UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-v-

THOMAS C. CONRADT and TRENT MARTIN,

Defendants.

12 Civ. 8676 (JSR)

MEMORANDUM ORDER
AND FINAL JUDGMENT

JED S. RAKOFF, U.S.D.J.

On November 29, 2012, plaintiff Securities and Exchange Commission ("SEC") filed suit against defendants Thomas C. Conradt and David J. Weishaus, later amending the complaint to add defendant Trent Martin. See Complaint, Dkt. 1; Amended Complaint, Dkt. 7. The SEC alleged that the defendants had engaged in unlawful insider trading ahead of IBM's 2009 acquisition of SPSS Inc. ("SPSS"). See Second Amended Complaint, Dkt. 20, ¶ 1. In this Memorandum Order, the Court enters final judgment against defendant Conradt, ordering him to pay $980,229 as a civil penalty for his unlawful insider trading activity. This amount represents the profits made by Conradt and his three downstream tippees in their trading of SPSS securities. In an accompanying Order, the Court enters final judgment against defendant Martin, ordering him to pay as a civil penalty $7,625, which is the amount he made trading in SPSS securities.

By way of background, the SEC alleged, and Conradt and Martin do not dispute,[1] that in 2009, Conradt, who was then working as a broker at EuroPacific Capital, learned of IBM's upcoming acquisition of SPSS from his roommate Trent Martin, who in turn had learned this information from Martin's friend Michael Dallas, an attorney who was working on the deal. See Second Amended Complaint, ¶¶ 1-2. Conradt then tipped Weishaus, a colleague of his at EuroPacific Capital. See Second Amended Complaint, ¶ 2. Conradt also tipped three additional colleagues, two of whom - Daryl M. Payton and Benjamin Durant, III - were named in a related insider trading case brought by the SEC on June 25, 2014.[2] See Second Amended Complaint, ¶ 2; Payton and Durant Amended Complaint, 14-cv-4644, Dkt. 32,[3] ¶¶ 1-2. Martin, Conradt, Weishaus, Payton, and Durant all traded in SPSS securities ahead of IBM's acquisition of SPSS. See Second Amended Complaint ¶¶ 2, 54, 73, 77; Payton and Durant Amended Complaint, ¶ 2.

The three defendants in the instant case - Conradt, Martin, and Weishaus - eventually reached Court-approved settlements with the SEC. Two of these defendants, Conradt and Martin, agreed to

---

[1] For the purposes of this motion, the allegations of the Complaint are deemed to be true pursuant to the Consent Judgments entered against Conradt and Martin. See Judgment as to Defendant Thomas C. Conradt, Dkt. 53, at 3-4; Judgment as to Defendant Trent Martin, Dkt. 54, at 3-4.

[2] The SEC also alleged, and Conradt acknowledged, that Conradt also told an additional colleague, Matthew Lehrer, about the SPSS transaction. See Second Amended Complaint, ¶ 2; Transcript of Payton and Durant Trial ("Tr."), 179:9-10. The SEC has not brought suit against Lehrer.

[3] All docket numbers following the notation 14-cv-4644 refer to the docket of SEC v. Payton and Durant. All docket numbers without such a notation refer to the docket of the instant case, SEC v. Conradt and Martin.

cooperate with the SEC, and the Court, on consent, entered judgment against them on December 23, 2013. See Judgment as to Defendant Thomas C. Conradt ("Conradt Judgment"), Dkt. 53; Judgment as to Defendant Trent Martin ("Martin Judgment), Dkt. 54. As a consequence of their cooperation agreements, the Court bifurcated the judgments against Conradt and Martin, postponing the determination of civil penalties until a post-cooperation time. Specifically, in the judgments entered on December 23, 2013, the Court enjoined defendants Conradt and Martin from engaging in future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10-5 promulgated thereunder; ordered them to pay disgorgement in the amount of $2,533.60 for Conradt and $7,625 for Martin; directed them to pay prejudgment interest on the disgorged sums; but did not at that time assess civil penalties. See Conradt Judgment; Martin Judgment. Instead, as part of the consensual agreement, the SEC agreed not to thereafter request more as a civil penalty than each defendant had paid in disgorgement unless the SEC "obtain[ed] information indicating that [the] Defendant failed to cooperate fully and truthfully." Conradt Judgment at 3-4; Martin Judgment at 3-4.

