

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

In the Matter of :
: SUPPLEMENTAL INITIAL DECISION
JOSÉ P. ZOLLINO : March 2, 2006

APPEARANCES: J. Kevin Edmundson for the Division of Enforcement,
Securities and Exchange Commission

Respondent José P. Zollino, pro se

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Supplemental Initial Decision bars José P. Zollino (Zollino) from association with a broker-dealer or with an investment adviser. The basis for the bars is Zollino's conviction of conspiracy to commit fraud and money laundering and injunction against violating the antifraud provisions of the securities laws. Those judgments were based on his wrongdoing in an investment scheme located in San Antonio, Texas.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) against Zollino on July 7, 2004, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). On September 23, 2004, the undersigned issued an Initial Decision barring Zollino from association with any broker, dealer, or investment adviser, based on his having been convicted of conspiracy to commit fraud and conspiracy to launder monetary instruments and enjoined against violations of the antifraud provisions of the federal securities laws. José P. Zollino, 83 SEC Docket 3058 (A.L.J. Sept. 23, 2004). The Initial Decision was issued pursuant to 17 C.F.R. § 201.250 and was based on Zollino's August 2, 2004, Answer to the OIP and the August 17, 2004, Motion of the Division of Enforcement (Division) for Summary Disposition

and responsive pleadings.¹ Zollino filed a petition for review, and the Commission remanded the proceeding to the undersigned for further consideration. José P. Zollino, 85 SEC Docket 1292 (Apr. 29, 2005). Specifically, the Commission directed that the undersigned hold a prehearing conference, as Zollino had previously requested, and determine whether he has had a reasonable opportunity to review the Division's investigative file and whether he should be permitted to present mitigative evidence and additional arguments in response to the Division's motion for summary disposition. Thereafter, the undersigned ordered that a prehearing conference be held after Zollino had reviewed the investigative file. José P. Zollino, Admin. Proc. No. 3-11536 (A.L.J. May 2, 2005) (unpublished). The prehearing conference was held on September 13, 2005, and a briefing schedule was established to enable Zollino to present mitigative evidence and additional arguments.

This Supplemental Initial Decision is based on the record referenced in the original Initial Decision and the following new material: (1) Zollino's Further Opposition, filed October 20, 2005; (2) the Division's Reply to Respondent's Further Opposition, filed November 14, 2005; and (3) Zollino's Surreply, filed December 29, 2005. There is no genuine issue with regard to any material fact. All material facts that concern the activities for which Zollino was convicted and enjoined were decided against him in the criminal and civil cases on which this proceeding is based. Any other facts in his pleadings have been taken as true, pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Zollino was convicted of conspiracy to commit fraud and money laundering and enjoined from violating the antifraud provisions of the securities laws, based on his wrongdoing while associated with an investment adviser, InverWorld, Inc. (IW, Inc.), and a broker-dealer, InverWorld Securities, Inc. (IW Securities) (collectively, "InverWorld"). The Division urges that he be barred from association with any broker-dealer or investment adviser.

Zollino admits the facts of his conviction, injunction, and sentence. He denies several allegations of specific facts in the OIP, including the allegations that the clients of IW, Inc., were predominantly Mexican nationals, that his conviction arose out of his involvement in the fraudulent activities of InverWorld, and allegations that purport to describe the misdeeds of InverWorld in handling client investments. Thus, he argues, there are genuine issues of material fact such that the Division's motion for summary disposition must be denied. Further, he states that no document in the Division's investigative file is relevant to the Commission's charges against him and faults the undersigned for having failed to examine the investigative file to discover the complete lack of evidence against him. Additionally, he argues that the Commission does not have jurisdiction over the matters alleged in its case against him as no relevant conduct took place in the United States or involved U.S. investors. In sum, he requests that the proceeding be dismissed for lack of jurisdiction and lack of evidence.

¹ Zollino filed an Opposition, the Division filed a Reply on September 2, 2004, and Zollino filed an Amended Opposition on September 13, 2004.

