

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 63622/December 30, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-14116

In the Matter of	:	
	:	
RALPH W. THOMPSON, JR.	:	ORDER MAKING FINDINGS AND
	:	IMPOSING SANCTIONS BY
	:	DEFAULT

The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP) on November 9, 2010, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act), alleging that Ralph W. Thompson, Jr. (Thompson), was enjoined from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act), Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5 in SEC v. Novus Techs., LLC, No. 2:07-cv-00235 (D. Utah Oct. 20, 2010). The United States Postal Service shows that the OIP sent by certified mail was received by John J.E. Markham, II, Esq. (Markham), on November 12, 2010. Thompson's Answer was due within twenty days of service. See OIP at 2; 17 C.F.R. § 201.220(b).

In a motion filed on November 29, 2010, the Division of Enforcement (Division) represented that Thompson did not object to a bar, but that the parties could not agree to settle the proceedings and Thompson indicated to the Division that he would not file an Answer. I issued an Order on December 2, 2010, postponing the hearing scheduled to begin on December 13, 2010, extending the time for Thompson's Answer to December 15, 2010, and stating that I would default Thompson if he did not file a timely Answer.

On December 22, 2010, the Division filed a Motion for Default and Memorandum of Law in Support with four exhibits (Default Motion). Exhibit A consists of the undated, signed receipts for the OIP sent to Thompson, in care of Markham, at Markham & Reed, One Commercial Wharf West, Boston, MA 02110; Exhibit B is an email on December 9, 2010, from Markham representing that he is authorized to receive service for Thompson; Exhibit C is the Order and Memorandum Decision in SEC v. Novus Techs., LLC, signed by Chief Judge Tena Campbell and filed on October 20, 2010; and Exhibit D is an Order Imposing Injunctive Relief against Thompson, in SEC v. Novus Techs., LLC, signed by Chief Judge Tena Campbell and filed on October 20, 2010.

The Division recommends that Thompson be barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or

nationally recognized statistical rating organization, or from participating in an offering of penny stock. (Default Motion at 4-7.)

On December 27, Markham filed an appearance on behalf of Thompson and stated that Thompson does not oppose the Default Motion and would have accepted the sanctions voluntarily but that the Commission wanted him to agree not to publicly disagree with the Division's allegations. As of this date, Thompson has not filed an Answer. Accordingly, I GRANT the Default Motion and find the allegations in the OIP are true. See 17 C.F.R. §§ 201.155(a), .220(f).

Findings of Fact and Conclusions of Law

Thompson, age forty-seven, is a Utah resident. (OIP at 1.) He was the managing member, registered agent, and principal of Novus Technologies, LLC (Novus), which claimed to be a business consultant specializing in generating cash flows. (OIP at 1; Default Motion, Ex. C at 1, 3.) Beginning in at least August 2006, Thompson personally participated in the solicitation of investors on behalf of Novus, which was in receivership as of October 20, 2010. (OIP at 1; Default Motion, Ex. C at 1, 4-5.)

On October 20, 2010, an Order Imposing Injunctive Relief was entered by consent against Thompson, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5. See SEC v. Novus Techs., LLC, No. 2:07-cv-00235 (D. Utah). (Default Motion, Ex. D.)

The Commission's complaint in the civil action alleged that Thompson, directly or indirectly, made use of the mails or the means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase and sale of, securities in Novus without being registered as a broker or dealer with the Commission or associated with a broker or dealer registered with the Commission. (OIP at 2.) The Commission's complaint also alleged that, in connection with the sale of Novus securities, Thompson misused and misappropriated investor funds, falsely stated to investors that their funds were secure, indicated to investors that their funds were fully invested and earning returns, and otherwise engaged in a variety of conduct that operated as a fraud and deceit on the investors. (Id.) The complaint also alleged that Thompson sold unregistered securities. (Id.)

In its Order and Memorandum Decision, granting in part and denying in part the Commission's motion for summary disposition, the court found that "Thompson (1) acted as a securities broker-dealer but was not registered, (2) sold unregistered securities, and (3) made material misrepresentations or omitted material information regarding the nature and value of those securities."¹ (Default Motion, Ex. C at 2.) The Court found further that the promissory notes and joint venture agreements that Thompson offered and sold were securities, and that he

¹ The Court denied the motion in part because it held that Thompson's state of mind was a question of fact for a jury and it deferred the decision on disgorgement until an evidentiary hearing was held. (Default Motion, Ex. C at 8 n.13, 19, 21 n.25, 26.)

acted as an unregistered broker-dealer, sold unregistered securities, and violated the antifraud provisions of the securities laws. (Default Motion, Ex. C at 13-25.) The Court concluded:

The undisputed evidence shows that Mr. Thompson unlawfully sold unregistered securities, in violation of Sections 5(a), 5(c), 17(a)(2), and 17(a)(3) of the Securities Act of 1933. The undisputed evidence also demonstrates that Mr. Thompson sold securities yet failed to register as a broker-dealer with the SEC under Section 15(b) of the Securities Exchange Act of 1934 and so violated Section 15(a) of the Exchange Act.

(Default Motion, Ex. C at 26.)

Section 15(b)(6) of the Exchange Act authorizes certain sanctions with respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer.² Sanctions include censure, placing limitations on the activities or functions of a person, suspension for a period not exceeding twelve months, or barring any such person from being associated with a broker or dealer, if the Commission finds that the sanction is in the public interest and where the person has been enjoined from certain securities-related activities. The criteria for making public interest determinations are:

[t]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the [respondent's] assurances against future violations, the [respondent's] recognition of the wrongful nature of his conduct, and the likelihood that the [respondent's] occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see also Joseph J. Barbato, 53 S.E.C. 1259, 1282 n.31 (1999); Donald T. Sheldon, 51 S.E.C. 59, 86 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995). Deterrence is also a factor to be considered. See McCarthy v. SEC, 406 F.3d 179, 189 (2d Cir. 2005.)

Novus's bank records reflect deposits exceeding \$11 million from over fifty investors indicating that the investments were sold to a broad segment of the general public. (Default Motion, Ex. C at 16.) The allegations in the complaint, the court's legal conclusions set forth above, and the scope of the injunction show that Thompson's illegal actions were egregious and recurrent. Thompson chose not to participate in this administrative proceeding to offer assurances against future violations and acknowledge that his conduct was wrong. On this record, I find that the public interest factors indicate that Thompson's continued participation in the securities industry will present opportunities for future violations and that a bar is in the public interest.

² It is well established that Exchange Act Section 15(b) applies to natural persons acting as a broker or dealer or associated with a broker or dealer. See Vladislav Steven Zubkis, 86 SEC Docket 2618, 2627 (Dec. 2, 2005).

Order

I ORDER, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, that Ralph W. Thompson, Jr., is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock.

Brenda P. Murray
Chief Administrative Law Judge