,974.50, reduced by the value of his assets under the control of the court-appointed receiver in SEC v. Stanford, as determined at the time of entry by the Commission of a final order in this administrative proceeding, plus prejudgment interest at the rate established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), compounded quarterly, pursuant to 17 C.F.R. § 201.600(b). Pursuant to 17 C.F.R. § 201.600(a), prejudgment interest is due from March 1, 2009, through the last day of the month preceding which payment is made.

Payment of penalties and disgorgement plus prejudgment interest shall be made on the first day following the day this Initial Decision becomes final. Payment shall be made by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission. The payment, and a cover letter identifying the Respondent(s) and Administrative Proceeding No. 3-15002, shall be delivered to: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Bld., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

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(h) of the Commission's Rules of Practice, 17 C.F.R. § 201.111(h). 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.

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Carol Fox Foelak
Administrative Law Judge