

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

In the Matter of :
: INITIAL DECISION
JOSÉ P. ZOLLINO : September 23, 2004

APPEARANCES: J. Kevin Edmundson for the Division of Enforcement,
Securities and Exchange Commission

Respondent José P. Zollino, pro se

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars José P. Zollino (Zollino) from association with a broker-dealer or with an investment adviser. Zollino was previously convicted of conspiracy to commit fraud and money laundering and enjoined from violating the antifraud provisions of the securities laws, based on his wrongdoing in an investment scheme located in San Antonio, Texas.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) against Zollino on July 7, 2004, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). Pursuant to leave granted on July 27, 2004,¹ and 17 C.F.R. § 201.250, the Division of Enforcement (Division) filed a Motion for Summary Disposition on August 17, 2004. Zollino filed an Opposition, the Division filed a Reply on September 2, 2004, and Zollino filed an Amended Opposition on September 13, 2004. The administrative law judge is required by 17 C.F.R. § 201.250(b) to act “promptly” on a motion for summary disposition.

This Initial Decision is based on (1) the Division’s Motion for Summary Disposition; (2) Zollino’s Opposition; (3) the Division’s Reply; (4) Zollino’s Amended Opposition; and (5)

¹ José P. Zollino, Admin. Proc. No. 3-11536 (A.L.J. July 27, 2004) (unpublished).

Zollino's Answer to the OIP, filed August 2, 2004 (Answer). There is no genuine issue with regard to any material fact. All material facts that concern the activities for which Zollino was convicted and enjoined were decided against him in the criminal and civil cases on which this proceeding is based. Any other facts in his pleadings have been taken as true, pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Zollino was convicted of conspiracy to commit fraud and money laundering and enjoined from violating the antifraud provisions of the securities laws, based on his wrongdoing while associated with an investment adviser, InverWorld, Inc. (IW, Inc.), and a broker-dealer, InverWorld Securities, Inc. (IW Securities) (collectively, "InverWorld"). The Division urges that he be barred from association with any broker-dealer or investment adviser.

Zollino admits the facts of his conviction, injunction, and sentence. He denies several allegations of specific facts in the OIP, including the allegations that the clients of IW, Inc., were predominantly Mexican nationals, that his conviction arose out of his involvement in the fraudulent activities of InverWorld, and allegations that purport to describe the misdeeds of InverWorld in handling client investments. Thus, he argues, there are genuine issues of material fact such that the Division's motion for summary disposition must be denied. Further, Zollino requests that the prehearing conference scheduled for September 30, 2004, be postponed and a hearing be scheduled for a date that allows sufficient time for him to review the Division's investigative file.

C. Procedural Issues

1. Exhibits Admitted into Evidence

The following items, of which official notice is taken, included in the Division's Motion for Summary Disposition, at Exhibits 1-8, are admitted into evidence as Division Exhibits 1-8:

August 4, 1999, Complaint, SEC v. InverWorld, Inc. (Div. Ex. 1);

August 4, 1999, Order Freezing Assets, SEC v. InverWorld, Inc. (Div. Ex. 2);

August 5, 1999, Order Appointing Receiver Pendente Lite, SEC v. InverWorld, Inc. (Div. Ex. 3);

Docket sheet, SEC v. InverWorld, Inc. (Div. Ex. 4);

Plea Agreement, filed May 13, 2002, United States v. Zollino (Div. Ex. 5);

Transcript of May 15, 2002, Plea Hearing, United States v. Zollino (Div. Ex. 6);

October 28, 2002, Judgment in United States v. Zollino, indicating that Zollino was adjudged guilty of one count of conspiracy to commit fraud and one count of conspiracy to launder monetary instruments, and the sentence imposed (Div. Ex. 7);

January 7, 2004, Order Granting Motion for Partial Summary Judgment Against Jose P. Zollino in SEC v. InverWorld, Inc., enjoining him from violating the antifraud provisions of the Securities Act of 1933 (Securities Act), Exchange Act, and Advisers Act (Div. Ex. 8).

The following items included in Zollino's Amended Opposition, at Exhibits A and B, are admitted into evidence as Respondent Exhibits A and B:

September 4, 2004, Declaration under penalty of perjury of José P. Zollino (Resp. Ex. A);

September 4, 2004, Declaration under penalty of perjury of David M. Wilson (Resp. Ex. B).

