INITIAL DECISION RELEASE NO. 279
ADMINISTRATIVE PROCEEDING
FILE NO. 3-11625

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

In the Matter of	:	
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VLADISLAV STEVEN ZUBKIS	:	INITIAL DECISION
	:	April 5, 2005
	:	
	:	

APPEARANCES: John J. Graubard for the Division of Enforcement, United States Securities and Exchange Commission

Vladislav Steven Zubkis, pro se

BEFORE: Lillian A. McEwen, Administrative Law Judge

SUMMARY

This Initial Decision finds that Respondent Vladislav Steven Zubkis (Zubkis) was permanently enjoined from violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act), and Sections 10(b), 15(b), and 15(c)(1) of the Securities Exchange Act of 1934 (Exchange Act) and Rules 10b-5, 15c1-2, 15c1-5, and 15c1-6 thereunder. This Initial Decision bars Zubkis from association with any broker or dealer and from participating in an offering of penny stock.

PROCEDURAL HISTORY

The Securities and Exchange Commission (Commission) initiated this proceeding on September 1, 2004, pursuant to Section 15(b) of the Exchange Act, with an Order Instituting Proceedings (OIP). Zubkis filed a timely Answer. Pursuant to Rule 155(a) of the Commission's Rules of Practice, a Default Order was issued against Zubkis on December 3, 2004. Vladislav Steven Zubkis, Exchange Act Release No. 50793. On December 9, 2004, Zubkis filed a Motion to Reconsider the Default Order. On February 18, 2005, the Commission ordered that the Motion to Reconsider be considered a request to set aside a default and remanded it to the undersigned. On February 22, 2005, I issued an order setting aside the Default Order.

I held a one-day public hearing in San Diego, California, on March 8, 2005. The Division of Enforcement (Division) called no witnesses and introduced twelve exhibits. Zubkis called no witnesses and introduced three exhibits. The Division filed its Post-Hearing Brief and Proposed Findings of Fact, and Proposed Conclusions of Law on March 18, 2005. Zubkis filed his Post-Hearing Brief on March 21, 2005, and a Motion for Court to Take Administrative Notice on March 24, 2005.[1]

ISSUES PRESENTED

The OIP alleges that on June 29, 2001, the United States District Court for the Southern District of New York (District Court) entered a Final Judgment of Permanent Injunctive and Other Relief Against Zubkis (Final Judgment) in SEC v. Zubkis, Civil Action No. 97 Civ. 8086 (JGK/KNF). The OIP alleges that the Final Judgment: (1) permanently enjoined Zubkis from violating Sections 5(a), 5(c), and 17(a) of the Securities Act, and Sections 10(b), 15(b), and 15(c)(1) of the Exchange Act and Rules 10b-5, 15c1-2, 15c1-5, and 15c1-6, thereunder; (2) ordered Zubkis to disgorge ill-gotten gains of $12,544,313.25 and prejudgment interest of $9,034,418.14, for a total of $21,578,731.39; and (3) permanently prohibited Zubkis from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

The OIP charges that, in the underlying civil litigation, the Commission alleged that from June 1993 through at least May 1996, Zubkis orchestrated a fraudulent scheme to sell unregistered securities of Stella Bella Corporation, USA, now known as International Brands, Inc. (IBI), to investors. It alleges that Zubkis participated in an offering of IBI stock, which is a penny stock, and caused IBI to issue more than five million shares of common stock from October 1994 to May 1996. Zubkis is alleged to have arranged for the sale of the IBI securities to investors through Z3 Capital Corporation (Z3 Capital), an unregistered broker-dealer, and through other registered broker-dealers, who sold at least two million of the IBI shares directly to investors. Zubkis is also alleged to have caused Z3 Capital to issue, offer, and sell "Triple Crown Units" (TCUs), to investors in a private placement. The OIP charges that there were no registration statements filed or in effect with the Commission for the IBI common stock or the Z3 Capital securities that were sold to investors. Additionally, the OIP alleges that there were no exemptions or safe harbors from registration available for those sales of IBI or Z3 Capital securities. Finally, Zubkis and the Z3 Capital salespeople are alleged to have made material misrepresentations to investors who purchased the IBI common stock and Z3 Capital securities.

If I conclude that the allegations in the OIP are true, I must then determine, pursuant to Section 15(b) of the Exchange Act, whether any remedial sanctions against Zubkis are appropriate in the public interest.

[1] Citations to the transcript of the hearing will be noted as "(Tr. __.)." Citations to the Division's and Zubkis's exhibits will be noted as "(Div. Ex. __.)," and "(Resp. Ex. __.)," respectively.

