

HARD COPY

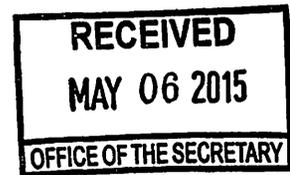
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16353

In the Matter of

SPRING HILL CAPITAL MARKETS, LLC,
SPRING HILL CAPITAL PARTNERS, LLC,
SPRING HILL CAPITAL HOLDINGS, LLC,
and KEVIN D. WHITE,

Respondents.



**DIVISION OF ENFORCEMENT'S MEMORANDUM OF LAW IN OPPOSITION TO
RESPONDENTS' MOTION *IN LIMINE* RELATING TO STATUTE OF LIMITATION**

The Division of Enforcement ("Division") respectfully submits the following memorandum of law in opposition to Respondents' "Motion *in Limine* to Preclude All Evidence, Either Documentary or Testimonial, of Conduct or Actions relating to the SEC's Charge that Spring Hill Capital Partners, LLC Acted as an Unregistered Broker Dealer or, in the Alternative, to Preclude All Evidence Prior to January 22, 2010 as Irrelevant and Immaterial to Determining Liability or Remedies Because Such Conduct is Outside the Five Year Statute of Limitation Applicable to the SEC's Claim" (the "Motion").

PRELIMINARY STATEMENT

For nearly one year, at the direction of founder-CEO Kevin White and parent company Spring Hill Capital Holdings, LLC ("SHCH"), Spring Hill Capital Partners, LLC ("SHCP"), an

unregistered entity, held itself out to the market as a broker-dealer, soliciting customer business that resulted in approximately 100 matched trades of asset-backed securities and generated more than \$4 million in transaction-based compensation. At the same time, Spring Hill Capital Markets, LLC (“SHCM”), an affiliated entity also controlled by White, deceived FINRA with repeated lies about SHCP’s business activities and revenues that Respondents now seek to bury with their Motion.

This is simply far from the case of “highly technical” illegal conduct that Respondents wish it were and which, in any event, would not change the fact that none of the Division’s charges is time-barred and that the Motion must be denied.

LEGAL DISCUSSION

Respondents’ argument that SHCP’s unregistered broker-dealer activity “cannot be considered to determine either liability or remedies” pursuant to the limitations period in 28 U.S.C. § 2462 is completely meritless.

Section 2462 of Title 28 of the United States Code states that an action seeking the enforcement of “any civil fine, penalty, or forfeiture, pecuniary or otherwise” must commence within five years from the date the claim first accrued.

As an initial matter, it is well-settled that Section 2462 does not limit the time for the Commission to file claims seeking equitable or remedial relief, such as cease and desist orders, disgorgement, and prejudgment interest. *See, e.g., Riordan v. SEC*, 627 F.3d 1230, 1234-35 (D.C. Cir. 2010) (cease and desist order not subject to five-year statute of limitations); *Terence Michael Coxon*, Sec. Act. Rel. No. 8271, 56 S.E.C. 934, 967 n.60 (Aug. 21, 2003) (Commission Opinion) (same); *Herbert Moskowitz*, Exch. Act Rel. No. 45609, 55 S.E.C. 658, 683-85 (Mar. 21, 2002) (same); *Zacharias v. SEC*, 569 F.3d 458, 471-72 (D.C. Cir. 2009) (disgorgement and

prejudgment interest not subject to five-year statute of limitations); *Dennis J. Malouf*, Initial Decisions Rel. No. 766, 2015 SEC LEXIS 1251 (Apr. 7, 2015) (concluding that “equitable and remedial claims are not barred by [Section 2462] or any other applicable statute of limitations”); *SEC v. McCaskey*, 56 F. Supp. 2d 323, 324, 326 (concluding that “[n]o statute of limitations applies to the SEC’s claims for equitable remedies,” including injunctions, disgorgement, and officer bar); *SEC v. Kelly*, 663 F. Supp. 2d 276, 286 (S.D.N.Y. 2009) (“[T]he great weight of case law . . . supports the SEC’s contention that equitable remedies are exempted from section 2462’s limitations period.”). “Courts have found that SEC suits for equitable and remedial relief . . . are not governed by § 2462 because they are not actions or proceedings for a ‘penalty’ within the meaning of the statute.” *SEC v. Tandem Mgmt. Inc.*, No. 95-civ-8411, 2001 WL 1488218 at *6 (S.D.N.Y. Nov. 21, 2001).