Weishaus's judgment was not bifurcated in the same way, and so on January 27, 2014, the Court entered final judgment as to Weishaus. See Final Judgment As To Defendant David J. Weishaus ("Weishaus Judgment"), Dkt. 56. In that Final Judgment, the Court, in accordance with the terms of Weishaus's settlement with the SEC,

entered an injunction against defendant Weishaus; ordered him to pay disgorgement in the amount of $127,485 and prejudgment interest thereon; and assessed against Weishaus a civil penalty in the amount of $127,485, i.e., one times the amount of his disgorgement. See Weishaus Judgment at 2.

Thereafter, on May 29, 2015, defendants Weishaus and Conradt moved to dismiss their judgments pursuant to Fed. R. Civ. P. 60(b). See Defendant David J. Weishaus's Memorandum of Law in Support of His Motion for Relief from Final Judgment ("Weishaus Vacatur Br."), Dkt. 77; Memorandum of Law of Defendant Thomas C. Conradt in Support of Motion to Vacate Judgment ("Conradt Vacatur Br."), Dkt. 73. Weishaus and Conradt argued, inter alia, that the Second Circuit's subsequent decision in United States v. Newman, 773 F.3d 438 (2d Cir. 2014), had rendered invalid the legal basis on which their judgments were predicated. See Weishaus Vacatur Br. at 10-16; Conradt Vacatur Br. at 7-15. On July 23, 2015, the Court denied these motions for vacatur. See Amended Memorandum Order, Dkt. 82. Defendants Weishaus and Conradt appealed these denials, and Conradt's appeal is currently pending.[4]

Meanwhile, on February 12, 2015, the Court granted the SEC's unopposed motion to defer the determination of a civil penalty for defendants Conradt and Martin until after the trial of the SEC's

[4] On March 21, 2016, Weishaus and the SEC filed a stipulation withdrawing the appeal and providing that Weishaus could reinstate it by May 20, 2016. On May 20, 2016, Weishaus and the SEC filed a stipulation extending to July 5, 2016 the time within which Weishaus could reinstate his appeal. See App. Dkts. 102, 109.

suit against defendants Payton and Durant, or the resolution of that related case. See Plaintiff Securities and Exchange Commission's Unopposed Motion to Defer Civil Penalty Determination for Defendants Trent Martin and Thomas Conradt, Dkt. 63. The purpose of deferring the civil penalty determination as to Conradt and Martin was to give the SEC and the Court the opportunity to determine whether these defendants met their obligations under their cooperation agreements. Ultimately, defendants Conradt and Martin testified at the trial of defendants Payton and Durant, Conradt in person and Martin through a videotape of his deposition. At trial, defendants Payton and Durant were found liable for insider trading, and the Court entered final judgment against them on May 16, 2016. See Jury Verdict, 14-cv-4644, Dkt. 136; Memorandum Order and Final Judgment, 14-cv-4644, Dkt. 167.