2. Collateral Estoppel

In his Answer, Opposition, and Amended Opposition, Zollino admits the following facts: his conviction, injunction, and sentence; IW, Inc., and IW Securities were an investment adviser and broker-dealer in San Antonio; and he controlled IW, Inc., and IW Securities. He denies all other specific allegations in the OIP regarding the underlying facts of his wrongdoing. Thus, he argues that there are genuine material issues of fact. Nonetheless, as found below in the Findings of Fact, Zollino was convicted of conspiracy to commit fraud and conspiracy to launder monetary instruments and permanently enjoined from violating the antifraud provisions of the securities laws. Zollino is foreclosed from arguing that the facts concerning his involvement in the criminal wrongdoing are not proven. It is well established that the Commission does not permit criminal convictions to be collaterally attacked in its administrative proceedings. See Ira William Scott, 53 S.E.C. 862, 866 (1998); William F. Lincoln, 53 S.E.C. 452, 455-56 (1998). Even if Zollino is appealing his conviction, the pendency of an appeal does not preclude the Commission from action based on a conviction. See Joseph P. Galluzi, 78 SEC Docket 1125, 1130 n.21 (Aug. 23, 2002). Similarly, the Commission does not permit a respondent to re-litigate issues that were addressed in a previous civil proceeding against the respondent. See Michael J. Markowski, 74 SEC Docket 1537, 1542 (Mar. 20, 2001), pet. denied, No. 01-1181 (D.C. Cir. 2002) (unpublished); John Francis D'Acquisto, 53 S.E.C. 440, 444 (1998); Demitrios Julius Shiva, 52 S.E.C. 1247, 1249 & nn. 6, 7 (1997).

3. Summary Disposition

The Commission considers summary disposition particularly appropriate in proceedings, such as this one, that are based on a respondent's conviction for fraud. Galluzzi, 78 SEC Docket at 1128 n.15; John S. Brownson, 77 SEC Docket 3636, 3640 (July 3, 2002), pet. denied, 66 Fed. Appx. 687 (9th Cir. 2003) (unpublished).

4. Zollino's Postponement Request

Zollino requests that the prehearing conference scheduled for September 30, 2004, be postponed and a hearing be scheduled for a date that will allow sufficient time for him to review the Division's investigative file. As found below, the Division made its investigative file available to him, pursuant to 17 C.F.R. § 201.230, by copying and shipping it to Zollino at the Forrest City, Arkansas, Federal Correctional Institution (FCI Forrest City). Zollino's opportunity to review the file has been limited because of constraints of prison management and his September 2004 transfer to the Big Springs, Texas, Federal Correctional Institution (FCI Big Springs). In light of the disposition of this proceeding, Zollino's request is moot. Further, it is noted that the disposition of this proceeding is based on Zollino's conviction and injunction, not on material that can be discovered from the Division's file.

II. FINDINGS OF FACT

IW, Inc., an investment adviser, and IW Securities, a broker-dealer, were based in San Antonio, Texas. Answer at 2. InverWorld Holdings, Inc. (IWH), was a holding company. Answer at 1. Zollino controlled 100% of the common stock of IWH, which in turn controlled 100% of the shares of IW, Inc., and IW Securities. Answer at 1. Zollino was chairman of the board of directors of IWH, IW, Inc., and IW Securities. Answer at 1.

On October 28, 2002, Zollino was convicted of conspiracy to commit fraud, in violation of 18 U.S.C. § 371, and conspiracy to launder monetary instruments, in violation of 18 U.S.C. § 1956(h). United States v. Zollino, SA-01-CR-180 (W.D. Tex. Oct. 28, 2002); Div. Ex. 7 at 1. Zollino's wrongdoing occurred from on or about June 1993 to on or about June 1999. Div. Ex. 7 at 1. His wrongdoing involved InverWorld's misdeeds concerning client investments.² Div. Ex. 6 at 15-19. Zollino was sentenced to 144 months in prison and ordered to pay restitution of \$341,787,496. Div. Ex. 7 at 2, 6. He has been incarcerated since January 2001.³ Div. Ex. 6 at

² Specifically, InverWorld sold various investments to clients, used the clients' funds or investments in unauthorized ways, and issued false account statements to the clients. When InverWorld ceased operations, the difference between the value of client investments as represented in the account statements and the value of assets actually held was approximately \$325 million. Additionally, InverWorld engaged in a series of circular financial transactions designed to conceal its true condition from its auditors, clients, and counterparties. Zollino controlled InverWorld's policies and practices and exercised ultimate decision-making authority. Div. Ex. 6 at 15-18. At his plea hearing, Zollino affirmatively agreed that these facts are essentially true and that the government could prove them, while continuing to dispute the government's \$325 million loss figure. Div. Ex. 6 at 18-19. Zollino and his family lost over \$13 million in the collapse of InverWorld. Div. Ex. 6 at 23.

