

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77225 / February 24, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17131

In the Matter of

MARK A. LOPEZ,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF
THE SECURITIES EXCHANGE ACT
OF 1934
AND NOTICE OF HEARING

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Mark A. Lopez (“Respondent”).

II.

After an investigation, the Division of Enforcement alleges that:

A. BACKGROUND

1. Respondent, age 51, presently resides at the Sheridan Federal Correction Institute in Sheridan, Oregon, where he is registered as prisoner number 37216-298. During the time in which he engaged in the conduct underlying the below-described consent judgment and criminal plea agreement, Respondent was a resident of San Diego, California.

2. From September 2004 through June 2012, Respondent was the Chief Executive Officer of Unico, Inc. (“Unico”), an Arizona corporation with its headquarters in San Diego, California, which was in the mining business.

3. From December 2001 through October 2008, Respondent was a vice president of investments with Ashton Capital Management, Inc. (“Ashton Capital”), a now-defunct registered broker-dealer; he was also a registered investment adviser from December 2001 through February 2007. Respondent held Series 7, 24, 63 and 65 licenses from FINRA during the entire time he was associated with Ashton Capital.

B. ENTRY OF THE INJUNCTION

4. On February 10, 2015, in the civil action titled Securities and Exchange Commission v. Mark A. Lefkowitz, et al., Civil Action Number 8:12-CV-1210 (M.D. Fla.), a final judgment was entered by consent against Respondent, permanently enjoining him from violating Sections 5(a) and 5(c) of the Securities Act of 1933 (“Securities Act”) and from aiding and abetting violations of Exchange Act Section 13(a) and Rules 12b-20, 13a-1, and 13a-11 thereunder, and permanently barring him from participating in any offering of penny stock.

5. The Commission’s complaint alleged that, on thirty five (35) separate occasions, beginning February 2006 and ending January 2008, Respondent was a necessary participant and substantial factor in the unregistered distribution of approximately 9 billion shares of Unico common stock, which purported to, but, did not qualify for the exemption from registration contained in Securities Act Section 3(a)(10). Specifically, as alleged, thirty-four (34) uncontested lawsuits were filed against Unico by domestic and offshore entities affiliated with Mark A. Lefkowitz (“Lefkowitz”), and one lawsuit was filed against Unico by Sequoia International, Inc. (“Sequoia”) under the false pretext of settling past-due convertible debentures owed by Unico, but for the real and impermissible purpose of raising capital for Unico. The complaint alleged the following with respect to all thirty five lawsuits: Respondent had agreed to the settlement terms of each lawsuit before it was filed. The core terms and conditions of each settlement agreed to by Respondent included the following: (i) Unico would settle each lawsuit with unrestricted shares of common stock, (ii) shares would be issued at a substantial discount to market causing the aggregate market value of the settlement shares to grossly exceed the amount of debt being settled and the amount provided for under the default provision of each debenture, and (iii) after the shares were sold, the Lefkowitz-affiliated entities and Sequoia would remit a portion of the sales proceeds to Unico. A fairness hearing was held in all thirty-five lawsuits, as is required by Section 3(a)(10), but the court was not informed of the foregoing terms and conditions; instead, in papers signed by Respondent, the court was told that “no promise or representation of any kind has been made [by the parties] except as expressly stated in [the papers presented to the court].” Further, with respect to the thirteen (13) lawsuits filed between October 2006 and January 2008, those suits were not based on bona fide debts of Unico. Unaware of the core terms and conditions of the settlements, the Florida court approved the settlements and granted a Section 3(a)(10) exemption in all thirty-five instances, resulting in the unregistered issuance of over 9 billion shares of Unico common stock. The complaint alleged that, through these unregistered issuances, Unico

extinguished approximately \$4 million of outstanding debts, and raised capital of approximately \$9.2 million.