On March 18, 2016, following the trial of Payton and Durant, the SEC moved for final judgment, including civil penalties, as to defendants Conradt and Martin. See Plaintiff Securities and Exchange Commission's Memorandum of Law in Support of Its Motion for the Imposition of a Civil Penalty Against Defendant Trent Martin ("SEC Martin Br."), Dkt. 90; Plaintiff Securities and Exchange Commission's Motion for Final Judgment Imposing a Civil Penalty Against Thomas C. Conradt ("SEC Conradt Br."), Dkt. 93. On April 15, 2016, defendant Martin consented to the SEC's proposed civil penalty, except that Martin, in a request unopposed by the SEC, asked that payment be due within 30 days of the entry of final judgment instead of within 14 days. See Consent to Application to

Set Civil Penalty as to Trent Martin, Dkt. 99. Also on April 15, 2016, defendant Conradt opposed the SEC's proposed civil penalty as to him. See Memorandum of Law of Defendant Thomas C. Conradt in Opposition to Motion for Final Judgment ("Conradt Opp. Br."), Dkt. 100. The SEC replied to Conradt's opposition on April 22, 2016. See Plaintiff Securities and Exchange Commission's Reply Memorandum in Support of Its Motion for Final Judgment Imposing a Civil Penalty Against Thomas C. Conradt ("SEC Reply Br."), Dkt. 103. Having considered all of these submissions, the Court hereby enters final judgment as follows.

As to defendant Martin, the SEC requests that the Court impose a civil penalty of $7,625. See SEC Martin Br. at 1. The SEC had agreed to request no more than this amount unless it found that Martin failed to cooperate, see Martin Judgment at 3, and the SEC stated in its brief on the instant motion for final judgment that, in the SEC's view, Martin had complied with his cooperation obligations. See SEC Martin Br. at 3. The Court agrees with this assessment. Accordingly, the Court dockets, alongside this Memorandum Order, the SEC's proposed final judgment as to Martin, with the revision (unopposed by the SEC) that payment is to be due within 30 days of the entry of that judgment, as distinct from the 14 days specified in the SEC's proposed judgment.

The case of defendant Conradt, however, presents complications. The SEC argues that Conradt materially breached his cooperation agreement and therefore asks the Court to impose a civil penalty

considerably higher than the $2,533.60 that the SEC had committed to requesting (at most) if Conradt fully cooperated. See SEC Conradt Br. at 1; Conradt Judgment at 3. Specifically, the SEC requests that the Court impose on Conradt a civil penalty of $2,940,687, which represents three times the amount of profits made by Conradt and his downstream tippees (Weishaus, Payton, and Durant) in their trading on SPSS ($980,229). See SEC Conradt Br. at 1. Conradt opposes the SEC's proposed civil penalty, arguing that he did not materially breach his cooperation agreement and that, in any event, a civil penalty as high as $2,940,687 would be unwarranted. See Conradt Opp. Br. at 2.

The Court, like the SEC, determines that Conradt "failed to cooperate fully and truthfully," thereby materially breaching his cooperation agreement. See Conradt Judgment at 3; Consent of Defendant Thomas C. Conradt, Dkt. 53, at 2. The SEC was therefore entitled to request more than $2,533.60 as a civil penalty against Conradt, and the Court - which has an independent obligation to assess an appropriate civil penalty - declines to grant Conradt the substantial benefits of truthful cooperation.

In particular, the Court finds that Conradt's testimony at the trial of Payton and Durant ("the trial") in February 2016 materially varied from Conradt's testimony at his deposition on July 17, 2015 in ways that indicate that Conradt was intentionally watering down his prior testimony in contravention of his cooperation agreement and, the Court finds, in contravention of the truth. For example,

Conradt testified at his deposition that in between his second and third conversations about SPSS with his roommate Martin, Durant came up to Conradt and asked him if he had heard anything else from his roommate about SPSS. See Tr. 256:19-257:8.[5] But when asked about this episode at trial, Conradt stated "You know, I don't recall offhand." Tr. 256:15-18. Conradt also testified at his deposition that after his third conversation about SPSS with Martin, Conradt updated Payton, Durant, and Lehrer about the information that Martin had told him. See Tr. 364:21-365:5. Yet at trial Conradt, when questioned about providing this update, responded "I can't say that with any certainty sitting here today." Tr. 364:10-17. Further, Conradt testified at his deposition that he learned from his colleague Matthew Lehrer that Lehrer had told Durant that Conradt's roommate had said SPSS was ripe for a buyout. See Transcript of Payton and Durant Trial ("Tr."), 241:5-15. At trial, however, Conradt claimed that he did not remember this statement of Lehrer's, because "a lot of these were really casual conversations, and over the course of seven years and multiple court documents that I've read . . . it's been very, very confusing for me to peg down exactly what was said in each conversation to each person. . . ." Tr. 237:19-238:12.