C. Procedural Issues

1. Exhibits Admitted into Evidence

The following items included in Zollino's Further Opposition, at Exhibits A through O, are admitted as Respondent Exhibits AA, BB, and C through O:

August 18, 1999, Declaration of Ignacio Negrete Perales (Resp. Ex. AA);

August 1999 Declaration of Antonio Abascal (Resp. Ex. BB);

August 1999 Declaration of Yolanda J. Ceballos (Resp. Ex. C);

August 1999 Declaration of Jorge I. Gimeno (Resp. Ex. D);

August 1999 Declaration of Ana M. Yañez (Resp. Ex. E);

August 20, 1999, Declaration of Agustin M. Ceballos (Resp. Ex. F);

August 19, 1999, Declaration of Edith Gonzalez (Resp. Ex. G);

August 1999 Declaration of Cecilia Gaxiola (Resp. Ex. H);

August 11, 1997, Affidavit of Mark F. Novak (Resp. Ex. I);

July 9, 1999, Affidavit of Mark Francis Novak (Resp. Ex. J);

July 1999 draft Declaration of Mauricio Hernandez Chavez and associated fax messages (Resp. Ex. K);

August 3, 1999, Declaration of Farol Parco (Resp. Ex. L);

Draft Declaration (unsigned) of Len B. Blackwell dated August 1999 (Resp. Ex. M);

Fifteen-page document entitled "Statement of Assumed Facts as of August 7, 2000 for Professor Jay Westbrook as Special Counsel/Examiner for Limited Purpose to Provide a Report Regarding Proprietary Rights" (Resp. Ex. N); and

October 5, 2005, Affidavit of José Zollino (Resp. Ex. O).

2. Collateral Estoppel

Zollino is foreclosed from arguing that the facts concerning his involvement in the criminal wrongdoing are not proven. It is well established that the Commission does not permit criminal convictions to be collaterally attacked in its administrative proceedings. See Ira

William Scott, 53 S.E.C. 862, 866 (1998); William F. Lincoln, 53 S.E.C. 452, 455-56 (1998). Even if Zollino is appealing his conviction, the pendency of an appeal does not preclude the Commission from action based on a conviction. See Joseph P. Galluzzi, 78 SEC Docket 1125, 1130 n.21 (Aug. 23, 2002). Similarly, the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent. See Michael J. Markowski, 74 SEC Docket 1537, 1542 (Mar. 20, 2001), pet. denied, No. 01-1181 (D.C. Cir. 2002) (unpublished); John Francis D'Acquisto, 53 S.E.C. 440, 444 (1998); Demitrios Julius Shiva, 52 S.E.C. 1247, 1249 & nn.6-7 (1997).

3. Summary Disposition

The Commission considers summary disposition particularly appropriate in proceedings, such as this one, that are based on a respondent's conviction for fraud. Galluzzi, 78 SEC Docket at 1128 n.15; John S. Brownson, 77 SEC Docket 3636, 3640 (July 3, 2002), pet. denied, 66 Fed. Appx. 687 (9th Cir. 2003) (unpublished).

II. FINDINGS OF FACT

A. Initial Decision

The following facts were found in the Initial Decision, which contains citations to the record. See José P. Zollino, 83 SEC Docket at 3061-62. As Zollino acknowledged in his Answer: IW, Inc., an investment adviser, and IW Securities, a broker-dealer, were based in San Antonio, Texas; InverWorld Holdings, Inc. (IWH), was a holding company; Zollino controlled 100% of the common stock of IWH, which, in turn, controlled 100% of the shares of IW, Inc., and IW Securities; and Zollino was chairman of the board of directors of IWH, IW, Inc., and IW Securities.

