

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 65261 / September 2, 2011

Admin. Proc. File No. 3-4393

In the Matter of

MARK S. PARNASS

c/o David R. Chase, P.A.
1700 East Las Olas Boulevard, Suite 305
Fort Lauderdale, Florida 33301

ORDER DENYING IN PART
PETITION TO VACATE
ADMINISTRATIVE BAR ORDER

I.

Mark S. Parnass seeks to vacate a Commission bar order entered in 1975 with his consent (the "1975 Order"). The Division of Enforcement opposes the grant of relief. For the reasons set forth below, we have determined to deny Parnass' petition for complete relief from the 1975 Order; however, we vacate that portion of the 1975 Order prohibiting Parnass from associating with an investment adviser or investment company.

II.

In the 1975 Order, the Commission found that Parnass, who was secretary and a director of Bovers Parnass & Turel, Inc., a former registered broker-dealer, aided and abetted the firm's net capital violations.¹ In that order, the Commission also found that Parnass had been enjoined in a related civil action from violating net capital provisions and that a trustee had been appointed for the firm under the Securities Investor Protection Act of 1970.² The Commission barred Parnass from association with any broker, dealer, investment adviser, or investment company, with the right to reapply to become associated with a broker-dealer in a non-supervisory and non-proprietary capacity after eighteen months and in a supervisory and

¹ *Mark Parnass, Findings and Order Imposing Remedial Sanctions*, Securities Exchange Act Rel. No. 11218 (Jan. 31, 1975), 6 SEC Docket 212.

² *Id.* at 213; *see Bovers, Parnass & Turel, Inc.*, Exchange Act Rel. No. 10873 (June 25, 1974), 4 SEC Docket 500, 501.

proprietary capacity after three and one-half years. Since 1980, Parnass has been permitted to associate as a registered representative in a supervised capacity with a number of broker-dealer firms.

In 1986, the Commission issued an order instituting and settling administrative proceedings, which found that Parnass violated the security registration provisions of the Securities Act of 1933 in connection with market making activity, while he was employed as a registered representative for M.H. Meyerson & Co., a registered broker-dealer.³ The Commission suspended Parnass for sixty days from association with any broker, dealer, investment adviser, investment company, municipal securities broker, or municipal securities dealer.

In 2001, Parnass sought to associate as a general securities principal with GBI Capital Partners, Inc. NASD denied Parnass' request because, as it stated in its decision, Parnass committed an additional violation of the securities laws in 1986 after being barred by the 1975 Order and because GBI Capital Partners had engaged in "many regulatory violations," which indicated that the firm did not have the "level of regulatory compliance" required of a firm that seeks to employ a statutorily disqualified individual as a principal.⁴

In 2004, Parnass petitioned the Commission to vacate the 1975 Order, arguing that twenty-nine years had passed since the bar was issued, that his net capital violations were not serious and would not likely have warranted a bar in 2004, that he had been continuously employed in the securities industry for twenty-four years, and that the bar order subjected him to unanticipated consequences, namely, the onerous application procedures and annual fees imposed on statutorily disqualified individuals and the members with which they seek to associate. The Commission denied Parnass' 2004 petition, concluding that "there are no

³ *Mark Parnass*, Order Instituting Proceedings Pursuant to Sections 15(b)(6) and 19(h) of the Securities Exchange Act of 1934 and Findings and Order of the Commission, Exchange Act Rel. No. 23250 (May 19, 1986), 35 SEC Docket 1227. Specifically, Parnass was found to have solicited purchasers for approximately one million shares of restricted stock before the owners of those restricted shares actually sold them; once the shares were sold, Parnass used them to cover his short position in the stock. Parnass, in effect, acted as an underwriter of the shares, precluding him from invoking the "safe harbor" of Securities Act Rule 144, 17 C.F.R. § 230.144, or any other provision, to exempt the transactions from the registration requirements of the Act.

⁴ In reaching its decision, NASD also considered a Letter of Caution issued to Parnass in 2000. The letter was issued in response to visits that Parnass made to a GBI Capital office before receiving NASD's permission to associate with the firm. Noting that Parnass admitted that he "had exercised bad judgment during this episode," NASD stated in its 2001 decision that it was "troubled" by Parnass' conduct.

compelling circumstances here that would warrant vacating the 1975 bar order."⁵ In so finding, the Commission noted, among other things, that the "mere passage of time since the issuance of the bar order . . . does not justify relief" and that Parnass had been suspended in 1986 for violating the Securities Act's registration provisions.⁶ The Commission concluded that the public interest would not be served if the safeguards provided by the 1975 Order were removed.

Parnass has again requested that the Commission vacate the 1975 Order, raising many of the same arguments as in his 2004 petition and stressing that thirty-five years have now passed since Parnass was first barred, and that twenty-five years have now passed since Parnass was last sanctioned by the Commission.

III.

