Securities Regulation Daily Wrap Up, TOP STORY—Ex-Stanford CCO Young loses administrative appeal, (Mar. 25, 2016)

Securities Regulation Daily Wrap Up

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By Mark S. Nelson, J.D.

The Commission left intact an administrative law judge's initial decision finding that Bernerd Young violated the antifraud provisions contained in the federal securities laws. Young personally made his case to the Commission at an oral argument held just last month (*In the Matter of Bernerd E. Young*, Release No. 33-10060, March 24, 2016).

According to the Commission, Young ran afoul of the antifraud provisions of the Securities Act, the Exchange Act, and the Investment Advisers Act regarding the role he played in promoting CDs sold to investors by Stanford International Bank Limited, part of a far flung group of companies controlled by accused Ponzi schemer Robert Allen Stanford. Young was associated with Stanford Group Company, a Houston-based registered investment adviser and broker-dealer.

In the Advisers Act context, the Commission rebuffed Young's claim that he could rely on regulatory exams that did not identify securities violations. The Commission reasoned that the salesperson in the case cited by Young lacked the due diligence duties Young had assumed. The Commission also rejected Young's worries about securities law charges against him turning compliance professionals into guarantors of others' conduct. At oral argument, the Division of Enforcement emphasized that its charges against Young were based on his conduct and not his role as a compliance officer. As for related Securities Act and Exchange Act violations, the Commission found that Young had directed the preparation of false responses to inquiries about the availability of insurance for the CDs.

The Commission also rejected Young's claim that he was deprived of access to key documents. The Commission said its rules of practice and the Stanford receiver's court appointment permitted some limits on access to documents in the matter. Similarly, the limitations period was not an issue, despite Young's claim that the SEC's suspicions began earlier, because the civil money penalty in the matter was based on violations during the limitations period and evidence of Young's intent from outside that period. In a footnote, the Commission dismissed Young's claim that the Supreme Court's *Gabelli* opinion governed the limitations issue.

As for sanctions, the Commission noted Young's "lack of remorse," his blaming of others for all of the alleged violations, and his "hostility and indifference" to regulators. As a result, the Commission imposed a cease and desist order, a wide-ranging industry bar, and an officer and director bar. The Commission also ordered Young to pay disgorgement of nearly $600,000 and imposed a $260,000 civil money penalty.

The release is No. 33-10060.

Companies: Stanford Group Company; Stanford International Bank Limited

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