On October 28, 2002, Zollino was convicted, on his plea of guilty, of conspiracy to commit fraud, in violation of 18 U.S.C. § 371, and conspiracy to launder monetary instruments, in violation of 18 U.S.C. § 1956(h). United States v. Zollino, SA-01-CR-180 (W.D. Tex. Oct. 28, 2002). Zollino's wrongdoing occurred from on or about June 1993 to on or about June 1999. His wrongdoing involved InverWorld's misdeeds concerning client investments.² Zollino was

² Specifically, InverWorld sold various investments to clients, used the clients' funds or investments in unauthorized ways, and issued false account statements to the clients. When InverWorld ceased operations, the difference between the value of client investments as represented in the account statements and the value of assets actually held was approximately \$325 million. Additionally, InverWorld engaged in a series of circular financial transactions designed to conceal its true condition from its auditors, clients, and counterparties. Zollino controlled InverWorld's policies and practices and exercised ultimate decision-making authority. At his May 15, 2002, plea hearing, Zollino affirmatively agreed that these facts are essentially true and that the government could prove them, while continuing to dispute the government's \$325 million loss figure. Zollino and his family lost more than \$13 million in the collapse of InverWorld.

sentenced to 144 months in prison and ordered to pay restitution of \$341,787,496. He has been incarcerated since January 2001. In connection with the same facts underlying the criminal proceeding, Zollino was also permanently enjoined from violating the antifraud provisions of the Securities Act of 1933, Exchange Act, and Advisers Act. SEC v. InverWorld, Inc., SA-99-CA-0822 (W.D. Tex. Jan. 7, 2004). Zollino is appealing the conviction and injunction.

B. Supplemental Material

A prehearing conference was held on September 13, 2005, at which Zollino confirmed that he had reviewed the Division's investigative file. He ascertained that the Initial Decision was based on the papers filed in the proceeding and confirmed that the undersigned had not reviewed the Division's investigative file. He urged that this showed insufficient due process, arguing that no document in it linked him to any wrongdoing. He also argued that the Commission had no jurisdiction in this matter because, whatever may have occurred off-shore, the companies in the United States themselves committed no violations.

Zollino provided several declarations and affidavits to support his contention that no allegedly violative acts occurred within U.S. jurisdiction.³ Respondent Exhibits BB and C-H are statements by several customers living in Mexico that they met with financial advisers in Mexico and invested through accounts with non-U.S. companies IWG Services, Ltd., I.G. Services, Ltd., or predecessors, and never believed or expected that U.S. laws would apply to their investments. Respondent Exhibit AA is the Declaration of a financial adviser in Mexico that provides context for the customer statements. Respondent Exhibits I, J, M, and N are statements about the nature of the services provided by IW, Inc., and IW Securities to IWG Securities, Ltd., and the other non-U.S. companies. Zollino also argues that there is no evidence of fraud, material misrepresentations or omissions by him or participation in unlawful activities or evidence of his diverting client funds, stating that the Division does not identify a single instance where he made a misrepresentation to an investor or encouraged someone else to do so. Finally, he argues that there is no evidence that any purported violation could recur due to the liquidation of IW, Inc., and IW Securities.

III. CONCLUSIONS OF LAW

Zollino has been convicted, within ten years of the commencement of this proceeding, of a felony that "involves the purchase or sale of any security" within the meaning of Sections 15(b)(4)(B) and 15(b)(6)(A)(ii) of the Exchange Act and Sections 203(e)(2) and 203(f) of the Advisers Act. Additionally, he has been permanently enjoined "from engaging in or continuing any conduct or practice in connection . . . with the purchase or sale of any security" within the

³ Zollino states that he and others built, over nearly twenty years, a financial group of companies, including IW, Inc, to serve the needs of foreign investors, primarily Mexican nationals, using reputable law and accounting firms. Unfortunately, he states, due to market reversals in 1999 in Mexico and other emerging markets, companies in which investors had their accounts, IWG Services, Ltd., a U.K. corporation, and I.G. Services, Ltd., a Cayman Islands corporation, became insolvent.

meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act and Sections 203(e)(4) and 203(f) of the Advisers Act.

Zollino is foreclosed from attacking his conviction and injunction in this proceeding. José P. Zollino, 85 SEC Docket at 1295 & n.7. However, his submissions mostly consist of a collateral attack on those judgments. He challenges the underlying facts and argues that the Commission does not have jurisdiction as no violative act took place in the United States.⁴ His argument that the Division's investigative file is devoid of evidence of his wrongdoing is irrelevant to the judgments against him on which this proceeding is based. Finally, he argues that an administrative proceeding such as this one is a meaningless waste of public and private resources if the Division does not have to independently prove the elements of a violation and can merely rely on a previous conviction. Nevertheless, the securities laws specifically provide for this, as quoted above.