In the Court's view, the material discrepancies between Conradt's deposition testimony and his testimony at the Payton and

[5] This reference is to the transcript of the trial of Payton and Durant, because the SEC played excerpts of Conradt's deposition at this trial.

Durant trial indicate that Conradt did not cooperate fully and truthfully and that, more broadly, Conradt did not respect the processes of justice.[6] Either Conradt lied at his deposition when he testified to certain facts, or (as the Court deems more likely) he lied at the trial when he said he did not remember these facts - and in both proceedings, Conradt took an oath to tell the truth.

After having carefully assessed Conradt's demeanor at trial, the Court does not credit Conradt's explanation that his memory failed him at trial as to points he clearly and specifically recalled seven months earlier, during his deposition. In fact, the Court was sufficiently troubled by Conradt's testimony at the time of the trial that the Court put questions to Conradt outside the presence of the jury. See Tr. 144:2-148:22, 215:5-12. Moreover, Conradt's memory at trial of events that had taken place in 2009 was hardly uniformly deficient. For example, Conradt testified at trial with particularity, and his recollection was readily refreshed, regarding events surrounding a rent reduction for his apartment in May 2009. See Tr. 294:2-296:11.

The material discrepancies in Conradt's testimony similarly cannot be explained, as Conradt suggests, by the fact that the SEC did not meet with Conradt to prepare him for trial. See Conradt Opp.

---

[6] The SEC argues that Conradt's motive for "feign[ing] a lack of recollection" at trial was Conradt's view that a loss for the SEC in its suit against Payton and Durant would bolster Conradt's appeal of this Court's denial of Conradt's motion to vacate his judgment. See SEC Conradt Br. at 6, 9. The Court need not make any definitive determination as to Conradt's motivations in order to conclude that Conradt failed to cooperate in a truthful and forthright manner.

Br. at 4. The SEC notes that it also did not meet with Conradt in advance of his deposition, see SEC Reply Br. at 3. Further, the fact that the SEC did not meet with Conradt in advance of trial - which it had no obligation whatsoever to do - does not explain why Conradt's memory was not, at crucial points, refreshed by his deposition or other transcripts while he was testifying at trial. See, e.g., Tr. 237:23-238:12, 359:3-24.

Conradt also argues that his co-defendant Martin's deposition testimony differed in certain ways from previous statements that Martin had made, and yet Martin was not found to have breached his cooperation agreement. See Conradt Opp. Br. at 16-17; see also, e.g., Conradt Opp. Br., Exhibit 6, Dkt. 102-6 (Martin deposition), 148:13-151:10. However, the Court does not view these alleged discrepancies on Martin's part to be either as extensive or as material as the inconsistencies between Conradt's deposition testimony and his trial testimony.

In short, Conradt is not entitled to intentionally change his testimony in a highly material way and without justification, and then to reap the benefits of an agreement to cooperate fully and truthfully. Accordingly, the Court finds that Conradt's penalty should not be limited to one that would be properly imposed on a truthful cooperator.

As to the appropriate amount of the civil penalty to be assessed against defendant Conradt, the insider trading laws provide that "[t]he amount of the penalty which may be imposed on the person

who committed such violation [of the insider trading laws] shall be determined by the court in light of the facts and circumstances, but shall not exceed three times the profit gained or loss avoided as a result of such unlawful purchase, sale, or communication." 15 U.S.C. § 78u-1(a)(2). More specifically,

> [c]ivil penalties are designed to punish the individual violator and deter future violations of the securities laws. . . . In determining whether civil penalties should be imposed, and the amount of the fine, courts look to a number of factors, including (1) the egregiousness of the defendant's conduct; (2) the degree of the defendant's scienter; (3) whether the defendant's conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant's conduct was isolated or recurrent; and (5) whether the penalty should be reduced due to the defendant's demonstrated current and future financial condition.

