

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 69746 / June 12, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-14207

In the Matter of	:	
	:	ORDER MAKING FINDINGS AND
	:	DENYING PRIVILEGE TO APPEAR
DAVID M. TAMMAN, ESQ.	:	OR PRACTICE BEFORE THE
	:	COMMISSION BY DEFAULT

Background

The Securities and Exchange Commission (Commission) initiated this proceeding with an Order Instituting Administrative Proceedings Pursuant to Section 4C of the Securities Exchange Act of 1934 (Exchange Act) and Rule 102(e) of the Commission's Rules of Practice (OIP) on January 27, 2011. The OIP alleges improper professional conduct by David M. Tamman, Esq. (Tamman), a member of the California Bar, from approximately May 2003 through October 2009, in connection with the preparation of private placement memoranda for NewPoint Financial Services, Inc., and that Tamman: (1) is subject to discipline pursuant to the two authorizing provisions; and (2) has violated California Business and Professions Code § 6106, California's Rules of Professional Conduct § 5-220, and 18 U.S.C. § 1519. Tamman denied most of the allegations in the OIP in his Answer filed on February 22, 2011. I held a prehearing conference on March 15, 2011, and set a hearing date of June 13, 2011.

On April 8, 2011, I granted a request by the Office of the General Counsel (General Counsel) to amend the OIP, and stayed the proceeding at the request of the U.S. Attorney for the Central District of California (U.S. Attorney), but I allowed Tamman twenty days to file an Answer to the amended OIP, which he did on April 18, 2011. David M. Tamman, Esq., Administrative Proceedings Rulings Release No. 670, 100 SEC Docket 40120.

On January 5, 2012, I granted the U.S. Attorney's request and continued the Stay, pending resolution of an indictment handed down on December 7, 2011, charging Tamman with ten felony counts that included obstruction of justice in U.S. v. Farahi, CR No. 11-1165-SVW (C.D. Cal.). I continued the Stay on June 8, 2012.

At a prehearing conference on November 28, 2012, General Counsel confirmed that Tamman had been convicted on November 13, 2012, of ten felony counts in Farahi, as it had stated in a motion filed on November 19, 2012. Tamman's counsel did not challenge General Counsel's representation. On General Counsel's representation that the U.S. Attorney no longer wanted the

Stay, I lifted the Stay, granted General Counsel leave to file a motion for summary disposition, and ordered a procedural schedule that called for a motion by General Counsel, a brief in opposition by Tamman, and a reply brief by General Counsel.

Pursuant to that schedule, on April 4, 2013, General Counsel filed a Motion for Summary Disposition and for an Order Permanently Disqualifying Tamman from Appearing and Practicing Before the Commission, Including Statements of Points and Authorities (Summary Disposition Motion). The Summary Disposition Motion contains the Declaration of Scharn Robinson, Senior Counsel, General Counsel, which provides background on Exhibits 1 through 6A to the Summary Disposition Motion and the volumes of exhibits and transcript from the criminal trial.¹ Tamman did not file a brief in opposition, which was due on April 26, 2013.

On May 2, 2013, General Counsel filed a Motion for Judgment by Default and for Order Permanently Disqualifying Tamman from Appearing and Practicing Before the Commission, Including Statement of Points and Authorities (Default Motion), with Attachment 1 and with Exhibits A through D.² Tamman did not file an opposition.

Rulings

I accept into evidence the evidentiary material attached to both General Counsel motions.

Commission Rule of Practice 155 allows for defaults where a person fails to answer a dispositive motion. 17 C.F.R. § 201.155. That is true here. Tamman has failed to oppose the General Counsel's Summary Disposition Motion and Default Motion.

The evidence shows that the allegations in the OIP are true. Following an eight day bench trial in Farahi, Judge Philip S. Gutierrez found as to Tamman:

The Court finds the defendant guilty on Count 27, in violation of Title 18 U.S.C. 371, 1512(k): Conspiracy to Obstruct Justice. The Court further finds that the objects of the conspiracy, that the defendant knowingly combined, conspired and agreed to commit the following offenses against the United States: first, to corruptly obstruct, influence, and impede, and attempt to obstruct, influence, and impede, an official proceeding, which need not be pending or about to be

¹ Exhibit 1 is the April 8, 2011, Order amending the OIP; Exhibit 2 is the Verdict Minutes in Farahi, November 13, 2012, Exhibit 3 is the First Superseding Indictment in Farahi, June 2011, Exhibits 4-5 are FBI Forms 302 from the Farahi criminal trial record, and Exhibits 6-6A are decisions in Hartley T. Bernstein, 263 A.D.2d 100 (N.Y. App. Div. 1999) and Marc A. Bernstein, 63 A.D.3d 87 (N.Y. App. Div. 2009). The materials were furnished in hard copy and on a CD.