We have stated that, in reviewing requests to lift or modify administrative bar orders, we will determine whether, "under all the facts and circumstances presented, it is consistent with the public interest and investor protection to permit the petitioner to function in the industry without the safeguards provided by the bar."⁷ However, our long-standing approach to Commission administrative bars has been that they will "remain in place in the usual case and be removed only in compelling circumstances," due in significant part to our interest in preserving the finality of Commission orders.⁸ This interest is particularly relevant to those orders entered by

⁵ *Mark S. Parnass*, Order Denying Petition to Vacate Administrative Bar Order, Exchange Act Rel. No. 50730 (Nov. 23, 2004), 84 SEC Docket 727, 729.

⁶ The Commission also noted that, "[i]n 2001, NASD considered this intervening misconduct and his then-current employer's disciplinary history in refusing to allow Parnass to associate in a principal capacity." *Id.*

⁷ *Ciro Cozzolino*, 57 S.E.C. 175, 181 (2003); *Edward I. Frankel*, 57 S.E.C. 186, 193 (2003); *Stephen S. Wien*, 57 S.E.C. 162, 170 (2003). Among the "facts and circumstances" we have considered in such cases are: the nature of the misconduct at issue in the underlying matter; the time that has passed since issuance of the administrative bar; the compliance record of the petitioner since issuance of the administrative bar; the age and securities industry experience of the petitioner, and the extent to which we have granted prior relief from the administrative bar; whether the petitioner has identified verifiable, unanticipated consequences of the bar; and the position and persuasiveness of the Division of Enforcement's response to the petition for relief. *Jesse M. Townsley, Jr.*, 58 S.E.C. 743, 746 (2005).

⁸ *Cozzolino*, 57 S.E.C. at 182; *Frankel*, 57 S.E.C. at 194; *Wien*, 57 S.E.C. at 171; *see also ICC v. City of Jersey City*, 322 U.S. 503, 514 (1944) ("If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to
(continued...)

consent. As we have stated, "by settling with the Commission, violators receive significant benefits and the Commission, in turn, advances investors' interests through an order that permits continuing control over respondents."⁹ A cautious approach to vacating bar orders therefore protects the integrity of the settlement process and "ensures that the Commission, in furtherance of the public interest and investor protection, retains its continuing control over such barred individuals' activities."¹⁰

Having considered all the facts and circumstances bearing on Parnass' petition, we have determined to deny his request because he has not demonstrated "compelling circumstances" sufficient to justify vacating the 1975 Order and eliminating all the important protections it affords. Parnass notes that thirty-five years have now passed since the original bar was issued and argues that the net capital violations that gave rise to the 1975 bar were not serious and probably would have resulted in a lesser sanction under current standards. He argues that he has committed only one intervening regulatory violation, which was "technical in nature" and did not involve fraud or scienter; Parnass emphasizes that twenty-five years have passed since he was sanctioned for this last violation without further incident.

We do not consider Parnass' violations to have lessened in degree or gravity simply because time has passed; we have opined frequently on the central importance of net capital requirements to investor protection,¹¹ and in Parnass' case, the original violation of the net capital rule resulted in the appointment of a trustee to liquidate the firm.¹² Also, we have long regarded violations of the registration provisions to be among the most serious, having noted that Section 5 is the "keystone" of the Securities Act and "serves to protect the public in the offer and

⁸ (...continued)
reopening.").

⁹ *Cozzolino*, 57 S.E.C. at 182-83 n.20; *Frankel*, 57 S.E.C. at 194-95, n.20; *Wien*, 57 S.E.C. at 171, n.19.

¹⁰ *Cozzolino*, 57 S.E.C. at 182; *Frankel*, 57 S.E.C. at 194; *Wien*, 57 S.E.C. at 171.

¹¹ *See, e.g., Joseph Ricupero*, Exchange Act Rel. No. 62891 (Sept. 10, 2010), 99 SEC Docket 32270, 32277-78 & nn.19-21 ("The net capital rule serves as 'the principal regulatory tool by which the Commission and [the self-regulatory organizations] monitor the financial health of brokerage firms and protect customers from the risks involved in leaving their cash and securities with broker-dealers.'" (quoting *CMG Institutional Trading, LLC*, Exchange Act Rel. No. 59325 (Jan. 30, 2009), 95 SEC Docket 13802, 13815 & n.41)).

¹² Parnass notes in passing in his Reply Brief that the liquidation was "a strategic liquidation based upon the broker-dealer having sufficient assets from which to return customer funds." The purport of this comment is unclear.

sale of new securities issues."¹³ Moreover, we have repeatedly held that the mere passage of time since the issuance of the bar order – in this case, thirty-five years – does not weigh significantly in favor of relief.¹⁴ That is especially true where, as here, the respondent has not passed that time with an unblemished disciplinary record.¹⁵

Parnass cites two orders, *Mark E. Ross* and *John W. Bendall, Jr.*,¹⁶ in which the Commission vacated bar orders after noting that twenty-five and twenty-eight years, respectively, had passed. However, the passage of time in those cases was not the sole factor upon which our decisions were based. Significantly, unlike Parnass, respondents Ross and Bendall had not committed any further violations subsequent to those that were the bases of their bar orders, and both respondents were considerably younger when their sanctions were imposed: Ross was 19 and Bendall was 24. Parnass was 32 when his bar order was entered and 43 when he settled his second Commission proceeding.

Parnass' other arguments also fail to provide the "compelling circumstances" necessary to support vacating his bar. Parnass argues, for example, that he is subject to verifiable and unanticipated consequences of the bar because of the burdensome application procedures required to change firms or to modify restrictions on his activities, and because of NASD's \$1,500 annual fee on member firms employing statutorily disqualified individuals. This argument is unavailing, as we have previously considered and rejected claims, like the one Parnass makes here, that the re-entry procedure and NASD's fee and audit processes constitute unanticipated harms that would justify setting aside a bar order.¹⁷

Parnass also argues that he has not been involved with creating, producing, maintaining or retaining the books or records of any of his employers and has no intention of doing so, thereby making it unlikely that he will ever be in a position to engage again in a net capital rule violation such as the one for which he was sanctioned in 1975. However, even if we accept Parnass' representation, the function of a bar order is not limited to merely preventing future identical violations, but is more broadly designed to achieve the goals of deterrence, both specific and general, to address the risks of allowing a respondent to remain in the industry, to

¹³ *Alvin W. Gebhart, Jr.*, 58 S.E.C. 1133, 1177 & n.108 (2006) (citing *First Heritage Inv. Co.*, 51 S.E.C. 953, 959 (1994)), *affirmed in part, reversed in part, and remanded (all on other grounds)*, 255 Fed. Appx. 254 (9th Cir. 2007) (unpublished), *appeal after remand at, petition denied*, 602 F.3d 1125 (9th Cir. 2010).

¹⁴ *See, e.g., Cozzolino*, 57 S.E.C. at 183.

¹⁵ *See Frankel*, 57 S.E.C. at 195-96 (denying Frankel's petition to vacate 1972 bar order based, in part, on intervening Florida sanctions against him).

¹⁶ *Mark E. Ross*, 54 S.E.C. 784 (2000); *John W. Bendall, Jr.*, 52 S.E.C. 1226 (1997).

¹⁷ *See Frankel*, 57 S.E.C. at 196-97; *Cozzolino*, 57 S.E.C. at 184.

serve as a "legitimate prophylactic remedy consistent with [our] statutory obligations," and, above all, to "protect[] investors and the integrity of the markets."¹⁸

Parnass suggests in his petition that, in denying his request to vacate the bar against him in its 2004 order, the Commission should not have "attached importance" to the NASD's denial of GBI Capital's application to employ Parnass as a principal in 2001 and to the Letter of Caution NASD issued to Parnass in 2000.¹⁹ As an initial matter, we note that the Commission's 2004 order took note of NASD's Letter of Caution as a factual matter, but based none of its analysis on the letter.²⁰ Moreover, although we recognize that NASD's denial of GBI Capital's application is not evidence of Parnass' compliance or non-compliance with the securities laws since his bar order was imposed, it does provide some additional support for our conclusion that the bar order should remain in place. In denying GBI Capital's request, NASD made appropriate use of the review process for member firms seeking to employ statutorily disqualified individuals and denied the request based on two sound reasons: (1) Parnass' disciplinary history and (2) GBI Capital's apparent inability, because of its own significant disciplinary history, to provide Parnass with the level of supervision necessary under the circumstances. This relatively recent exercise of control over Parnass' participation in the industry afforded by the bar illustrates its continuing value to the public interest and to the protection of investors.

We find that Parnass has not presented "compelling circumstances" that demonstrate that the public interest and investor protection will be served if Parnass is permitted to function in the securities industry without the safeguards provided by the 1975 Order. We have therefore concluded that it is not appropriate to grant the petition and decline to vacate the bar against Parnass from association with any broker or dealer. We have determined, however, that it is appropriate to modify the bar against Parnass insofar as it prohibits him from associating with an investment adviser or investment company.²¹

Accordingly, IT IS ORDERED that the petition of Mark S. Parnass to vacate the bar order entered against him on January 31, 1975, as it applies to the bar from association with any broker or dealer be, and it hereby is, DENIED; and it is further

ORDERED that the January 31, 1975 order entered against Mark S. Parnass, to the extent that it bars him from association with any investment adviser or investment company, be, and it hereby is, VACATED.

¹⁸ *Don Warner Reinhard*, Exchange Act Rel. No. 63720 (Jan. 14, 2011), 100 SEC Docket 36940, 36952 & nn.36-38.

¹⁹ *See supra* note 4 and accompanying text.

²⁰ *See Parnass*, 84 SEC Docket at 728-30.

²¹ *See, e.g., Salim B. Lewis*, 58 S.E.C 491, 506 (2005).

By the Commission.

Elizabeth M. Murphy
Secretary