

INITIAL DECISION RELEASE NO. 313
ADMINISTRATIVE PROCEEDING
FILE NO. 3-12239

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

In the Matter of :
: INITIAL DECISION
DOMINICK J. SAVINO : June 20, 2006
:
:

APPEARANCES: Arthur S. Lowry and Michael S. Fuchs for the Division of Enforcement,
Securities and Exchange Commission

Michael J. Grudberg for Respondent Dominick J. Savino

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP) on March 16, 2006, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). Respondent Dominick J. Savino (Savino) was served with the OIP on March 20, 2006. Savino's Answer, filed on April 11, 2006, admits all material allegations in the OIP, including the fact that after a bench trial a final judgment was entered against him that permanently enjoined him from future violations of Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. (Answer at 1.)

At a telephonic prehearing conference on March 30, 2006, I granted the Division of Enforcement's (Division) request to change Section II, paragraph 3, fourth sentence of the OIP to state:

The complaint further alleged that Savino failed to disclose that he had given these kickbacks to a New York Life bond trader in exchange for the flow of business and favorable prices, and that he took other steps to conceal the fraudulent scheme.

See 17 C.F.R. § 201.221(c)(10). On April 5, 2006, I granted the Division leave to file a motion for summary disposition. See 17 C.F.R. § 201.250. Savino did not object to either Division request.

The Division filed a Motion for Summary Disposition and Supporting Memorandum of Law (Motion) on May 5, 2006, requesting that Savino be barred from association with any broker or dealer. I take official notice of Exhibits A through D submitted with the Motion. See 17 C.F.R. § 201.323.

Exhibit A is the Complaint dated March 22, 2001 in SEC v. Savino, 01-Civ. 2438 (GBD) (S.D.N.Y.)

Exhibit B is the Memorandum Decision, issued February 16, 2006, by United States District Court Judge George B. Daniels, in SEC v. Savino, 01-Civ. 2438 (GBD) (S.D.N.Y.).

Exhibit C is the Judgment, signed by United States District Court Judge George B. Daniels on February 22, 2006, in SEC v. Savino, 01-Civ. 2438 (GBD) (S.D.N.Y.).

Exhibit D is the Modified Final Judgment, signed by United States District Court Judge George B. Daniels on April 10, 2006, in SEC v. Savino, 01-Civ. 2438 (GBD) (S.D.N.Y.).

Savino filed a Brief in Response to the Motion for Summary Disposition (Response) on May 22, 2006, and the Division filed its Reply Brief in Support of the Motion on May 26, 2006. Rule 250 of the Commission's Rules of Practice provides that a motion for summary disposition may be granted where there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. See 17 C.F.R. § 201.250(b). There is no material issue of fact.

Findings of Fact and Conclusions of Law

From August 1998 through August 2000, Savino, age forty-two, was a mortgage-and asset-backed securities sales representative, a securities professional licensed by the National Association of Securities Dealers (NASD), and a vice-president and registered representative associated with Greenwich Capital Markets, Inc. (Greenwich), an NASD member firm and a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act. (Answer at 1, Exhibit B at 2.) In a Memorandum Decision issued February 16, 2006, United States District Court Judge George B. Daniels found that Savino violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, by engaging in fraudulent schemes to give kickbacks of cash, improper gifts, and gratuities to Anthony Shen (Shen), a bond trader employed by New York Life Insurance Company, Inc. (New York Life),

and a co-defendant in the civil proceeding.¹ (Exhibit B at 1, 9-11.) The district court judge also found that Savino aided and abetted Shen's violations of Section 10(b) of the Exchange Act and Rule 10b-5. (Exhibit B at 12.) The Memorandum Decision concluded that the record "demonstrates that beginning in September 1998, Shen and Savino reached agreements constituting an illegal scheme to defraud New York Life" and that "Savino attempted to enter into a commission splitting formula to compensate Shen for increasing Savino's commission's by giving Savino New York Life trades at favorable prices." (Exhibit B at 11-12.) Furthermore, "Savino's flow of trades with New York Life increased substantially during those periods when he was negotiating and making payments to Shen in connection with those trades." (Exhibit B at 10.) Savino made material representations and omissions in connection with the trades and concealed the fact that he was compensating Shen in connection with the trades. (Exhibit B at 10.) Savino also concealed that Shen was trading New York Life securities at less than favorable prices because of his promises and gifts. (Exhibit B at 10.)

A Modified Final Judgment, signed on April 10, 2006, permanently enjoined Savino from violating, directly or indirectly, Section 17(a) of the Securities Act, and permanently enjoined Savino from violating, directly or indirectly, or from aiding or abetting violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. (Exhibit D.) The Modified Final Judgment also found Savino liable for disgorgement of \$366,358.04, together with prejudgment interest in the amount of \$203,269.59, for a total of \$569,627.63, and ordered him to pay a civil penalty in the amount of \$100,000. (Exhibit D.) The district court judge concluded that a third-tier civil penalty was warranted because Savino's conduct involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and the violations directly resulted in substantial losses to the victims. (Exhibit B at 14.)

I conclude on these facts that: (1) Savino has been permanently enjoined from engaging in conduct in connection with the purchase or sale of a security within the meaning of Section 15(b)(4)(C); and (2) Savino committed the violations that were the basis for the injunction while he was associated with a broker-dealer registered with the Commission. (Answer at 1, Response at 1.)

