

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

In the Matter of

SPECTRUM CONCEPTS, LLC,
DONALD JAMES WORSWICK,
MICHAEL NICHOLAS GROSSO, AND
MICHAEL PATRICK BROWN

INITIAL DECISION ON DEFAULT
AS TO MICHAEL NICHOLAS
GROSSO AND MICHAEL PATRICK
BROWN AND STAY AS TO
SPECTRUM CONCEPTS,LLC, AND
DONALD JAMES WORSWICK
April 7, 2015

APPEARANCES: Edward G. Sullivan and Michael D. Watson for the Division of Enforcement, Securities and Exchange Commission

Philip J. Snyderburn and K. Michael Swann, Snyderburn, Rishoi & Swann, LLP, for Spectrum Concepts, LLP, and Donald James Worswick

No appearances were made by, or on behalf of, Michael Nicholas Grosso

Michael Patrick Brown appeared *pro se*

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

The Securities and Exchange Commission (Commission) issued an Order Instituting Cease-and-Desist Proceedings (OIP) on January 23, 2015, pursuant to Section 8A of the Securities Act of 1933 (Securities Act) and Section 21C of the Securities Exchange Act of 1934 (Exchange Act). Respondents were required to file an Answer within twenty days after service of the OIP. OIP at 7; 17 C.F.R. § 201.220(b). On March 23, 2015, Spectrum Concepts, LLP (Spectrum), and Donald James Worswick (Worswick) and the Division of Enforcement (Division) filed a joint motion to stay the proceeding pending Commission consideration of offers of settlement and brief in support (Motion to Stay). The Motion to Stay represents that the parties have reached an agreement in principle to a settlement that will resolve all claims and requests for relief. Motion to Stay at 1-2.

Michael Nicholas Grosso (Grosso) and Michael Patrick Brown (Brown) were served with the OIP on February 23, 2015, and February 10, 2015, respectively. *Spectrum Concepts, LLC*, Admin. Proc. Rulings Release No. 2370, 2015 SEC LEXIS 771 at *1-2 (Mar. 2, 2015). On March 2, 2015, I warned Grosso and Brown that I would default them if they did not file Answers and that I would default any party that failed to participate in the prehearing conference. *Id.* at *4. All the parties, except Grosso, participated in a prehearing conference on March 5, 2015, at which I reminded Brown that failing to file an Answer was grounds for default. *Spectrum Concepts, LLC*, Admin. Proc. Rulings Release No. 2385, 2015 SEC LEXIS 855 (Mar. 6, 2015). Grosso sent a letter, which the Office of the Secretary (Secretary) filed on March 10, 2015, stating that he had cooperated with the Commission last year, had spent five hours with Michael Watson in New York City explaining everything he knew, and had no further knowledge of Spectrum or Brown. I take official notice of a closed action, *SEC v. Grosso*, 1:13 mi 158 (N.D. Ga.), in which the Commission filed a motion on October 21, 2013, for enforcement of an administrative subpoena. 17 C.F.R. § 201.323. On March 11, 2015, I informed Grosso via email, with copy to the Secretary, that this administrative proceeding was a separate matter from the subpoena enforcement action, and he could be held in default if he did not file an Answer, participate in the hearing, or otherwise defend the proceeding.

On March 17, 2015, the Division filed separate motions to deem Grosso and Brown in default (Grosso Motion, Brown Motion) citing Rule 155(a)(2) of the Commission's Rules of Practice. I GRANT the Division's Motions and find Grosso and Brown in default, and find that the allegations in the OIP are true as to them. Both Respondents fall within Rule 155(a)(2) because both failed to file an Answer, to respond to a dispositive motion, and to otherwise contest the proceeding. In addition, Grosso did not appear at a prehearing conference. 17 C.F.R. §§ 201.155(a), .220(f), .221(f).

Findings of Fact

Grosso is 60 years of age and a resident of Rocky Point, New York.¹ OIP at 3. Brown is forty-seven years old and a resident of Boca Raton, Florida. *Id.* Spectrum is a Florida limited liability company that Worswick created in January 2010 for the supposed purpose of sponsoring and promoting concerts. *Id.* at 2. However, other than the investor funds which Spectrum received into its bank account, Spectrum has never had any corporate assets or business operations, and has served only as a vehicle for Worswick's fraud.² *Id.* Spectrum has never registered an offering of securities under the Securities Act or a class of securities under the Exchange Act. *Id.*

¹ While the OIP states that Grosso is a resident of Rocky Point, New York, he has since moved to Andes, New York.

² Any mention of behavior of Spectrum or Worswick in this Initial Decision is true only for purposes of this Initial Decision as to Respondents Grosso and Brown. 17 C.F.R. § 201.155(a) ("A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against that party upon consideration of the record, including the [OIP], the allegations of which may be deemed true."). I do not make any findings as to Spectrum or Worswick.

Between approximately May 2012 and October 2012 (the Offering Period), Worswick, acting through Spectrum, offered and sold to at least five elderly investors \$465,000 of investments in what he called “Private Joint Venture Credit Enhancement Agreements” (Enhancement Agreements). OIP at 2. In selling the Enhancement Agreements, Worswick was helped by Brown, who devised and drafted the language of the Enhancement Agreements and other documents presented, or intended to be presented, to investors as part of the offering, and helped sell them to at least two investors. *Id.* at 2-3. Grosso also helped sell the Enhancement Agreements to investors while portraying himself falsely as an officer or employee of Spectrum. *Id.* During the Offering Period, Brown portrayed himself as an attorney-at-law but, in fact, has never been licensed as an attorney by any state. *Id.* at 3. In 2004, Brown was charged by the Commission with violations of Section 10(b) of the Exchange Act and Rule 10b-5, thereunder. *Id.* at 3. In 2005, Brown settled those charges by consenting to a court order enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5, thereunder, and barring him for a period of two years from participating in the offering of a penny stock. *Id.*

Worswick and Grosso reviewed, edited, and disseminated to investors the documents created by Brown, and also solicited investors themselves. OIP at 3. Grosso posted information about the offering on a classified advertisement website in order to attract investors broadly. *Id.* Worswick, Brown, and Grosso were helped in their sale efforts by one or more of four individuals, who helped to identify and refer investors interested in Spectrum’s Enhancement Agreements. *Id.* at 2. The Enhancement Agreements represented to investors that investor funds would be placed by Spectrum in “private funding projects” and used to “set up” a “credit facility” and something called a “trade slot” that would then be “blocked” for the benefit of a supposed “trade platform.” *Id.* In selling Enhancement Agreements, Worswick, Brown, and Grosso told investors that, by investing in an Enhancement Agreement, the investors, along with Spectrum, would earn returns ranging from 900% in twenty days to 4,627% annually. *Id.* The investments were fictitious. *Id.*

After signing certain forms, early investors were allowed to discuss their potential investment with Brown. OIP at 4. Brown, Grosso or Worswick finalized the investor’s Enhancement Agreement and provided it to the investor for signing. *Id.* Grosso and Worswick made some revisions to the Enhancement Agreements drafted by Brown for the final three investors. *Id.* Brown’s role in the fraud lessened in or about the late summer of 2012. *Id.*

To add legitimacy to the offering, Worswick arranged for an escrow agent to receive investor funds and to release the funds to Spectrum at the investor’s direction when certain pre-conditions were met. OIP at 4. Worswick, Brown, or Grosso would tell investors that the pre-conditions had occurred. *Id.* The use of an escrow agent provided a façade of legitimacy. *Id.* Investors in the Enhancement Agreements had no means to verify independently whether the pre-conditions had occurred. *Id.* The financial guarantee provided to two investors was fictitious. *Id.*

The Enhancement Agreements only vaguely described how investor funds would be used. OIP at 4. According to their terms, Spectrum would establish a credit facility and trade slot “approximately 7 banking days” after it received investor funds from escrow. *Id.* Afterwards, the credit facility and trade slot would be “blocked for the benefit of a trade platform.” *Id.* The Enhancement Agreements further represented that the trade platform would begin making profit payments to the escrow attorney within thirty banking days of the trade platform being blocked, and that the escrow agent would disperse profit payments to investors within one business day of the escrow agent receiving them. *Id.* In addition, Spectrum itself would somehow participate in the investment with the investors and share in the profits accordingly. *Id.*

On June 18, 2012, Spectrum provided two investors with a financial guarantee, drafted by Brown and signed by Worswick, and purportedly backed by a particular insurance company. OIP at 5. In a June 18, 2012, email, Brown communicated through an intermediary to one of the investors that the “policy will be effective tomorrow . . . and must be signed by [the investor] and Mr. Worswick and sent back to [Brown].” *Id.* Brown added that the investor needed to release the funds from the escrow agent so that the policy premium could be paid. *Id.* In fact, the financial guarantee provided by Spectrum was fictitious. *Id.*

Of the \$465,000 of investor funds raised, two investors obtained a return of their funds of \$265,000. OIP at 2. Most of the remaining \$200,000 was misappropriated by Worswick. *Id.* Among other things, he spent a portion of this amount on living expenses and paid other portions to a variety of people, including Grosso, who received \$27,500. *Id.* Brown was paid between \$15,000 and \$20,000. *Id.* at 6.

Conclusions of Law

Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5, prohibit fraudulent conduct in the offer, purchase, and sale of securities using the instrumentalities of interstate commerce. 15 U.S.C. §§ 77q(a), 78j(b); 17 C.F.R. § 240.10b-5. Sections 5(a) and 5(c) of the Securities Act prohibit, absent an exemption, any person, directly or indirectly, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell a security for which a registration statement is not in effect or to offer to sell a security for which a registration statement has not been filed. 15 U.S.C. § 77e(a), (c). Grosso’s and Brown’s default leave as uncontested and therefore deemed to be true, allegations that they violated Sections 5(a), 5(c), and 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5, as alleged in the OIP. 17 C.F.R. § 201.155(a).

Sanctions

This proceeding was instituted pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act. Section 8A(a) of the Securities Act authorizes the Commission where it finds, after notice and opportunity for hearing, that a person has violated a provision of the statute to order the person to cease and desist from committing or causing such violation and any future violation. 15 U.S.C. § 77h-1(a). Section 8A(e) of the Securities Act authorizes the

Commission in a cease-and-desist proceeding to order disgorgement, including reasonable interest. 15 U.S.C. § 77h-1(e). Section 8A(g) of the Securities Act authorizes the Commission to impose civil money penalties in a cease-and-desist proceeding, after notice and hearing, where it finds a violation of the Securities Act and finds that a penalty is in the public interest. 15 U.S.C. § 77h-1(g). Sections 21C and 21B of the Exchange Act contain similar provisions. 15 U.S.C. §§ 78u-2(a)(2), 78u-3(a), (e).

The *Steadman* factors are used to determine whether a sanction is in the public interest: egregiousness of the actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of assurances against future violations; recognition of the wrongful nature of the conduct; and the likelihood that the respondent's occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive. *Gary M. Kornman*, 2009 SEC LEXIS 367, at *22. The Commission also considers the deterrent effect of administrative sanctions. *See Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35-36 & n.46 (Jan. 31, 2006).

Grosso's and Brown's conduct was egregious and recurrent in that they participated in a blatant fraud over an approximate five-month period, and they acted with a high degree of scienter in that they helped the main perpetrator of a prime bank scheme. OIP at 1. Neither has demonstrated any remorse or recognition that their conduct violated the securities statutes. Moreover, the Commission has made clear that it considers violations of the antifraud provisions of the federal securities laws to be serious violations. *Marshall E. Melton*, Investment Advisers Act of 1940 Release No. 2151, 2003 SEC LEXIS 1767 at *29-30 (July 25, 2003) and later cases. Brown's violations are amplified by the fact that the Commission enjoined Brown from antifraud violations in 2005. OIP at 3. The conduct is recent, having occurred in 2012 and investors were harmed in the amount of \$200,000. There are no mitigating circumstances.

The Division requests that Grosso: (1) disgorge \$27,500, the amount he received in investor proceeds, with prejudgment interest of \$2,056.76; (2) pay a third tier civil penalty; and (3) be ordered to cease and desist from further fraudulent conduct. Grosso Motion at 2, Ex. A. The Division requests that Brown: (1) disgorge "the lower end" of a \$15,000 to \$20,000 range of investor proceeds he received, with prejudgment interest of \$1,121.87; (2) pay a third tier civil penalty; and (3) cease and desist from further fraudulent conduct. Brown Motion at 2-3, Ex. A.

Cease and Desist

If the Commission finds that a person has violated certain provisions of the federal securities laws, Section 8A of the Securities Act and Section 21C of the Exchange Act authorize the Commission to enter an order requiring a person to cease and desist from committing or causing that violation and any future violation. 15 U.S.C. §§ 77h-1, 78u-3. In determining whether to issue a cease-and-desist order, the Commission considers essentially the same factors as in *Steadman*. *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *116 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002). There must also be some likelihood of future violations, although the required showing is "significantly less than

that required for an injunction.” *Id.* at *101, *114. Absent evidence to the contrary, a single past violation ordinarily suffices to establish risk of future violations. *Id.* at *102-03, *114-15 & n.147. In addition, the Commission considers “whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings.” *Id.* at *116.

Consideration of the factors indicates serious measures are needed to protect the public with respect to the activities of Grosso and Brown in the securities industry, taking into account the other sanctions imposed by this Initial Decision. Brown’s violations occurred despite his being enjoined, so the probability of future violations is very high. By defaulting, Grosso has shown no appreciation for the seriousness of his acts or this process, and as such, the probability of his future violations appears to be substantial. For all these reasons, Brown and Grosso will be ordered to cease and desist from committing any further violations.

Disgorgement

Securities Act Section 8A(e) and Exchange Act Sections 21B(e) and 21C(e) authorize disgorgement, including reasonable interest, in cease-and-desist proceedings. 15 U.S.C. §§ 77h-1(e), 78u-2(e), 78u-3(e). The case law is clear that persons who violate the securities statutes should be required to disgorge ill-gotten gains with prejudgment interest. Disgorgement of illegal gains is an equitable remedy designed to deprive the wrongdoer of his unjust enrichment and to deter him and others from violating the securities laws. *SEC v. First Pac. Bancorp.*, 142 F.3d 1186, 1191 (9th Cir. 1998), *cert. denied*, 525 U.S. 1121 (1999); *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989); *SEC v. Commonwealth Chem. Sec., Inc.*, 574 F.2d 90, 102 (2d Cir. 1978). It is undisputed that Grosso received \$27,500 and Brown received a minimum of \$15,000 as a result of their wrongdoing. They will be required to disgorge these amounts, with prejudgment interest.

Civil Money Penalty

Section 8A(g) of the Securities Act and Section 21B(b) of the Exchange Act set out a three-tiered system for determining the maximum civil penalty for each act or omission. A maximum third-tier penalty is permitted if (1) the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and (2) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission. 15 U.S.C. §§ 77h-1(g)(2)(C), 78u-2(b)(3). To determine whether a penalty is in the public interest, Exchange Act Section 21B calls for consideration of: (1) whether the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) the harm caused to others; (3) any unjust enrichment; (4) any prior violations; (5) the need for deterrence; and (6) such other matters as justice may require. 15 U.S.C. § 78u-2(c).

Grosso’s and Brown’s conduct satisfies the requirements for a third-tier penalty because they committed violations that involved fraud, caused harm to others and unjust enrichment to themselves; and as discussed above, these penalties are in the public interest. For the period May to October 2012, the maximum amount of civil penalty for each act or omission at the third tier is \$150,000 for a natural person. 17 C.F.R. § 201.1004, Subpt. E, Table IV. The OIP describes

Grosso and Brown as playing a significant role in a scheme that was blatantly illegal; therefore, they should be ordered to pay a maximum third-tier penalty for each of the five investors who purchased Enhancement Agreements.

Order

I STAY the proceedings as to Spectrum Concepts, LLC, and Donald James Worswick, pursuant to Commission Rule of Practice 161(c)(2)(i), 17 C.F.R. § 201.161(c)(2)(i).

I ORDER, pursuant to Section 8A of the Securities Act of 1933, and Section 21C of the Securities Exchange Act of 1934, that Michael Nicholas Grosso and Michael Patrick Brown shall cease and desist from committing or causing violations, and any future violations, of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5.

I FURTHER ORDER, pursuant to Section 8A(e) of the Securities Act of 1933 and Sections 21B(e) and 21C(e) of the Securities Exchange Act of 1934, that Michael Nicholas Grosso shall disgorge \$27,500, with prejudgment interest, and that Michael Patrick Brown shall disgorge \$15,000, with prejudgment interest. Prejudgment interest shall be calculated at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), shall be compounded quarterly, and shall run from October 1, 2012, through the last day of the month preceding the month in which payment is made. 17 C.F.R. § 201.600.

I FURTHER ORDER that, pursuant to Section 8A(g) of the Securities Act of 1933 and Section 21B(a) of the Securities Exchange Act of 1934, Michael Nicholas Grosso and Michael Patrick Brown shall each pay a civil monetary penalty in the amount of \$750,000.

Payment of disgorgement, prejudgment interest, and civil penalties shall be made no later than twenty-one days following the day this Initial Decision becomes final, unless the Commission directs otherwise. Payment shall be made in one of the following ways: (1) transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) direct payments from a bank account via Pay.gov through the Commission website at <http://www.sec.gov/about/offices/ofm.htm>; or (3) by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission. Any payment by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order shall include a cover letter identifying the Respondent(s) and Administrative Proceeding No. 3-16358, shall be delivered to: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Bld., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

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 a 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.

In addition, a respondent has the right to file a motion to set aside a default within a reasonable time, stating the reasons for the failure to appear or defend, and specifying the nature of the proposed defense. 17 C.F.R. § 201.155(b). The Commission can set aside a default at any time for good cause. *Id.*

Brenda P. Murray
Chief Administrative Law Judge