Respondents’ reliance on a single, outlier case from the Southern District of Florida for the contention that enforcement actions for equitable relief and disgorgement are subject to the five-year statute of limitations, which is contrary to Commission precedent, is clearly misplaced. See Motion at 6 (citing *SEC v. Graham*, 21 F. Supp. 3d 1300, 1307-11 (S.D. Fla. 2014)). As Judge Patil recently explained in *Malouf*, “I am not persuaded by [the *Graham*] opinion’s reasoning that the longstanding precedents on the pertinent limitations period were swept aside . . . by the Supreme Court’s decision in *Gabelli*, which specifically noted that its holding did not extend to injunctive relief and disgorgement claims.” *Dennis J. Malouf*, Initial Decisions Rel. No. 766, 2015 SEC LEXIS 1251 (Apr. 7, 2015) (citing *Gabelli v. SEC*, 133 S. Ct. 1216, 1220 n.1 (2013)). Indeed, the overwhelming weight of post-*Gabelli* authority rejects the interpretation proposed by Respondents and is consistent with the longstanding rule that the Section 2462 limitation period does not apply to equitable or remedial claims. See, e.g., *SEC v. LeCroy*, Civil

Action No. 2:09-cv-2238, 2014 U.S. Dist. LEXIS 126836, at *2-5 n.1 (N.D. Ala. Sept. 5, 2014); *SEC v. Geswein*, Case No. 5:10cv1235, 2 F. Supp. 3d 1074, 2014 WL 861317, at *9 (N.D. Ohio Mar. 5, 2014); *SEC v. Amerindo Inv. Advisors Inc.*, No. 05 Civ. 5231, 2014 WL 2112032, at *11 (S.D.N.Y. May 6, 2014); *SEC v. Syndicated Food Serv. Int'l., Inc.*, 2014 WL 1311442, at *25 (E.D.N.Y. Mar. 28, 2014); *SEC v. Radius Capital Corp.*, 2013 WL 3716394, at *2 n.2 (M.D. Fla. July 15, 2013); *SEC v. Fujinaga*, No. 2:13-cv-1658, 2014 WL 4977334, at *6 (D. Nev. Oct. 3, 2014). In short, the *Graham* opinion, “which nearly all Respondents discuss in support of their arguments that Section 2462 extends to all causes of action, is not controlling law and is an outlier.” *Donald J. Anthony, Jr.*, Initial Decisions Rel. No. 745, 2015 SEC LEXIS 707 (Feb. 25, 2015).

Moreover, Respondents’ argument that the Division’s claims for civil penalties relating to SHCP’s unregistered broker-dealer activity are time barred because they “accrued . . . more than five years” ago is similarly baseless. The Division does not dispute that certain unregistered broker-dealer activity by SHCP occurred more than five years before the Order Instituting Proceeding (“OIP”) was filed. However, SHCP committed new and independently actionable violations of Section 15(a) of the Securities and Exchange Act of 1934 within the limitations period through the solicitation and conduct of approximately 40 more trades and the generation of nearly \$1 million in additional transaction-based compensation (85% retained by SHCP), while simultaneously and repeatedly holding itself out to the market as a broker-dealer.¹ See *Donald J. Anthony, Jr.*, Initial Decisions Rel. No. 745, 2015 SEC LEXIS 707 (Feb. 25, 2015) (“The Commission has long permitted penalties to be sought for violations occurring within the limitations period, even when similar violations first occurred outside that period.”); *Guy P.*

¹ These trades and the associated revenues are reflected in SHCP’s 2010 trade blotter (Div. Ex. 138), the relevant excerpts of which are attached hereto as Exhibit A.

Riordan, Exch. Act Release No. 61153, 2009 SEC LEXIS 4166, at *74 (Dec. 11, 2009) (“Five of [respondent’s] approximately eighty agency securities transactions . . . occurred . . . within the five-year period before the institution of this proceeding. Accordingly . . . this proceeding is not time-barred.”). Respondents’ contention that, here, there was only a single violation from which ill-effects subsequently resulted completely disregards the illegal trading activity and marketing efforts which persisted through at least February 2010. Respondents’ reliance on *Gabelli* is again misplaced because that case “concerns the ‘discovery rule’ and simply does not . . . stand for the proposition that continuing or new violations are immune to action because the statute of limitations period runs from the first violation.” *Donald J. Anthony, Jr*, Initial Decisions Rel. No. 745, 2015 SEC LEXIS 707 (Feb. 25, 2015).

