

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3391 / April 4, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14653

In the Matter of

KENNETH E. MARSH,	:	
BALDWIN ANDERSON,	:	
ROBERT ANTHONY BUDION,	:	ORDER MAKING FINDINGS AND
JEANNE M. LADA, and	:	IMPOSING SANCTIONS BY
JAMES T. LEVIER	:	DEFAULT

Summary

This Order bars Kenneth E. Marsh (Marsh), Baldwin Anderson (Anderson), Robert Anthony Budion (Budion), Jeanne M. Lada (Lada), and James T. Levier (Levier) (collectively, Respondents) from association with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, and nationally recognized statistical rating organization (NRSRO). Respondents were previously enjoined from violating antifraud provisions of the federal securities laws and were criminally convicted of conspiracy and securities fraud violations.

Background

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on December 7, 2011, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that each Respondent was previously enjoined from future violations of Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act), Rule 10b-5 thereunder, and Sections 206(1) and (2) of the Advisers Act in SEC v. Gryphon Holdings, Inc., 10-civ-1742 (E.D.N.Y.) (Civil Action).¹ The OIP also alleges that each Respondent was criminally convicted in the United States District Court for the Eastern District of New York (Court) in United States v. Marsh, 10-cr-480 (Criminal Action) for conspiracy and securities fraud violations.²

The Office of the Secretary provided evidence that Respondents were served with the OIP, in accordance with Rule 141(a)(2)(i) of the Commission's Rules of Practice, by January 17, 2012.

¹ Judgment in the Civil Case was entered against Budion and Levier in December 2010, Marsh in June 2010, and Anderson and Lada in August 2011. OIP at 3.

² Judgment in the Criminal Case was entered against Lada in October 2011 and against all other Respondents in November 2011. OIP at 2.

See 17 C.F.R. § 201.141(a)(2)(i). Respondents did not file Answers to the OIP, due within twenty days of service of the OIP on them.³ See OIP at 4; 17 C.F.R. §§ 201.160(b), .220(b).

On January 20, 2012, a prehearing conference was held, attended only by Alexander Janghorbani, Esq., of the Division of Enforcement (Division), and Kenneth B. Falk, Esq., of Falk & Associates, LLC, counsel for Marsh. That same day, Respondents were ordered to show cause – by February 10, 2012 – why they should not be found in default. See 17 C.F.R. §§ 201.155(a)(2), .220(f), .221(f). To date, no Respondent has shown cause.

The Division was granted leave to file a motion for relief against all defaulting Respondents, by March 9, 2012. The Division timely filed its Motion for Summary Disposition (Motion) along with its supporting Declaration of Alexander J. Janghorbani and six exhibits attached (Exhibit A through Exhibit F).⁴ Pursuant to Rule 323 of the Commission’s Rules of Practice, official notice is taken that each Respondent was civilly enjoined in the Civil Action and criminally convicted in the Criminal Action.

All Respondents are in default for failing to file Answers to the OIP. See 17 C.F.R. §§ 201.155(a), .220(f). Additionally, all Respondents, except Marsh, are in default for failing to participate in the prehearing conference. See 17 C.F.R. §§ 201.155(a), .221(f). Accordingly, the allegations in the OIP are deemed true and this proceeding is determined against them by default.

Findings of Fact

Marsh, a resident of Staten Island, New York, until his incarceration in 2010, was the founder and owner of Gryphon Holdings, Inc. (Gryphon), an unregistered investment adviser that provided investment recommendations to the public through the sale of subscriptions to investment newsletters from 2006 through April 2010. OIP at 1; Exhibit B at 9. In 2007, the National Association of Securities Dealers (NASD), the predecessor of the Financial Industry Regulatory Authority (FINRA), barred Marsh from associating in any capacity with any firm that is a member of the NASD. OIP at 1-2.

Anderson, Budion, and Levier worked at Gryphon as marketing and sales representatives from January 2008 to April 2010, May 2008 to April 2010, and May 2008 to April 2010,

³ On January 13, 2012, Anderson filed a letter with the Office of the Secretary that did not meet the requirements of an Answer. In an Order dated February 13, 2012, Anderson was ordered to file his Answer by February 24, 2012, and advised that failure to do so would result in his default without further notice or proceedings. See 17 C.F.R. § 201.155(a).

⁴ Exhibit A is the OIP; Exhibit B is the Court’s November 2, 2011, judgment in the Criminal Action; Exhibit C is the Court’s Order filed August 24, 2011, granting partial summary judgment and imposing injunctions against Anderson and Lada in the Civil Action; Exhibit D is the Court’s Order filed June 17, 2011, granting partial summary judgment and imposing injunctions against Marsh in the Civil Action; Exhibit E is the Court’s Order filed December 13, 2010, entering judgment and imposing injunctions against Levier in the Civil Action; and Exhibit F is the Court’s Order filed December 13, 2010, entering judgment and imposing injunctions against Budion in the Civil Action.

respectively. Id. at 2. Lada worked at Gryphon as a marketing representative, editor, and content creator from May 2008 to April 2010. Id.

