

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 1, 2004

ADMINISTRATIVE PROCEEDING
File No. 3-11624

In the Matter of

MARLON D. TROPEANO,

Respondent.

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

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 Marlon D. Tropeano (“Tropeano” or the “Respondent”).

II.

After an investigation, the Division of Enforcement alleges that:

Respondent

A. Tropeano, 35, is a former resident of Brooklyn, New York. He is currently in the custody of the U.S. Bureau of Prisons. From August 1997 through March 1998, Tropeano was a registered representative in the New York City branch office of Briarwood Investment Counsel, Inc. (“Briarwood”), a broker-dealer registered with the Commission.

Injunctive Action

B. On August 7, 2000, a Final Judgment By Default was entered against Tropeano, permanently enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, in the civil action entitled Securities and Exchange Commission v.

Marlon D. Tropeano, et al., Civil Action No. 99 Civ. 10260 (JSR), in the United States District Court for the Southern District of New York.

C. The Commission's complaint alleged that, between October 1997 and March 1998, Tropeano, acting as a registered representative of Briarwood, defrauded various Briarwood customers by, among other things, selling securities in their accounts without authorization and misappropriating the proceeds of those sales. Specifically, on a number of occasions, Tropeano used forged documents to cause the unauthorized transfer of customer accounts from Briarwood to other broker-dealers, caused securities in those accounts to be sold without authorization, and diverted the proceeds of those sales to various relief defendants named in the Commission's complaint. The complaint further alleged that, on another occasion, Tropeano used forged documents to divert customer funds from another Briarwood account to the relief defendants. Through his fraudulent conduct, Tropeano misappropriated over \$76,000 of customer funds.

Criminal Conviction

D. On February 10, 2000, Tropeano pleaded guilty to two felony counts of conspiracy to commit securities fraud before the United States District Court for the Southern District of New York, in United States v. Marlon D. Tropeano, et al., 99 Cr. 01024 (S.D.N.Y.) (SAS). On July 26, 2000, a judgment was entered against Tropeano, sentencing him to a prison term of one year and one day followed by two years of supervised release.

E. The felony counts to which Tropeano pleaded guilty alleged, *inter alia*, that Tropeano engaged in a conspiracy to defraud customers of Briarwood by forging documents to cause the unauthorized transfer of customer accounts, causing securities to be sold without customer authorization, and diverting customer funds for his own and others' benefit.

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 Tropeano an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Tropeano 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 200 of the Commission's Rules of Practice, 17 C.F.R. § 201.200.

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 such respondent 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.

IT IS FURTHER ORDERED that an Administrative Law Judge shall issue an initial decision no later than 210 days from the date of the service of this Order, as provided by Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2).

This Order shall be served upon Respondent personally or by certified mail.

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 proceedings 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.

For the Commission, by its Secretary, pursuant to delegated authority.

Jonathan G. Katz
Secretary