IV. SANCTIONS

Zollino will be barred from association with any broker-dealer or investment adviser. This sanction will serve the public interest and the protection of investors, pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act. It accords with Commission precedent and the sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). When the Commission determines administrative sanctions, it considers:

the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Id. (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)).

The unlawful conduct for which Zollino was convicted continued for several years and caused enormous losses. Thus, his actions were recurring and egregious. A high degree of scienter is indicated by Zollino's conviction for fraud. Despite his conviction, on his plea of guilty, he has avoided acknowledging the wrongful nature of his conduct in this proceeding. To the contrary, he has attempted to relitigate the basis for his conviction and judgment. Zollino argues that there is no evidence that any purported violations can recur because of the liquidation of IW, Inc., and IW Securities. Their liquidation, however, does not foreclose the possibility of

⁴ The statutory basis for evaluating the qualifications of persons associated with broker-dealers and investment advisers is not restricted to wrongful conduct within the United States. See Section 15(b)(4)(B) of the Exchange Act and Section 203(e)(2) of the Advisers Act (a bar against association with a broker-dealer or investment adviser in the United States can be based on a conviction in a foreign court of a "substantially equivalent crime" as those listed in those sections).

future violations by Zollino himself, particularly because he controlled them. Although opportunities for future violations will be circumscribed for the next several years, a bar is essential to avoid the possibility of future violations. Prior to his incarceration, Zollino worked in the securities industry for many years. Absent a bar, he will be free to reenter his previous occupation when he regains his freedom.

A bar is consistent with Commission precedent in litigated administrative proceedings based on a respondent's conviction involving fraud. See Galluzzi, 78 SEC Docket 1125; Brownson, 77 SEC Docket 3636; Ted Harold Westerfield, 54 S.E.C. 25 (1999); Scott, 53 S.E.C. 862; Victor Teicher, 53 S.E.C. 581 (1998), aff'd in part and rev'd in part, 177 F.3d 1016 (D.C. Cir. 1999), cert. denied, 529 U.S. 1003 (2000); Lincoln, 53 S.E.C. 452; Meyer Blinder, 53 S.E.C. 250 (1997); Benjamin G. Sprecher, 52 S.E.C. 1296 (1997); Ahmed M. Soliman, 52 S.E.C. 227 (1995). "Absent extraordinary mitigating circumstances, such an individual cannot be permitted to remain in the securities industry." Brownson, 77 SEC Docket at 3640. The Commission remanded the proceeding to allow Zollino to present mitigative evidence and additional arguments. Instead, he continued to attack the judgments against him and presented no mitigative evidence or arguments except to argue that there is no evidence that any purported violation will recur in light of the liquidation of IW, Inc., and IW Securities. In sum, there are no extraordinary mitigating circumstances in this case to warrant a lesser sanction.

Similarly, a bar is consistent with Commission precedent in litigated proceedings against a respondent who has been enjoined from violating the antifraud provisions of the securities laws. See Michael J. Markowski, 74 SEC Docket 1537; Seaboard Investment Advisers, Inc., 54 S.E.C. 1111 (2001); Martin R. Kaiden, 54 S.E.C. 194 (1999); Robert Sayegh, 54 S.E.C. 46 (1999), modified, 54 S.E.C. 289 (1999); John Francis D'Acquisto, 53 S.E.C. 440; Demitrios Julius Shiva, 52 S.E.C. 1247; Timothy Mobley, 52 S.E.C. 592 (1996); David M. Haber, 52 S.E.C. 201 (1995).

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, JOSÉ P. ZOLLINO IS BARRED from association with any broker or dealer.

IT IS FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, JOSÉ P. ZOLLINO IS BARRED from association with any investment adviser.

This Supplemental 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 Supplemental Initial Decision within twenty-one days after service of the Supplemental Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Supplemental Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 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 a manifest error of fact. The Supplemental 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 Supplemental Initial Decision as to a party. If any of these events occur, the Supplemental Initial Decision shall not become final as to that party.

Carol Fox Foelak
Administrative Law Judge