Both the Civil Action and the Criminal Action arose out of the same conduct. Id. at 3. Respondents prepared investment newsletters and solicited customers to purchase subscriptions to Gryphon's investment newsletter at rates ranging from \$99 to \$1 million. Exhibit B at 6, 9. Depending on the subscription level purchased, customers could obtain direct telephone access to Gryphon staff and investment advice tailored to them. Id. Respondents also sold investment advice regarding individual stocks and stock options for between \$1,000 and \$50,000. Id.

From at least 2007 through April 2010, Respondents marketed Gryphon as a publisher of financial newsletters and as an investment manager by repeatedly making false statements on the internet and over the telephone about virtually every aspect of Gryphon's business, including the scope of the firm's investment management operations, the past performance of its trading recommendations, the credentials and qualifications of its staff, and the satisfaction of prior clients. OIP at 3. On several occasions, Respondents, through promotional materials or telephone calls, referred to the company's "trading desk," the "expertise of its traders," its "experienced team of financial analysts and researchers," and its "hedge fund." Id. at 10, 49-50, 60, 70-71, 80. In fact, each of these statements was a gross misrepresentation about Gryphon and its business. Further, Gryphon's sales representatives, including Marsh, Anderson, Budion, and Levier, referenced "Ken Maseka" and "Michael Warren," both fictional employees with fabricated credentials. Id. at 10, 37.

Respondents' fraudulent conduct during the relevant period caused subscribers to lose over \$19 million. Exhibit B at 24. In the Civil Case, each Respondent was permanently enjoined from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act. OIP at 3; Exhibits C, D, E, F. Further, Respondents each pled guilty to a felony arising from their conduct and the District Court of the Eastern District of New York entered criminal sentences against each of them. Additionally, each Respondent was ordered to make restitution ranging in amount from \$1,631,252 to \$11,068,376. OIP at 2-3.

Conclusion of Law

Section 203(f) of the Advisers Act authorizes the Commission to impose certain sanctions on persons associated with investment advisers where the person has been convicted within the prior ten years of any felony involving the purchase or sale of any security or the conduct of an investment adviser, and it is in the public interest to do so.

Respondents are subject to Advisers Act Section 203(f) because at the time of the illegal conduct, they acted as persons associated with an unregistered investment adviser, Gryphon. Respondents, while associated with Gryphon, were permanently enjoined from violating the antifraud provisions of the federal securities laws in the Civil Action and were criminally convicted of felonies involving the sale of securities, punishable by imprisonment of more than one year, in the Criminal Action. The injunctions arose out of wrongful conduct involving the purchase or sale of securities. Accordingly, the only remaining issue is which sanctions, if any, are in the public interest.

Sanctions

The Commission considers a wide variety of factors when determining the public interest, including whether respondent's conduct was egregious or recurrent, and the respondent's scienter, assurances against future violations, recognition of the wrongdoing nature of his conduct, and likelihood of future violations. Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see also Joseph J. Barbato, 53 S.E.C. 1259, 1282 n.31 (1999); Donald T. Sheldon, 51 S.E.C. 59, 86 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995). Deterrence is also a factor to be considered. See Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963).

A permanent associational bar against each Respondent is appropriate. Respondents' conduct meets all the factors used in making a determination that it is in the public interest for the Commission to issue a sanction. See Christopher A. Lowry, Advisers Act Release No. 2052 (Aug. 30, 2002), 55 S.E.C. 1133, 1141 (citing Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981)). Over a three-year period, Respondents engaged in a scheme to defraud investors of more than \$19 million and, thus, their conduct was egregious and repetitive. Respondents' actions involved a high degree of scienter in that they repeatedly and intentionally misrepresented virtually every aspect of Gryphon's business, including their own credentials. Respondents have failed to offer assurances against future violations or to demonstrate that they recognized the wrongful nature of their conduct. Accordingly, a permanent associational bar will serve the public interest and the protection of investors, pursuant to Section 203(f) of the Advisers Act. 15 U.S.C. § 80b-3(f).

The Division requests that Respondents be barred from associating with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, municipal advisor, and NRSRO. The Division correctly notes that most of the collateral bars established by the Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted July 21, 2010, after Respondents' misconduct ended, may be lawfully imposed. See Hector Gallardo, Exchange Act Release No. 65422 (Sept. 28, 2011); Motion at 14-15 & n.4. Specifically, bars on associating with a broker, dealer, investment adviser, municipal securities dealer, and transfer agent are proper. Gallardo, pp. 5-8. The same is true for a bar on associating with an NRSRO. Id. However, imposition of a bar on associating with a municipal advisor would impair Respondents' vested rights and have an impermissibly retroactive effect. Id. Accordingly, the requested municipal advisor bar will not be imposed.

Order

It is ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, Kenneth E. Marsh, Baldwin Anderson, Robert Anthony Budion, Jeanne M. Lada, and James T. Levier are BARRED from association with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, and nationally recognized statistical rating organization.

Cameron Elliot
Administrative Law Judge