FINDINGS OF FACT

The findings and conclusions herein are based on the entire record. I applied preponderance of the evidence as the standard of proof for the Division's case. See Steadman v. SEC, 450 U.S. 91, 102 (1981). I have considered and rejected all arguments and proposed findings and conclusions that are inconsistent with this Initial Decision.

The Civil Action

On October 31, 1997, the Commission filed a civil injunctive complaint in the United States District Court for the Southern District of New York, against Zubkis. (Div. Ex. 1) The Commission's complaint alleged that from June 1993 through at least May 1996, Zubkis, a controlling shareholder of IBI and Z3 Capital, planned and implemented, and IBI and Z3 Capital participated in, a wide-ranging fraudulent scheme to evade the registration requirements of the federal securities laws and to illegally raise money for IBI and Zubkis. (Div. Ex. 1.) On February 21, 2000, the District Court entered an order granting partial summary judgment as to liability against Zubkis. (Div. Ex. 5.) The District Court made the following findings, which I find to be true.

In 1993, Zubkis incorporated Z3 Capital, which acquired the assets of Stella Bella Coffee Co., which were subsequently sold or transferred to the Stella Bella Corporation, which, in turn, assigned the assets to Stella Bella Corporation, USA, now known as IBI. (Div. Ex. 5 at 5-6) In 1994, the IBI board of directors authorized the issuance of ten million shares of IBI stock, which were purportedly "restricted" within the meaning of Rule 144 of the Securities Act, to Z3 Capital or its assignees. In return, Z3 Capital purportedly provided IBI with consulting services and a $2 million unsecured promissory note. There is no evidence that the note was ever paid.

IBI, pursuant to board authorization, then issued nine million shares to Sumatra Investments, Ltd. (Sumatra), and 900,000 shares to Zubkis as Z3 Capital's designees. (Div. Ex. 5 at 6.) The IBI board, also in 1994, authorized an additional 8.12 million shares of stock to Rose Blossom Corp. (Rose Blossom) or its designees, purportedly for forgiving $8,120 in debt that Rose Blossom had assumed on behalf of IBI. Upon this authorization, IBI issued 5.35 million shares to Rose Blossom and its designees, Trenton Guaranty Corp., Camden Guaranty Investment Corp., Kivah Guaranty Limited, and Kirachi Corp. (Div. Ex. 5 at 6-7.) These shares were purportedly governed by Rule 901 of the Securities Act. Like Sumatra and Rose Blossom, these corporations were organized and controlled by Zubkis. Upon the same authorization, IBI issued over 1.1 million shares to Z3 Capital and 280,000 shares to Zubkis, all of which purported to be "restricted" within the meaning of Rule 144 of the Securities Act. (Div. Ex. 5 at 7.) None of the IBI shares issued to Z3 Capital, Rose Blossom, or their designees were registered with the Commission and there were no exemptions or safe harbors from registration.

Beginning in late 1994, Zubkis directed the sale to public investors of many shares of the IBI stock that had been issued to Z3 Capital, Rose Blossom, and their designees. For example, IBI shares were transferred into a Rose Blossom brokerage account at Alpine Securities Corporation (Alpine), a registered broker-dealer located in Salt Lake City, Utah. Zubkis, on

Rose Blossom's behalf, directed Alpine to sell IBI shares into the market. The proceeds of these sales were wired into an account over which Zubkis exercised joint control. (Div. Ex. 5 at 8.)

From late 1993 until some time in 1995, Zubkis directed Z3 Capital to issue, offer, and sell securities, referred to as TCUs. The TCUs were issued in at least two series, one for Z3 Capital stock and one for IBI stock, neither of which were registered with the Commission and for which there were no exemptions or safe harbors from registration. The issuance, sale, and offer of these TCUs generated more than $2.8 million in proceeds. (Div. Ex. 5 at 9.)

Between June 1993 and at least May 1996, Zubkis, directly and through Z3 Capital, operated an unregistered securities broker, and sold and offered to sell IBI and Z3 Capital securities to investors. Z3 Capital maintained several offices and employed several salespeople who, using interstate telephones, actively solicited investors. The Z3 Capital salespeople sold at least 3.7 million shares of IBI stock to investors, which resulted in at least $1.2 million in proceeds. (Div. Exs. 5, 6.) Neither Zubkis nor Z3 Capital was registered as a securities broker or dealer. Despite a duty to do so, neither Zubkis, nor the Z3 Capital salespeople, ever disclosed to investors that IBI and Z3 Capital were both controlled by Zubkis, or that he had a financial interest in the sale of the IBI and Z3 Capital securities. (Div. Ex. 5 at 8-9.)