Finally, Respondents’ contention that “at the very least, this Court should exclude all evidence regarding . . . conduct that occurred prior to . . . the OIP” must be rejected because, as the Commission has previously held, “Section 2462 does not constitute an evidentiary bar” and “[e]vidence of matters that occurred before the applicable limitations period may be admitted.” *Terence Michael Coxon*, Sec. Act. Rel. No. 8271, 56 S.E.C. 934 (Aug. 21, 2013) (Commission Opinion); *see also Joseph J. Barbato*, 53 S.E.C. 1259, 1278 n.26 (1999) (“Statutes of limitation do not act as an evidentiary bar. Therefore courts may admit evidence of misconduct outside of an applicable limitations period.”); *Guy P. Riordan*, Sec. Act. Rel. No. 9085, 2009 SEC LEXIS 4166 (Dec. 11, 2009) (“We may consider conduct occurring [outside the limitations period], to establish such matters as [the respondent’s] course of conduct, motive, intent, or knowledge in committing violations that are within the limitations period. We may also consider such conduct in deciding whether to impose a cease-and-desist or disgorgement order because such an order . . . is not subject to Section 2462.”); *Terry T. Steen*, Exch. Act. Rel. No. 40055, 53 S.E.C. 618

(June 1, 1998) (Commission Opinion) (rejecting contention that Commission cannot consider conduct that occurred outside limitations period in determining appropriate term of suspension).

Respondents' transparent objective is to preclude evidence revealing that White and SHCH knew SHCP's unregistered broker-dealer conduct was improper so that they can cast this case merely as one of "highly technical" wrongdoing. However, for all the reasons set forth above, Section 2642 does not provide an avenue for Respondents to construct their false narrative. In sum, the Division's claims are not time-barred and evidence of conduct more than five years before the OIP is admissible. Moreover, this evidence can and should be considered in granting the remedies sought pursuant to the OIP.

CONCLUSION

For all of the foregoing reasons, the Motion should be denied in its entirety.

Dated May 4, 2015
New York, New York

DIVISION OF ENFORCEMENT

/s/ Nicholas A. Pilgrim
Nicholas A. Pilgrim
Daniel M. Loss
Securities and Exchange Commission
New York Regional Office
Brookfield Place, 200 Vesey Street, Suite 400
New York, NY 10281
Tel: 212.336.0924
Email: pilgrimn@sec.gov

CERTIFICATE OF SERVICE

I hereby certify that I served true copies by electronic mail of the foregoing Memorandum in Opposition to Respondents' Motion *in Limine* to Exclude Evidence Pursuant to Rule 320 on the following on the 4th day of May, 2015.

The Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
alj@sec.gov

Ronald W. Dunbar, Jr., Esq.
Dunbar Law PC
197 Portland Street
Boston, MA 02114
Counsel for Respondents

Dated: May 4, 2015

/s/ Nicholas A. Pilgrim
Nicholas A. Pilgrim

Division of Enforcement's Memorandum of Law in Opposition to Respondents' Motion *in Limine*
Relating to Statute of Limitation

EXHIBIT A



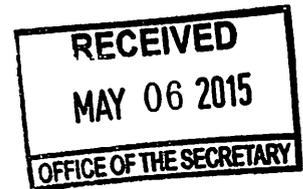
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
3 WORLD FINANCIAL CENTER
SUITE 400
NEW YORK, NEW YORK 10281-1022

WRITER'S DIRECT LINE
(212) 336-9134
LossD@sec.gov

May 4, 2015

Via UPS

Brent J. Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549



Re: *In re Spring Hill Capital Markets, LLC, et al.*, AP File No. 3-16353

Dear Mr. Fields,

Enclosed please find an original and three copies of the Division of Enforcement's Memorandum of Law in Opposition to Respondents' Motion *in Limine* relating to the statute of limitations in the above referenced matter.

Respectfully submitted,


Daniel Loss
Counsel

cc: The Honorable Carol Fox Foelak (via email)

Ronald W. Dunbar, Jr., Esq. (via email)
Andrew E. Goloboy, Esq. (via email)
Counsel for Respondents