UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 64438 / May 6, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14219

In the Matter of	:	
	:	ORDER MAKING FINDINGS AND
MITCHELL, PORTER &	:	IMPOSING REMEDIAL SANCTIONS
WILLIAMS, INC., and	:	BY DEFAULT
THOMAS L. MITCHELL	:	

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) in this matter on February 2, 2011, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleged that Thomas L. Mitchell (Mitchell) and Mitchell, Porter & Williams, Inc. (MPW) (collectively, Respondents), operated a multi-million dollar Ponzi scheme, and, as a result, they were enjoined from future violations of the antifraud, registration, and record-keeping provisions of the Securities Act of 1933 (Securities Act), the Exchange Act, and the Advisers Act by the U.S. District Court for the Central District of California.

Procedural Background

In a letter dated February 23, 2011, Andrew B. Holmes, Esq. (Holmes), represented that he had received the OIP and was authorized to accept service on behalf of Respondents. Respondents' Answer was due within twenty days of service of the OIP. See OIP at 3; 17 C.F.R. § 201.220(b). At a telephonic prehearing conference held on March 15, 2011, Holmes was informed that Respondents' Answer was due that day. (Preh'g Tr. 6.) The parties were granted a few days to discuss the possibility of settlement and Holmes was advised that if settlement was not reached that an Answer should be filed as soon as possible. (Preh'g Tr. 7-8.) No Answer has been filed.

On March 22, 2011, the Division of Enforcement (Division) filed a Status Report and Request for Entry of Default (Status Report), noting that settlement had not be reached. The Division further noted that it had informed Respondents that, if an Answer was not filed by March 21, 2011, it would request an entry of default. (Status Report, Ex. 1) In the Status Report, the Division officially requested an entry of default against Respondents. (Status Report at 2.) No response to the Status Report was filed by Respondents.

On April 25, 2011, the Division filed a Motion for Order of Default (Motion), Declaration of Gregory C. Glynn (Declaration) with seven attached exhibits, and Memorandum of Law in Support (Memo). The Division's filings request that Respondents be sanctioned by default through issuance of an order barring Mitchell from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and revoking the investment adviser registration of MPW. (Motion at 3; Memo at 9-10.) The Division also stated that it had been in contact with a new attorney for Respondents, Bob Bernstein, Esq. (Bernstein), who contacted the Division by letter dated March 29, 2011. (Memo at 4; Decl. at 6, Ex. 6.) Bernstein has not filed a Notice of Appearance in this proceeding. See 17 C.F.R. § 201.102(d)(2). The Division informed Bernstein that, if Respondents failed to file an Answer by April 15, 2011, it would again seek default relief. (Memo at 4; Decl. at 6, Ex. 7.) No response to the Division's Motion has been filed and the time for filing has passed. See 17 C.F.R. § 201.154(b).

As noted above, no Answer has been filed by Respondents. Further, Respondents have failed to reply to dispositive motions from the Division. Accordingly, they are in default and this proceeding may be determined against them. See 17 C.F.R. §§ 201.155(a), .220(f). As authorized by 17 C.F.R. § 201.155(a), the allegations of the OIP are deemed true, with Official Notice taken of the civil proceeding against them in SEC v. Mitchell, Porter & Williams, Inc., No. 2:10-cv-01576-PSG-FFM (C.D. Cal. Mar. 3, 2010), including Exhibits 1, 2, and 5 of the Declaration, containing the Commission's Complaint, the case Docket, and the Revised Judgment entered against Mitchell and MPW, respectively. (Decl. at 4-6.)

Findings of Fact

Mitchell, age sixty-four, is a resident of Los Angeles, California. (OIP at 2.) Mitchell is the principal of MPW and, in connection with the events set forth below, acted as an unregistered broker or dealer. (Id.) MPW is a suspended California corporation formed in October 2000 and based in Los Angeles, California, which registered with the Commission as an investment adviser in 2005. (Id.)

The Commission's Complaint in Mitchell, Porter alleged that from at least 1995 until March 2010, MPW and Mitchell operated a $14.7 million Ponzi scheme targeting retiring Los Angeles County Metropolitan Transit Authority bus operators. (Id.) The Complaint alleged Respondents raised at least $14.7 million from at least eighty-two clients nationwide through the offer and sale of promissory notes paying 10% to 15% a year issued by entities controlled by Mitchell. (Id.) The Complaint further alleged that Respondents used new client funds to pay interest on old clients' promissory notes and to pay MPW's operating expenses and Mitchell's living expenses. (Id.) The Complaint finally alleged that MPW, aided and abetted by Mitchell, improperly registered with the Commission as an investment adviser even though it had less than $25 million under management and failed to make and keep required books and records. (Id.)