Zubkis, individually and through others, made numerous fraudulent misrepresentations inducing investors to purchase IBI securities, including: (1) baseless predictions on the future price of IBI common stock; (2) baseless revenue predictions regarding IBI's business; (3) that United Airlines would be contracting with IBI for all its coffee needs for all its flights in the United States; (4) that IBI would be merging with Boston Chicken; and (5) that IBI common stock would be listed on the American Stock Exchange by the end of 1996. (Div. Ex. 5 at 9-10.)

Final Judgment

On the preceding facts, the District Court found that Zubkis violated Sections 5(a), 5(c), and 17(a) of the Securities Act, and Sections 10(b), 15(b), and 15(c)(1) of the Exchange Act and Rules 10b-5, 15c1-2, 15c1-5, and 15c1-6, thereunder. The District Court also ordered Zubkis to disgorge ill-gotten gains, which would be determined at a future proceeding. Thereafter, on April 17, 2001, a Magistrate Judge entered a Report and Recommendation (Report and Recommendation) recommending Zubkis disgorge $12,544,313.25, along with prejudgment interest at $9,034,418.14 – for a total of $21,578,731.39. (Div. Ex. 6.) The District Court accepted and adopted the Report and Recommendation on June 21, 2001. (Div. Ex. 7.)

On June 29, 2001, the District Court entered its Final Judgment in which it: (1) permanently enjoined Zubkis from violating Sections 5(a), 5(c), and 17(a) of the Securities Act, and Sections 10(b), 15(b), and 15(c)(1) of the Exchange Act and Rules 10b-5, 15c1-2, 15c1-5, and 15c1-6, thereunder; (2) ordered Zubkis to disgorge ill-gotten gains of $12,544,313.25 and prejudgment interest of $9,034,418.14, for a total of $21,578,731.39; and (3) permanently prohibited Zubkis from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act. (Div. Ex. 8.) On May 20, 2002, the United States Court of Appeals for the Second Circuit affirmed the Final Judgment. (Div. Ex. 9.)

CONCLUSIONS OF LAW

The Permanent Injunction

I have taken official notice of the Final Judgment rendered in the injunctive proceeding, SEC v. Zubkis, Civil Action No. 97 Civ. 8086 (JGK/KNF), and I conclude that the United States District Court for the Southern District of New York is a court of competent jurisdiction. See 17 C.F.R. § 201.323. Based on the foregoing, I conclude that Zubkis was permanently enjoined within the meaning of Sections 15(b)(6)(A) and 15(b)(4)(C) of the Exchange Act.

It is well established that findings of fact and conclusions of law made in an injunctive action cannot be attacked in a subsequent administrative proceeding. Jospeph P. Galluzzi, 78 SEC Docket 1125, 1129 (Aug. 23, 2002); Ted Harold Westerfield, 54 S.E.C. 32, 32 n.22 (1999); Demetrius Julius Shiva, 52 S.E.C. 1247, 1249 (1997). Accordingly, Zubkis is precluded from challenging the findings of fact and conclusions of law made by the District Court. To the extent that such challenges are raised in Zubkis's Post-Hearing Brief or Motion for Court to Take Administrative Notice, they are hereby rejected.

Section 3(a)(4) of the Exchange Act defines the term "broker" as "any person engaged in the business of effecting transactions in securities for the account of others." Section 3(a)(18) of the Exchange Act provides that the term "person associated with a broker or dealer" includes "any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer." Zubkis was associated with Z3 Capital, an unregistered securities broker, as he directed and controlled its activities. The IBI stock sold by Z3 Capital salespeople, was a penny stock within the meaning of Section 3(a)(51) and Rule 3a51-1(d) of the Exchange Act, in that it was not a reported security and sold for less than five dollars per share. See e.g. (Div. Ex. 6 at 4) (finding that Z3 Capital sold at least 3.7 million shares of IBI stock from which it received $1.2 million in proceeds). Accordingly, as a result of the conduct underlying the Final Judgment, I find that Zubkis was associated with a broker and was a person participating in an offering of penny stock.

Zubkis's Arguments

Zubkis raised five legal claims in a March 4, 2005, submission to the Commission. (Resp. Ex. 1.) Each will be addressed below.

Zubkis primarily argues that this proceeding is barred by the statute of limitations, citing 28 U.S.C. § 1658, which provides a four-year period for the commencement of any civil action arising under an act of Congress. (Resp. Ex. 1 at 2.) The statute of limitations in an action brought by the United States is governed by 28 U.S.C. § 2462, which provides a five-year period. This period began to run when the District Court's Final Judgment was entered, June 21, 2001. See Markowski v. SEC, No. 01-1181, 2002 WL 1932001, at *1 (D.C. Cir. Apr. 25, 2002), cert. denied, 537 U.S. 976 (2002). Thus, this proceeding was timely brought.

