

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 51254 / February 25, 2005

Admin. Proc. File No. 3-10884

In the Matter of

LESLIE A. AROUH

:
:
:
:
:
:
:

ORDER DENYING MOTION FOR RECONSIDERATION

I.

On December 20, 2004, we issued an opinion finding that Leslie A. Arouh, formerly associated with First Union Capital Markets Corp. ("First Union"), a registered broker-dealer, violated the federal securities laws. 1/ Arouh requests reconsideration of our opinion.

We found that Arouh participated, with scienter, in a fraudulent adjusted trading scheme in willful violation of Section 17(a) of the Securities Act of 1933, 2/ Section 10(b) of the Securities Exchange Act of 1934, 3/ and Exchange Act Rule 10b-5. 4/ The fraudulent adjusted trading scheme consisted of a three-legged trade between First Union and ARM Capital Advisors LLC ("ARM"), a registered investment adviser. Arouh purchased bonds from one set of accounts advised by ARM, sold the same bonds at lower prices to different accounts at ARM, and recovered the loss to First Union by selling certain ARM accounts additional bonds that he marked up above the prevailing market price. We found that Arouh's participation in these transactions and his pricing of the bonds constituted deceptive acts in furtherance of the adjusted trading scheme and violated antifraud provisions of the securities laws. We further found that it was in the public interest to bar Arouh from association with any broker or dealer with a right to reapply after two years, to order Arouh to pay a civil money penalty of \$110,000, and to order Arouh to cease and desist from committing or causing any violations or future violations of

1/ Leslie A. Arouh, Securities Exchange Act Rel. No. 50889 (Dec. 20, 2004), __ SEC Docket ____.

2/ 15 U.S.C. § 77q.

3/ 15 U.S.C. § 78j.

4/ 17 C.F.R. § 240.10b-5.

Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5.

We evaluate Arouh's motion for reconsideration under Rule of Practice 470. 5/ A motion for reconsideration is designed to correct manifest errors of law or fact or to permit the presentation of newly discovered evidence. 6/ Respondents may not use motions for reconsideration to reiterate arguments previously made or to cite authorities previously available. 7/ Arouh's motion does not meet the rigorous standard required and thus affords no basis for reconsideration of our opinion. 8/

Many of Arouh's arguments are simply reiterations of arguments previously made. For example, our opinion considered and rejected Arouh's argument that the sanctions imposed on him are "grossly disproportionate" to the sanctions received by Keith Mauney, the head trader of investment-grade bonds at First Union, who agreed to the transactions proposed by Arouh. Arouh also alleges that the sanctions imposed on him are disproportionate to sanctions imposed on other persons found to have engaged in adjusted trading. While he provides citations to cases in which lesser sanctions were imposed for adjusted trading, he makes no attempt to compare them to this case on the basis of the egregiousness of the respondents' actions, the degree of scienter involved, or any of the other factors we traditionally consider in determining what sanction is in the public interest.

In any event, as we stated in the opinion, we repeatedly have held that the appropriate sanction depends on the facts and circumstances of each particular case; it cannot be precisely determined by comparison with action taken in other proceedings. 9/ We weighed each of the traditional factors, and we determined that Arouh's violation was egregious and that his conduct

5/ 17 C.F.R. § 201.470.

6/ KPMG Peat Marwick LLP, Order Denying Request for Reconsideration, Exchange Act Rel. No. 44050 (Mar. 8, 2001), 74 SEC Docket 1351, 1352-53 n.7 (citing "settled principles of federal court practice" in supporting the rejection of motions for reconsideration unless correction of manifest errors of law or fact or presentation of newly discovered evidence is sought).

7/ See Feeley & Willcox Asset Mgmt. Corp. and Michael J. Feeley, Order Denying Request for Reconsideration, Securities Act Rel. No. 8303 (Oct. 9, 2003), 81 SEC Docket 919, 921 & n.8 (quoting KPMG, 74 SEC Docket at 1352-53 n.7).

8/ Compare Robert Sayegh, Exchange Act Rel. No. 41762 (Aug. 19, 1999), 70 SEC Docket 1126 (granting motion for reconsideration in order to take into account change in applicable law).

