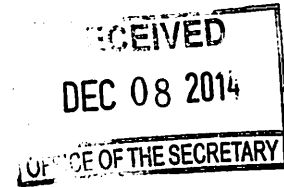


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**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

ADMINISTRATIVE PROCEEDING
File No. 3-15737

In the Matter of :
:
THOMAS C. GONNELLA, :
:
Respondent. :
_____ :



THE DIVISION OF ENFORCEMENT'S PETITION FOR REVIEW

Nicholas A. Pilgrim
Senior Trial Counsel
Securities and Exchange Commission
New York Regional Office
Brookfield Place
200 Vesey Street
New York, NY 10281
Tel. (212) 336-0924
pilgrimn@sec.gov

Daniel Michael
Assistant Regional Director
Securities and Exchange Commission
New York Regional Office
Brookfield Place
200 Vesey Street
New York, NY 10281-1022
Tel. (212) 336-1313
michaeld@sec.gov

Attorneys for the Division of Enforcement

Pursuant to the Commission's Rule of Practice 410(b), the Division of Enforcement ("Division") hereby petitions the Commission for review of the Initial Decision issued by Administrative Law Judge James E. Grimes on November 13, 2014. The Division seeks review under Rule of Practice 411(b)(2)(ii)(C) of the length of the collateral and penny-stock suspensions imposed against Respondent Thomas C. Gonnella ("Gonnella").

BACKGROUND

The proceedings instituted against Gonnella concern a parking scheme undertaken by Gonnella in 2011. Barclays, his employer at the time, had an "aged-inventory policy" which provided that if a trader held a security in his trading book in excess of three months, the trader's trading book would accrue monthly charges.

To avoid these charges, which could adversely impact his bonus, Gonnella pre-arranged to sell and then quickly repurchase twelve bonds at prices designed to compensate the counterparty for holding the parked bonds. Gonnella also concealed from his supervisors the pre-arranged nature of the trades, which resulted in guaranteed profits for his counterparty at the expense of Gonnella's employer. Based on this conduct, Judge Grimes found that "Gonnella engaged in a fraudulent scheme in which he abused his fiduciary position in order to engage in trades that benefitted him to Barclays's detriment." *Id.* at 16.

Judge Grimes found that Gonnella violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, and aided and abetted and caused Barclays's violation of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder. The Initial Decision ordered Gonnella to cease-and-desist from future violations and to pay civil penalties, and imposed twelve month collateral and penny stock suspensions.

ARGUMENT

The Division seeks review of the imposition of a twelve month industry-wide or collateral suspension and a twelve month penny-stock suspension against Gonnella. While the law judge correctly found that time away from the industry was in the public interest, the Division respectfully submits that the length is inadequate in light of the law judge's findings concerning the extent of Gonnella's misconduct – which involved repeated violations of the anti-fraud provisions of the securities laws – the degree of scienter involved, and Gonnella's failure to recognize the wrongfulness of his conduct.

In the Initial Decision, Judge Grimes found that Gonnella: 1) “breached his fiduciary duty in the course of intentionally defrauding Barclays;” 2) “acted with a high degree of scienter;” 3) “intended to abuse his position of trust to defraud Barclays for his own benefit;” 4) “made extensive efforts to hide this scheme from Barclays;” 5) “has shown no recognition of the wrongfulness of his conduct;” 6) “persists in denying that his conduct was actionable;” 7) “has not provided any assurances that he will not engage in wrongful conduct in the future;” and 8) “will have the opportunity to commit similar wrongful acts in the future.” Initial Decision at 31.

In light of the law judge's findings, twelve month collateral and penny-stock suspensions are insufficiently protective of the public interest. By engaging in egregious misconduct (Initial Decision at 31), Gonnella has shown himself unfit to participate in the securities industry; by failing to recognize the wrongfulness of his actions and providing no assurances that he will not engage in the same or similar conduct, Gonnella poses a high risk of committing future violations.

Judge Grimes found that the “most significant factor weighing against Gonnella is the fact that he intentionally abused his fiduciary position to trade for his own benefit to the

detriment of his employer” and concluded that “[t]his factor alone supports the imposition of a sanction.” Initial Decision at 34. Nonetheless, Judge Grimes imposed a short suspension because “the scheme was necessarily limited in scope” and because Gonnella’s former superiors at Barclays supposedly “continue to hold Gonnella in high regard.” Initial Decision at 34. In fact, the scheme was limited only because Gonnella’s former superiors at Barclays discovered the misconduct – despite Gonnella’s attempts to conceal it by using his personal cell phone to “cover his tracks” (Initial Decision at 20) and by lying to Barclays compliance personnel, his supervisor, and others – and fired him. As Judge Grimes noted: “Although Gonnella’s conduct was not recurrent, I cannot find that it was isolated. On the one hand the relevant events were limited to three sets of trades On the other hand, because Gonnella professes that he did nothing wrong, it is likely that he would have engaged in other similar transactions had he been able to do so.” Initial Decision at 31 n.39.

Although the Initial Decision recognized that Gonnella’s misconduct was only stopped because it was discovered by his employer, Judge Grimes viewed Gonnella’s youth as a mitigating factor “influencing his lack of complete appreciation for the wrongfulness of his conduct” and as a positive attribute that “giv[es] him the chance to learn from his experience and to not engage in future violations.” Initial Decision at 34; *but see In re Thomas C. Kocherhans*, Exch. Act Rel. No. 34-36556, 1995 WL 723989, at *3 (Dec. 6, 1995) (Commission Opinion) (“Participants in the securities industry must take responsibility for compliance with regulatory requirements and cannot be excused for lack of knowledge, understanding, or appreciation of these requirements.”).

The record, however, demonstrates that Gonnella has not learned anything from his experience, as he continues three years later to deny the wrongfulness of his conduct with

explanations that “shade the truth as to critical points” and are “not credible,” “unbelievable,” and “nonsensical.” *Id.* at 10, 21 & 28. Moreover, the Commission has stated in affirming the length of a bar that “[y]outh or inexperience does not excuse a registered representative’s duty to his clients.” *In re Scott Epstein*, Exch. Act Rel. No. 59328, 2009 WL 223611, at *21 (Jan. 30, 2009) (Commission Opinion) (quoting *SEC v. Hasho*, 784 F. Supp. 1059, 1108 (S.D.N.Y. 1992)), *aff’d sub. nom.*, *Epstein v. SEC*, 416 F. App’x 142 (3d Cir. 2010).

For the aforementioned reasons, the Division respectfully requests that the Commission impose permanent collateral and penny-stock bars on Gonnella or, in the alternative, impose bars of sufficient length to effectuate their remedial purpose and protect the public interest. *See, e.g.*, *In re Amsel*, Exch. Act Rel. No. 37092, 1996 WL 169430, at *5 (Apr. 10, 1996) (Commission Opinion) (affirming permanent bar against trader for four month parking scheme conducted “for his own benefit, not the firm’s”).

Dated: December 4, 2014

Respectfully submitted,



Nicholas Pilgrim
Daniel Michael
Attorneys for the Division of Enforcement