Zubkis claims that the Commission's regulations used as the basis for the OIP were not published in the Federal Register and that the OIP "made use of statute without regulations." (Resp.

Ex. 1 at 2-3.) First, the Commission's regulations are published in the Code of Federal Regulations, which is a supplemental codification of the Federal Register; and is "prima facie evidence of the text of the documents and of the fact that they are in effect on and after the date of publication." See 44 U.S.C. § 1510(b), (e). Second, unless required by the implementing regulations, a statute enacted by Congress does not need agency adopting regulations for it to become operative. The OIP is based on Section 15(b) of the Exchange Act, which does not require the Commission to adopt implementing regulations.

Zubkis contends that the Commission lacks jurisdiction to bring this proceeding and that the civil injunctive proceeding bars this administrative proceeding. (Resp. Ex. 1.) The plain language of Section 15(b)(6) of the Exchange Act establishes the jurisdiction of the Commission when a respondent, like Zubkis, has been enjoined for violating federal securities laws. Throughout each of his arguments, Zubkis makes the general claim that "he has been denied due process of law." (Resp. Ex. 1.) Zubkis, however, was given full notice of the proceedings by proper service of the OIP. Zubkis filed submissions with this Office that were duly considered by the undersigned or the Commission, and he also attended and participated in the public hearing held for this matter on March 8, 2005. Therefore, I reject all of the arguments raised in Respondent's Exhibit 1, as being contrary to law or otherwise meritless.

SANCTIONS

Section 15(b)(6)(A) of the Exchange Act authorizes the Commission to sanction any person who is, or at the time of the alleged misconduct was, associated with a broker or dealer; or at the time of the misconduct was participating in the offering of any penny stock if: (1) the person is enjoined from engaging in any conduct or practice in connection with the purchase or sale of a security; and (2) such a sanction is in the public interest. I have already concluded that Zubkis 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. I have also concluded that at the time of the misconduct underlying the Civil Action, Zubkis was associated with a broker and was participating in an offering of penny stock.

The remaining issue is what sanctions are appropriate in the public interest. The Division requests a bar from association with any broker or dealer and a bar from participating in a penny stock offering. In determining whether a sanction is appropriate in the public interest, the following factors are examined:

> [T]he egregiousness of the [respondents's] actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the [respondent's] assurances against future violations, the [respondent's] recognition of the wrongful nature of their conduct, and the likelihood that the [respondent's] occupations will present opportunity for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (citation omitted), aff'd on other grounds, 450 U.S. 91 (1981). In proceedings based on an injunction, the Commission considers the

circumstances surrounding the injunctive action when making the public interest determination. Marshall E. Melton, 80 SEC Docket 2812, 2814 (July 25, 2003).

As stated by the District Court, Zubkis engaged in recurrent behavior in which "[o]ver a period of several years … [he] knowingly orchestrated a securities fraud that netted him several million dollars and from which he stood to profit personally." (Div. Ex. 5.) The several fraudulent statements and misrepresentations that are the basis for the scheme were nothing short of egregious, as Zubkis's scheme resulted in investors losing over $12 million dollars. Further, the complexities of the scheme, along with the outright fraudulent nature of the statements and misrepresentations, evidence a high degree of scienter by Zubkis. At no time has Zubkis shown recognition of the wrongful nature of his conduct, or made any assurances that there would be no future violations of federal securities laws. To the contrary, Zubkis has repeatedly taken the position that he is not bound by the federal securities laws. (Div. Exs. 3, 5, 10; Resp. Ex. 1, 2, 3.) Moreover, Zubkis has previously been found to have violated securities related rules. (Div. Exs. 11, 12.) Finally, Zubkis indicated at the hearing that he continues to raise funds from investors. (Tr. 68-69.)

Accordingly, I find that it is in the public interest to bar Zubkis from association with any broker or dealer and to bar him from participating in an offering of penny stock. There are no mitigating circumstances that warrant a lesser sanction.

CERTIFICATION OF RECORD

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), I hereby certify that the record includes the items set forth in the record index issued by the Secretary of the Commission on March 29, 2005.

ORDER

Based on the findings and conclusions set forth above:

IT IS ORDERED that, pursuant to Section 15(b)(6)(A) of the Securities Exchange Act of 1934, Vladislav Steven Zubkis is hereby BARRED from association with any broker or dealer; and

IT IS FURTHER ORDERED that, pursuant to Section 15(b)(6)(A) of the Securities Exchange Act of 1934, Vladislav Steven Zubkis is hereby BARRED from participating in an offering of penny stock.

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.

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Lillian A. McEwen
Administrative Law Judge