6. The Commission's complaint also alleged that Respondent aided and abetted (i) Unico's failure to file timely reports with the Commission on Forms 8-K and (ii) Unico's filing of false and misleading disclosures with the Commission concerning, among other things, the unregistered issuance of shares of Unico common stock. Specifically, on or about June 13, 2007, Respondent signed and certified Unico's Form 10-K for the fiscal year ended February 28, 2007, which falsely identified (i) \$2,525,000 of the proceeds received from the sale of 3(a)(10) settlement shares as from "the issuance of convertible debentures," (ii) \$750,000 of the proceeds as amounts "resulting from an adjustment in the stock price subsequent to the court ordered settlement," and (iii) \$999,000 of the proceeds as being from "stock payable." On or about June 2, 2008, Respondent signed and certified Unico's Form 10-K for the fiscal year ended February 29, 2008, which falsely identified (i) \$68,000 of the proceeds as being the result of "an adjustment in stock price subsequent to the court ordered settlement," and (ii) \$4,814,854 of the proceeds as proceeds from the sales of convertible debentures.

C. RESPONDENT'S CRIMINAL CONVICTION

7. On February 27, 2015, Respondent pleaded guilty to one count of conspiring to commit securities fraud in violation of 18 U.S.C. § 1349, in the related criminal action titled United States v. Mark Anthony Lopez, 12-CR-5236 (S.D. Cal.). In support of his guilty plea, Respondent admitted that, beginning in or about December 2006, he agreed with a co-conspirator and others to execute a scheme to defraud Unico's shareholders and others by deceptively using the Securities Act Section 3(a)(10) exemption from registration in order to issue, and then sell on the open market, new shares of Unico common stock, and to "split the proceeds." Pursuant to that agreement, on or about December 7, 2006, the co-conspirators caused Sequoia to file a complaint against Unico in the Florida court, giving the appearance that Unico was contesting its liability under a convertible debenture with a face value of \$500,000. On the same day, Respondent executed settlement documents on Unico's behalf, in which the lawsuit was settled for 350 million shares of Unico common stock, worth approximately \$2,670,500. Respondent and his co-conspirator knowingly concealed this information from the court. Respondent and his co-conspirator also knowingly concealed from the court and Unico's shareholders the existence of the agreement to pay Unico a portion of the stock sale proceeds and thus that Unico was misusing the Section 3(a)(10) exemption to procure shares of stock that could not otherwise be issued. Sequoia paid over \$1,067,000 in proceeds to Unico pursuant to the agreement with Respondent. On or about July 16, 2007, Respondent also signed and filed with the Commission on Unico's behalf a Form 10-QSB, which falsely represented that \$68,000 of the proceeds represented an "adjustment in the stock price subsequent to the court-ordered settlement," instead of truthfully explaining that these funds were payment pursuant to the prior agreement to share proceeds. In causing such language to be included in Unico's public filing, Respondent intended to deceive Unico's shareholders into believing that the Florida case filed by Sequoia was a bona fide, arms-length lawsuit in which a judge made a fairness determination based on all information required to qualify for a Section 3(a)(10) exemption from registration. Further, through this conspiracy, Respondent and his co-conspirator defrauded more than 100 Unico

shareholders by diluting their investments through the unregistered issuance of millions of shares of Unico common stock. Respondent used the sales proceeds that were remitted to Unico for a number of expenses, including to pay his own salary of \$210,399.

8. On August 21, 2015, the criminal court entered judgment against Respondent. He was sentenced to a prison term of twenty-four months, to be followed by five years of supervised released; payment of a criminal fine was waived.

9. On December 7, 2015, the criminal court ordered Respondent to pay restitution to victims in the amount of \$835,536.69. The criminal court made Respondent jointly and severally liable for the \$835,536.69 with Lefkowitz, who was ordered on November 20, 2015, to pay restitution in the same amount, for the same victim losses, in United States v. Mark A. Lefkowitz, 12-cr-4714 (S.D. Cal.). Respondent has filed a notice of appeal with respect to the restitution order.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary