

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

August 25, 2004

ADMINISTRATIVE PROCEEDING

File No. 3-11605

In the Matter of

DERRICK N. MCKINNEY
and
RICK R. MALIZIA,

Respondents.

ORDER INSTITUTING
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 Derrick N. McKinney (“McKinney”) and Rick R. Malizia (“Malizia”) (collectively “Respondents”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. McKinney, age 41, is a resident of Lewis Center, Ohio. He was employed as a registered representative at Merrill Lynch from November 1991 through August 1992. McKinney worked as a registered representative for Hamilton Investments and Linsco Private Ledger from February 1994 through December 1997, and as a registered representative for another brokerage firm named Mutual Services Corporation, a Florida-based broker-dealer, from January 1998 through December 31, 1999. During the relevant times, McKinney held Series 63 and 7 licenses.

2. Malizia, age 41, resided at relevant times in Willoughby, Ohio, Chicago, Illinois and Boynton Beach, Florida. He is now a resident of Weston, Florida. Malizia was employed as a registered representative at Merrill Lynch from October 1987 to May 1995. From 1995 to 1998 he served as the branch manager of a Dean Witter Reynolds Inc. office in suburban Cleveland, Ohio. From 1998 to 1999, he held the position of associate regional sales manager for Dean Witter’s Chicago office. From October 2000 through February 2002, Malizia was employed by the brokerage firm of Legg Mason Wood Walker in a supervisory position responsible for several

offices in Southeast Florida. During the relevant times, Malizia held Series 7, 8, 31, 63 and 65 licenses.

B. THE DISTRICT COURT PROCEEDINGS

1. On April 2, 2001, the Commission filed a Complaint in the United States District Court for the Southern District of Ohio (“Court”), captioned Securities and Exchange Commission v. Steven E. Thorn, et al., Case No. 2:01-cv-290. On September 9, 2001, the Commission filed an Amended Complaint adding McKinney and Malizia, along with companies they controlled, as defendants to the lawsuit.

2. The Amended Complaint alleged that from February 1998 through April 2001, the defendants, including McKinney and Malizia, raised approximately \$75 million through the offer and sale of investments in a series of purported European bank trading programs. The programs offered and sold by McKinney and Malizia exhibited many of the characteristics of the fraudulent prime bank schemes that the Commission, the Federal Reserve Board and other regulators have warned do not exist. In selling the relevant investments, the defendants, including McKinney and Malizia told investors that the programs involved the trading of bank instruments issued by foreign banks; they promised investors returns ranging as high as 200 percent per month; they assured investors that the investments were risk free; and they warned investors that participation in the trading programs required total secrecy and confidentiality. In reality, the defendants, including McKinney and Malizia, dissipated much of the investors’ funds to pay personal and business expenses, to pay purported returns to earlier investors, and to pay undisclosed salaries and fees for themselves. The Amended Complaint alleged that McKinney and Malizia thereby violated Section 17(a) of the Securities Act of 1933 (“Securities Act”) and Sections 10(b), 15(a) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder.

3. On October 14, 2003, the Court granted the Commission’s motion for summary judgment and permanently enjoined McKinney and Malizia from future violations of Section 17(a) of the Securities Act and Sections 10(b), 15(a) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder. The Court further ordered McKinney to disgorge \$54,200 plus \$16,499 of pre-judgment interest and held him jointly and severally liable for \$1,434,757 of disgorgement and \$294,632 of pre-judgment interest imposed against his company, International Trading Partners, Ltd. (“ITP”), pursuant to a previous Court order. Malizia was ordered to pay disgorgement and interest in amounts to be determined later by the Court. The Court also ordered McKinney and Malizia to pay civil penalties in amounts to be determined later.

4. In its October 14, 2003 Order, the Court found as to McKinney:

- a. that McKinney conceded that he received money from investors;
- b. that McKinney conceded that he had no personal knowledge about the source of the payments he received from Defendant Steven E. Thorn (“Thorn”);

- c. that McKinney conceded that he actually paid investors with other investors' money;
 - d. that McKinney testified that he informed investors that there was little or no risk to their principal because Thorn would invest the money in exempt European securities, United States treasury securities or overseas bonds;
 - e. that McKinney and his company, ITP, used at least \$1.4 million of money they received from investors for their own purposes;
 - f. that McKinney made misrepresentations of material facts with regard to the investments and in connection with the offer, sale or purchase thereof and had violated the anti-fraud provisions of the federal securities laws; and
 - g. that given McKinney's prior professional experience as a stockbroker and employment at a brokerage firm, there was no genuine issue of material fact that McKinney's conduct was at least reckless, so as to satisfy the scienter requirement.
5. In its October 14, 2003 Order, the Court found as to Malizia:
- a. that Malizia testified that Thorn told him there would be no risk to principal on the investments and that profits could be expected;
 - b. that Malizia testified that he did not know where the money would be invested, other than it was to be in a foreign market, nor did he know why information about the purported investments was not available;
 - c. that Malizia testified that he received no documentation regarding the purported investments other than those which Thorn had him sign to participate in the program;
 - d. that Malizia contributed money toward the investments and he solicited others to join in the purported investment offered by Thorn;
 - e. that Malizia relayed any information Thorn gave him to others who put money into the programs through his company, RMAZ, LLC;
 - f. that Malizia testified that he paid purported profits to investors, knowing that the same were not profits;
 - g. that Malizia made misrepresentations or omissions of material fact in connection with the offer, sale or purchase of securities and that no evidence had been presented that would raise genuine issues of material fact on this issue;

- h. that in view of Malizia's former employment at several well-known brokerage firms, Malizia knew, or should have known that Thorn's scheme was fraudulent; and
- i. that Malizia acted with the requisite scienter to establish liability under the anti-fraud provisions of the securities laws and that Malizia's conduct in encouraging others to invest in Thorn's purported programs was, at a minimum, reckless for one with his past professional experience.

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 proceedings be instituted to determine:

1. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations; and
2. What, if any, remedial action is appropriate in the public interest against Respondents 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 Respondents shall file Answers 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 Respondents fail to file the directed answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them 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), 221(f), and 201.310.

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

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

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 proceeding 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