SEC v. Haligiannis, 470 F. Supp. 2d 373, 386 (S.D.N.Y. 2007).

Here, the Court finds that these factors support a civil penalty of one times the amount of the trading profits of Conradt and his downstream tippees Weishaus, Payton, and Durant.[7] In particular, Conradt was trained as a lawyer and was a licensed stockbroker. See Tr. 88:10-90:14. On July 1, 2009, in an instant

[7] The Second Circuit has explained that "[a] tippee's gains are attributable to the tipper, regardless whether benefit accrues to the tipper. The value of the rule in preventing misuse of insider information would be virtually nullified if those in possession of such information, although prohibited from trading for their own accounts, were free to use the inside information on trades to benefit their families, friends, and business associates." SEC v. Warde, 151 F.3d 42, 49 (2d Cir. 1998). This statement was made in the disgorgement context, but it equally applies in the setting of civil penalties, since the gains of downstream tippees count, in the terms of the insider trading sanctions statute, as "the profit gained or loss avoided as a result of such unlawful purchase, sale, or communication." 15 U.S.C. § 78u-1(a)(2). See SEC v. Gupta, 569 F. App'x 45 (2d Cir. 2014) (summary order) ("Precedent in this Circuit is clear that a tippee's gains and losses avoided are attributable to the tipper, regardless whether benefit accrues to the tipper.") (internal quotation marks omitted); cf. SEC v. Svoboda, 409 F. Supp. 2d 331, 347-48 (S.D.N.Y. 2006).

message conversation between Conradt and Weishaus about trading in SPSS, Conradt told Weishaus that "we gotta keep this in the family," and Weishaus noted that Martha Stewart had gone to jail. See SEC Conradt Br., Exhibit 6, Dkt. 93-6. Conradt also made multiple stock purchases, see Conradt Opp. Br. at 19, and, as Conradt acknowledged, he provided updates to his tippees about the SPSS acquisition. See Conradt Dep., 165:15-170:17; Tr. 270:13-22; 455:6-456:13. Even though the amount that Conradt traded was less than the amount traded by his co-defendants or by Payton and Durant, Conradt was responsible for transferring the tip from his roommate Martin to EuroPacific, and for tipping three co-workers who also purchased SPSS securities. Indeed, on July 23, 2009, Conradt told Weishaus that Conradt was "setting this deal up for everyone" and "makin everyone rich." See SEC Conradt Br., Exhibit 7, Dkt. 93-7. All these features of Conradt's conduct speak to the egregiousness of his behavior and his high level of scienter, which support a substantial civil penalty.

However, countervailing factors - notably Conradt's precarious financial circumstances, see Conradt Opp. Br. at 21 - counsel against imposing the SEC's requested civil penalty of treble damages, or $2,940,687. Moreover, the Court finds that a penalty of one times the amount gained by Conradt and his downstream tippees is adequate to ensure effective deterrence of such serious breaches of the securities laws.

Consequently, by way of final judgment supplementing the Consent Judgment previously ordered, the Court hereby imposes on Conradt a civil penalty of $980,229, to be paid to the SEC. Payment is to be made at the rate of 20% of Conradt's gross monthly income beginning with July 2016, with each payment to be made no later than two weeks after the end of the month. Thus, the first payment, covering the month of July 2016, must be made no later than August 14, 2016. In this connection, Conradt will supply the SEC, immediately upon request, with any and all financial information requested by the SEC.

The Clerk of Court is directed to close docket entries 88 and 92, and to close the case.

SO ORDERED.

Dated: New York, NY
June 16, 2016

JED S. RAKOFF, U.S.D.J.