² Attachment 1 is the amended OIP; Exhibit A is the General Counsel's Brief in Support of Motion to Amend the OIP Pursuant to Rule 200(d)(2) of the Commission's Rules of Practice; a second Exhibit A is portions of investigative testimony taken on September 7, 2010; Exhibit B is an e-mail and an Unsecured Revolving Note form; Exhibit C is an e-mail; and Exhibit D is a Commission filing in Application to Enforce Administrative Subpoenas of the Securities and Exchange Commission v. Nixon Peabody LLP and David M. Tamman, CV 09-8006 (JFW) (C.D. Cal. Nov. 2, 2009).

instituted at the time of the offense, in violation of Title 18, United States Code, Section 1512 (c)(2); and two, to knowingly alter, destroy, mutilate, conceal, cover up, falsify, and make a false entry in any record, document, or tangible object with the intent to impede, obstruct, and influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States, and in relation to and contemplation of any such matter, in violation of Title 18, United States Code, Section 1519.

As to Counts 28 through 32, in violation of Title 18, United States Code, Section 1519, 2: Destruction, Alteration, Falsification of Records, the Court finds the defendant guilty. As to Counts 29 through 32, the Court finds the defendant guilty.

Court finds the defendant guilty, and further finds that the defendant knowing that an offense against the United States had been committed, namely Mail Fraud in violation [of] Title 18, United States Code, Section 1341, and securities law offenses, in violation of Title 15 United States Code, 77e and 77x, received, relieved, comforted and assisted the offenders, including John Farahi and [New Point Financial Services, Inc.], in order to hinder and prevent the offenders' apprehension, trial, and punishment, in violation of Title 18, United States Code, Section 3.

As to Counts 36, 37, and 38 in violation of Title 18, United States Code, Sections 1512(c)(2): Obstruction of Justice, the Court finds the defendant guilty.

Summary Disposition Motion, Ex. 2, Verdict Minutes in Farahi, November 13, 2012.

The evidence in this record shows the allegations in the OIP are true, and Tamman, an attorney, engaged in improper professional conduct. Tamman knowingly relieved, comforted and assisted persons who committed securities law offenses in violation of Title 15 United States Code, 77e and 77x, and he violated 18 U.S.C. § 1519. See OIP at 3-4. Tamman's criminal conviction demonstrates that his conduct violated California's Business and Professions Code § 6106 and Rules of Professional Conduct § 5-220, as alleged in the OIP. Finally, where a person is in default, the Commission's Rules of Practice provide that the allegations in the OIP may be deemed to be true. 17 C.F.R. § 201.155(a).

Exchange Act Section 4C provides that the Commission may deny to any person the privilege of appearing or practicing before the Commission if the person, among other things, has engaged in unethical or improper professional conduct, and Commission Rule of Practice 102(e)(1)(ii) provides that the Commission may censure a person or deny the privilege of appearing before the Commission in any way to a person found "to be lacking in character or integrity or to have engaged in unethical or improper professional conduct." 17 C.F.R. § 201.102(e)(1)(ii). The Commission considers public interest considerations in making determinations pursuant to Section 4C of the Exchange Act. See Steven Altman, Esq., Exchange Act Release No. 63306 (Nov. 10, 2010) 99 SEC Docket 34405, 34434-35. The criteria for making a public interest determination are set out in Steadman v. SEC, 603 F.2d 1126 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). The fact that Tamman's conduct was egregious and recurrent, and that he acted with

scienter is evident from the nature of the ten felony counts for which he was convicted.³ There is nothing in the record that shows he appreciates the wrongful nature of his conduct and he has made no assurances against future violations. The nature and number of criminal violations and consideration of the public interest factors both demonstrate that Tamman should not be allowed the privilege of appearing or practicing before the Commission.

Order

I GRANT the General Counsel's Default Motion and ORDER, pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, that Tamman is DENIED the privilege of appearing or practicing before the Commission.

Brenda P. Murray
Chief Administrative Law Judge

³ The OIP alleges that the violations occurred from approximately May 2003 through October 2009.