9/ See Butz v. Glover Livestock Comm'n Co., 411 U.S. 182, 187 (1973).

evidenced a high level of scienter. ^{10/} Our conclusions were based on Arouh's own testimony and other corroborative evidence (such as taped conversations in which Arouh discussed the scheme) that Arouh was a knowledgeable participant in the adjusted trading scheme. We modified the sanction imposed by the administrative law judge accordingly, increasing the bar from association with any broker or dealer and imposing a cease-and-desist order, but reducing the amount of the civil money penalty. We concluded that the sanctions imposed would protect investors and the market and ensure Arouh's compliance with the federal securities laws in the event he subsequently is permitted to return to the industry.

Arouh also appears to argue that our decision was not supported by substantial evidence and, therefore, would be reversed on appeal. To support this claim he cites Howard v. SEC. ^{11/} The Court in Howard found that the record did not contain substantial evidence that Howard had the requisite scienter to aid and abet the violations alleged where he was not involved in the drafting of the assertedly fraudulent documents and had obtained approval of the documents from inside and outside counsel. ^{12/} Arouh does not attempt to explain how the case is relevant here, where we found Arouh to have engaged in primary violations because he was an active participant with Rubinstein in implementing the adjusted trading scheme. ^{13/}

Arouh claims that we misconstrued the record in assessing the risk that he would commit future violations. Arouh contends that our finding that he admitted to conducting a similar

^{10/} Leslie A. Arouh, __ SEC Docket at _____. We also took into consideration the mitigating factors raised by Arouh.

^{11/} 376 F.3d 1136 (D.C. Cir. 2004).

^{12/} Howard, 376 F.3d at 1149.

^{13/} Arouh argues that public policy disfavors disproportionate sanctions and supports this argument by citing to Blakely v. Washington, 124 S.Ct. 2531 (2004), and other cases and materials addressing the importance of the uniformity of sentences in federal criminal cases. (After Arouh submitted his motion, the Supreme Court decided U.S. v. Booker, __ S.Ct. ____ (2005), in which it held the federal sentencing guidelines unconstitutional and required sentencing courts to consider guideline ranges, but permitted those courts to tailor the sentence in light of other statutory concerns.) As an initial matter, there are significant differences between the public policy goals underlying criminal sentences and civil sanctions. In any event, in our opinion we considered the traditional factors in determining what sanction was in the public interest. After extensive analysis of these factors we concluded that Arouh's egregious conduct in conducting the fraudulent trading scheme warranted the sanctions imposed.

although smaller trade is contrary to the record evidence. ^{14/} The record is clear, however, that Arouh admitted to conducting a trade with Rubinstein along the lines of the one at issue here with the difference in price on First Union's purchase of the bonds recouped on their resale. ^{15/} Even were we not to consider this trade, the serious nature of the fraud Arouh committed, the harm that would have resulted to customers purchasing bonds in the third leg (as well as harm to the market in the form of prices set without relation to the forces of supply and demand), the harm that resulted to First Union (which, upon learning of the scheme during the third leg, made restitution to ARM for the third leg bonds that were priced above market and permitted the ARM accounts from the first leg to keep their inflated profits), and the fact that his occupation presents opportunity for future violations fully warrant the sanctions imposed. The sanctions reflect our consideration of the mitigating factors raised by Arouh, including the fact that he has not been subject to further disciplinary action since the time of the events in question.

Accordingly, IT IS ORDERED that the motion for reconsideration filed by Leslie A. Arouh be, and it hereby is, denied.

By the Commission.

Jonathan G. Katz
Secretary

^{14/} Arouh also argues that we erred because we found that he proposed the "very same trade" to Curtis Arledge when, in fact, he presented a "similar trade" involving mortgage backed securities. The opinion notes, however, that "[i]t appears that the adjusted trading scheme that Arouh proposed to Arledge involved mortgage securities." Leslie A. Arouh, __ SEC Docket at _____. This is further evidence that Arouh was an active participant in the fraudulent adjusted trading because he was willing to propose it to different traders at First Union and use different investment vehicles to accomplish the scheme.

^{15/} In other words, this smaller trade involved two legs instead of three and the above-market price paid on the first leg was recouped for First Union on the second leg.