Sanctions

Section 15(b)(6) of the Exchange Act provides that the Commission shall impose a sanction if it is in the public interest to do so, with respect to a person who has been enjoined from violations of the federal securities statutes where the person was associated with a broker or dealer at the time of the misconduct. The following considerations, as well as deterrence, are relevant in making a public interest determination:

¹ The Memorandum Decision resulted from the Complaint filed by the Commission on March 22, 2001. (Exhibit A.) On March 21, 2001, in a separate criminal proceeding, Shen entered a guilty plea to conspiracy to commit securities fraud, mail fraud, wire fraud, and commercial bribery. Shen was sentenced to three years' probation, including 1,000 hours of community service, and ordered to make restitution to New York Life. (Exhibit B at 8.)

[T]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, 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.

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. Shelton, 51 S.E.C. 59, 86 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995). The severity of a sanction depends on the facts of each case and the value of the sanction in preventing recurrence. See Richard C. Spangler, Inc., 46 S.E.C. 238, 254 n.67 (1976); Leo Glassman, 46 S.E.C. 209, 211-12 (1975). “[O]rdinarily, and in the absence of evidence to the contrary, it will be in the public interest to revoke the registration of, or suspend or bar from participation in the securities industry, or prohibit from participation in an offering of penny stock, a respondent who is enjoined from violating the antifraud provisions.” Marshall E. Melton, 80 SEC Docket 2812, 2825-26 (2003).

The antifraud findings, the permanent injunction, the considerable disgorgement, and the civil penalty establish that Savino's conduct was egregious. In addition, the district court judge's findings, made after a bench trial in which Savino testified, is further persuasive evidence that it is in the public interest to bar Savino from association with any broker or dealer.

During the course of their arrangement, Savino and Shen knew that their conduct was wrong, and took affirmative steps to conceal it. . . .

The level of scienter involved in Savino's violations is high. Savino knowingly and willingly defrauded New York Life, and knowingly and willingly aided and abetted Shen in Shen's own violations of the federal security laws. Savino's violations were repeated multiple times over the course of his relationship with Shen. Savino has been unwilling to admit that he engaged in wrongdoing with Shen, and continues to claim that the scheme was all a joke, despite overwhelming evidence to the contrary. Savino was untruthful during his deposition and in his testimony during trial.

Due to his current occupation as a licensed securities professional trading bonds for a broker-dealer, Savino is in a position to engage in further fraudulent conduct.² . . .

Savino's violations are egregious. They were committed while Savino was a licensed security professional employed in the securities industry. As a registered representative of Greenwich Capital, Savino possessed a duty to fully inform his clients as to all consideration involved in each security trade. Savino violated his duties by engaging in an illegal fraudulent scheme with Shen. Savino has been

² Savino's illegal conduct occurred in 1998 and 1999. Greenwich terminated Savino effective August 1, 2000. (Exhibit B at 8.) At the time of the trial in the underlying proceeding, Savino was employed in the securities industry as a bond trader at Greenwich Financial Services, which is not affiliated with Greenwich. His compensation in 2003 was \$1.5 million. (Exhibit B at 3.)

unwilling to admit that he engaged in wrongdoing, contending that the fraudulent scheme was in jest. The evidence also reveals that Savino attempted to obstruct the investigation by authorities. Savino lied to the attorneys at Greenwich Capital when they were conducting an internal investigation. Savino also urged Shen to lie to investigators to further conceal their scheme. Savino's lack of cooperation and candor continued with his untruthful statements concerning his conduct during his deposition, and at trial.

(Exhibit B at 11, 13-14.)

Despite his admission that all the material allegations in the OIP are true, Savino maintains that remedial action against him is not in the public interest and that the proceeding against him should be dismissed in its entirety.³ (Answer at 2.) Contrary to his claim, the egregiousness of Savino's conduct is not mitigated because: (1) the kickbacks he provided did not follow a set formula; (2) he and Shen had a business, as well as a social relationship, before 1998; and (3) he was not "criminally charged unlike every other defendant in the injunctive action." (Response at 2-4.) The district court judge specifically rejected Savino's claim that the joking nature of the conversations mitigated the offense finding that "the evidence demonstrated that, underlying the ostensibly jocular conversation, Savino and Shen reached agreements to exchange cash and gifts in connection with trades." (Exhibit B at 11.) The fact that the district court judge did not find that the pricing was outside the contemporary bid-spread is not mitigating when the parties viewed this as a plus because the prices, which were less favorable to New York Life than otherwise obtainable, "would not be noticed because these prices were within the bid/ask spread." (Response at 3; Exhibit B at 7.) A criminal conviction is different in nature from a civil judgment. However, I find Savino's position that the fact that he was not charged criminally should mitigate the sanction unpersuasive given his actions, his level of scienter, and his subsequent attempts to cover up his actions. For all these reasons, I reject Savino's position and find there are no mitigating circumstances.

Order

I GRANT the Division of Enforcement's Motion for Summary Disposition. See 17 C.F.R. § 201.250(b).

I ORDER that pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, DOMINICK J. SAVINO be, and hereby is, barred from associating with any broker or dealer.

This 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 Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the commission's Rules of Practice, 17 C.F.R.

³ The Answer only denies the allegation in Paragraph 1 of the OIP that Savino resides in Riverside, Connecticut. Savino is appealing the final judgment to the United States Court of Appeals for the Second Circuit. (Prehearing Conference, March 30, 2006, Tr. 10-11.)

§ 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 manifest error of fact. The 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 motion to correct manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

Brenda P. Murray
Chief Administrative Law Judge