On October 26, 2010, the district court entered a Revised Judgment against Respondents, enjoining them from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act; Exchange Act Section 10(b) and Rule 10b-5; and Advisers Act Sections 206(1), 206(2), and 206(4) and Rule 206(4)-8. (Id.) Further the Revised Judgment enjoined MPW from future

violations of Advisers Act Sections 203A and 204 and Rule 204-2, enjoined Mitchell from aiding and abetting violations of these same provisions, and enjoined Mitchell from future violations of Section 15(a) of the Exchange Act. (Id.)

Conclusions of Law

Under Exchange Act Section 15(b)(6)(A)(iii), incorporating subsection (4)(C), the Commission may impose remedial sanctions on a person associated with a broker or dealer, consistent with the public interest, if the person has been enjoined from engaging in conduct in connection with the purchase or sale of any security. See 15 U.S.C. §§ 78o(b)(4)(C), (6)(A)(iii). The Commission is similarly authorized by Advisers Act Section 203(f), incorporating subsection (e)(4), to impose remedial sanctions for this conduct on a person associated with an investment adviser. See 15 C.F.R. §§ 80b-3(e)(4), (f). Advisers Act Section 203(e)(4) also authorizes the imposition of remedial sanctions under the same conditions for an investment adviser. See 15 C.F.R. § 80b-3(e)(4).

As noted in more detail above, Mitchell was an associated person with an investment adviser and acted as an unregistered broker-dealer.[1] Both Mitchell and MPW, a registered investment adviser, were enjoined from violating antifraud and other provisions of the federal securities laws. To determine whether sanctions are in the public interest, the Commission considers six factors: (1) the egregiousness of the respondent's actions; (2) whether the violations were isolated or recurrent; (3) the degree of scienter; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his or her conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). "[T]he Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive." Conrad P. Seghers, 91 SEC Docket 2293, 2298 (Sept. 26, 2007) (citing Robert W. Armstrong, III, 85 SEC Docket 3011, 3039 (June 24, 2005) (quoting KPMG Peat Marwick LLP, 54 S.E.C. at 1192).). Remedial sanctions are not intended to punish a respondent, but to protect the public from future harm. See Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

The Commission has held that "conduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest sanctions under the securities laws." Jose P. Zollino, 89 SEC Docket 2598, 2608 (Jan. 16, 2007). In proceedings based on an injunction, the Commission examines the facts and circumstances underlying the injunction in determining the public interest. See Marshall E. Melton, 56 S.E.C. 695, 698 (2003). "[O]rdinarily, and in the absence of evidence to the contrary, it will be in the public interest to . . . bar from participation in the securities industry . . . a respondent who is enjoined from violating the antifraud provisions." Id. at 713.

While no findings of fact were made in the civil action underlying this proceeding, the OIP noted that Respondents' conduct occurred over the course of approximately fifteen years,

[1] Exchange Act Section 15(b) applies to persons acting as or associated with an unregistered broker or dealer. See Vladislav Steven Zubkis, 86 SEC Docket 2618, 2627 (Dec. 2, 2005).

where they violated antifraud, registration, and record-keeping provisions of the federal securities laws through the operation of a multi-million dollar Ponzi scheme perpetrated against retiring city workers. These allegations are deemed true, pursuant to 17 C.F.R. § 201.155(a), and Respondents have not contested them. Further Respondents have not provided assurances against future violations or recognized the wrongful nature of their conduct.

Additionally, the Commission has noted that "the fact that a person has been enjoined from violating the antifraud provisions 'has especially serious implications for the public interest.'" Michael T. Studer, 57 S.E.C. 890, 898 (2004) (quoting Marshall E. Melton, 56 S.E.C. 695, 713 (2003)). "Conduct that violates the antifraud provisions of the federal securities laws is . . . subject to the severest of sanctions under the securities laws." Jose P. Zollino, 89 SEC Docket 2598, 2608 (Jan. 16, 2007); Melton, 56 S.E.C. at 713. The existence of such an injunction can indicate the appropriateness of a bar from participation in the securities industry. See Michael Batterman, 57 S.E.C. 1031, 1043 (2004); Melton, 56 S.E.C. at 709-710.

In view of the foregoing, and consistent with the public interest, MPW's registration should be revoked and Mitchell should be barred from association within the securities industry. Exchange Act Section 15(b)(6)(A) and Advisers Act Section 203(f), as amended by Section 925 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, authorizes as permissible remedial sanctions bars from association with a "broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization." Because bars from association with a municipal advisor or nationally recognized statistical rating organization did not exist at the time of Mitchell's conduct, they will not be applied here. See generally Landgraf v. USI Film Products, 511 U.S. 244, 245, 269-70 (1994).

Order

IT IS ORDERED, pursuant to Section 15(b)(6)(A) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, that Thomas L. Mitchell is barred from association with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent; and

IT IS FURTHER ORDERED, pursuant to Section 203(e) of the Investment Advisers Act of 1940, that the registration of Mitchell, Porter & Williams, Inc., as an investment adviser is revoked.

Robert G. Mahony
Administrative Law Judge