³ Until recently, Zollino was incarcerated at FCI Forrest City. Resp. Ex. A at 1. The Division made its investigative file available to him by copying and shipping it to him there in eight bankers' boxes. Resp. Ex. A at 1. Prison officials first gave him access to the file on August 27, 2004, and retrieved it from him on September 1, 2004, in preparation for his transfer to FCI Big Springs during September 2004. Resp. Ex. A at 1-2. Because of the transfer and constraints of

23. Zollino was also permanently enjoined from violating the antifraud provisions of the Securities Act of 1933, Exchange Act, and Advisers Act. SEC v. InverWorld, Inc., SA-99-CA-0822 (W.D. Tex. Jan. 7, 2004); Div. Ex. 8. Zollino is appealing the conviction and injunction. Amended Opposition at 1-2.

In his Answer, Opposition, and Amended Opposition Zollino denies several specific allegations of facts underlying his conviction and injunction. Zollino has not affirmatively alleged any additional facts that are relevant to the disposition of this proceeding.

III. CONCLUSIONS OF LAW

Zollino has been convicted, within ten years of the commencement of this proceeding, of a felony that “involves the purchase or sale of any security” within the meaning of Sections 15(b)(4)(B) and 15(b)(6)(A)(ii) of the Exchange Act and Sections 203(e)(2) and 203(f) of the Advisers Act. Additionally, he has been permanently enjoined “from engaging in or continuing any conduct or practice in connection . . . with the purchase or sale of any security” within the meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act and Sections 203(e)(4) and 203(f) of the Advisers Act.

IV. SANCTIONS

Zollino will be barred from association with any broker-dealer or investment adviser. This sanction will serve the public interest and the protection of investors, pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act. It accords with Commission precedent and the sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff’d on other grounds, 450 U.S. 91 (1981). When the Commission determines administrative sanctions, it considers:

the egregiousness of the defendant’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant’s assurances against future violations, 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.

Id. (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978), aff’d on other grounds, 450 U.S. 91 (1981)).

The unlawful conduct for which Zollino was convicted continued for several years and caused enormous losses. Thus, his actions were recurring and egregious. A high degree of scienter is indicated by Zollino’s conviction for fraud. Consistent with his defense of the charges against him, he has not fully acknowledged the wrongful nature of his conduct. Opportunities

prison management, to date, Zollino has had ten hours to review the file, and has completed review of 45% of the first box. Resp. Ex. A at 1-2.

for future violations will be circumscribed for the next several years. Nonetheless, a bar is essential to avoid the possibility of future violations.

A bar is consistent with Commission precedent in litigated administrative proceedings based on a respondent's conviction involving fraud. See Galluzzi, 78 SEC Docket 1125; Brownson, 77 SEC Docket 3636; Ted Harold Westerfield, 69 SEC Docket 722 (Mar. 1, 1999); Scott, 53 S.E.C. 862; Victor Teicher, 53 S.E.C. 581 (1998), aff'd in part and rev'd in part, 177 F.3d 1016 (D.C. Cir. 1999), cert. denied, 529 U.S. 1003 (2000); Lincoln, 53 S.E.C. 452; Meyer Blinder, 53 S.E.C. 250 (1997); Benjamin G. Sprecher, 52 S.E.C. 1296 (1997); Ahmed M. Soliman, 52 S.E.C. 227 (1995). "Absent extraordinary mitigating circumstances, such an individual cannot be permitted to remain in the securities industry." Brownson, 77 SEC Docket at 3640. There are no extraordinary mitigating circumstances in this case to warrant a lesser sanction.

Similarly, a bar is consistent with Commission precedent in litigated proceedings against a respondent who has been enjoined from violating the antifraud provisions of the securities laws. See Michael J. Markowski, 74 SEC Docket 1537; Seaboard Investment Advisers, Inc., 74 SEC Docket 201 (Jan. 10, 2001); Martin R. Kaiden, 70 SEC Docket 439 (July 20, 1999); Robert Sayegh, 69 SEC Docket 1307 (Mar. 30, 1999); John Francis D'Acquisto, 53 S.E.C. 440; Demitrios Julius Shiva, 52 S.E.C. 1247 (1997); Timothy Mobley, 52 S.E.C. 592 (1996); David M. Haber, 52 S.E.C. 201 (1995).

V. PROCEDURAL ORDER

IT IS ORDERED that the prehearing conference scheduled for September 30, 2004, IS CANCELLED.

IT IS FURTHER ORDERED that Zollino's requests regarding rescheduling of the prehearing conference and hearing ARE DENIED as moot.

VI. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, JOSÉ P. ZOLLINO IS BARRED from association with any broker or dealer.

IT IS FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, JOSÉ P. ZOLLINO IS BARRED from association with any investment adviser.

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. § 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 a 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 a motion to correct a 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.

Carol Fox Foelak
Administrative Law Judge