ADMINISTRATIVE PROCEEDING
FILE NO. 3-8305

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)
	)
MEYER BLINDER	)
	)

INITIAL DECISION

Washington, D.C.
January 17, 1995

Brenda P. Murray
Chief Administrative Law Judge

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APPEARANCES: Stephen J. Crimmins and M. Catherine Cottam for the Division of Enforcement, Securities and Exchange Commission

Meyer Blinder, pro se, with John Fogerty Winston, on the brief

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

The Securities and Exchange Commission (Commission) initiated this proceeding on March 2, 1994, pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act). The Order Instituting Proceedings (Order) alleges that Mr. Blinder was: (1) convicted of violating Sections 5(b)(2) and 17(a) of the Securities Act of 1933 (Securities Act) and certain provisions of the anti-racketeering laws, 18 U.S.C. §§1962(c) and (d) (U.S. v. Blinder, CR-S-90-38-LDG (D. Nev. July 16, 1992)) 1/ and (2) permanently enjoined from future violations of Sections 10(b), 15(c)(1) and 17(a) of the Exchange Act and Rules 10b-5, 10b-6, 15c1-2, 15c1-6, 15c1-8 and 17a-3 thereunder, and from aiding and abetting further violations of Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5, 10b-6, 15c1-2 and 15c1-8 thereunder, and ordered to disgorge

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1/ On August 31, 1992, Mr. Blinder was sentenced to incarceration for three 46-month terms on count 1, on count 2 and on counts 3, 4, 5, and 6 with the time running concurrently, followed by three years supervised release and fined $100,000. As one of the conditions for release, the Court restricted Mr. Blinder from engaging in employment, consulting or any association with any stock brokerage or stock brokering business and ordered him to comply with all of the Commission injunctions as required by law (Division Exhibit 6, 67-69). On December 2, 1993, the 9th Circuit Court of Appeals affirmed Mr. Blinder's criminal conviction (U.S. v. Blinder, 10 F.3d 1468 (1993)).

more than $24 million in illegal profits 2/ (SEC v. Blinder, Robinson & Co., No. 90-4534 (E.D. Pa. Aug. 21, 1992)).

I held a hearing in Fort Worth, Texas, on June 27, 1994. At the hearing, neither the Division of Enforcement (Division) nor Mr. Blinder, a non-lawyer who appeared pro se, called any witnesses. 3/ The parties offered a total of 31 exhibits which I received and made part of the record. 4/ The Division filed Proposed Findings of Facts and Conclusions of Law and a Brief, Mr. Blinder filed a Brief, and the Division filed a Reply Brief, the last filing, on October 12, 1994.

My findings and conclusions are based on the record and my observations of the respondent's demeanor. I applied preponderance of the evidence as the applicable standard of proof.

2/ The disgorgement order was against Mr. Blinder and another defendant, Intercontinental Enterprises, Inc. Mr. Blinder owned at least 53.8% of Intercontinental Enterprises during the period June 1985 through February 1987. Blinder, Robinson & Co., Inc. (Blinder Robinson), a registered broker-dealer from 1970 until May 1992 which was liquidated pursuant to the Securities Investor Protection Act, was Intercontinental Enterprises's sole operating subsidiary and revenue source. Mr. Blinder was president and chairman of the board of directors of Intercontinental Enterprises, Inc., and Blinder Robinson (Division Exhibit 1A). See Securities Investor Protection Corp. v. Blinder, Robinson & Co., Inc., 962 F.2d 960 (10th Cir. 1992).

3/ Mr. Blinder was not represented by counsel at the hearing, however, Attorney Winston filed a Post-Hearing Brief in which he referred to himself as one of several counsel representing Mr. Blinder.

4/ I marked for identification but refused to admit into evidence based on objections of hearsay, relevancy, competency and authenticity two letters Mr. Blinder received in 1988 and 1992 from supporters (Tr. 65, 69).

FINDINGS OF FACT

Mr. Blinder does not dispute that the respective court decisions and orders are as alleged in the Order, however, he claims that the decisions were in error, that he is innocent, and that the rules are wrong (Tr. 34, 35, 78). 5/ According to his counsel in the criminal case:

> the one things that jumps out about Mr. Blinder is Mr. Blinder, right or wrong, believes in what he believes, that he--I think he is sincere in his belief. He has been in litigation with the SEC, the NASD, ad infinitum because he has a true belief in himself; and the jury obviously didn't agree with that, but that belief is sincere. (Division Exhibit 6, 15)

The doctrine of collateral estoppel as well as Commission case law preclude Mr. Blinder's attacks in this proceeding on the validity of the criminal conviction and permanent injunction issued against him in other proceedings. Blinder, Robinson & Co., Inc., 48 S.E.C. 624 (1986), vacated and remanded, 837 F.2d 1099 (D.C. Cir. 1988), cert. denied, 488 U.S. 869 (1988); Kimball Securities, Inc., 39 S.E.C. 921, 924 n.4 (1960); J.D. Creger & Co., 39 S.E.C. 165 (1959); Kaye, Real & Co., Inc., 36 S.E.C. 373, 375 (1955); and James F. Morrissey, 25 S.E.C. 372, 381 (1947).

PUBLIC INTEREST

Section 15(b)(6) of the Exchange Act requires that the Commission sanction someone who, like Mr. Blinder, was convicted

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5/ At the hearing, Mr. Blinder said "I still maintain that I am 100 percent innocent. The jury made a mistake." (Tr. 34). When asked "if given a second chance, would you do things differently," Mr. Blinder responded: "I would make sure that, in the future, nobody would manufacture deals for me. I had the ability. I had 2,000 salesmen. I could have done my own blind pools." (Tr. 55)

of a crime involving his conduct in the securities industry and who was enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, if it finds, after notice and opportunity for hearing, that it is in the public interest to do so.

It is well settled that the selection of an appropriate sanction involves consideration of several elements in each case. These include deterrence as well as:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of defendant's assurances against future violations, defendant's recognition of the wrongful nature of his conduct, and the likelihood that defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), aff'd, 450 U.S. 91 (1981). I will consider each of these criteria with respect to Mr. Blinder.

Mr. Blinder's criminal conviction resulted from actions even his attorney acknowledges were serious offenses (Division Exhibit 6, 17). Mr. Blinder engaged in a criminal conspiracy whereby he agreed to receive securities in shell corporations which filed false registration statements with the Commission and engaged in sham initial public offerings. Pursuant to an agreement, Blinder Robinson controlled and dominated the market in these securities and, among other illegal activities, its sales staff sold these

securities to the public omitting material information. 6/ A jury convicted Mr. Blinder of conspiracy to commit racketeering, racketeering, securities fraud, and unlawfully distributing securities. The presiding judge believed that Mr. Blinder was deeply involved in the criminal activities and clearly understood what was happening (Division Exhibit 6, 62). In summary, Mr. Blinder's conduct in the underlying criminal case was egregious, it continued over an extended period, both the judge and jury were convinced that Mr. Blinder understood what was happening and that he was a key player in the illegal acts. It seems very likely that Mr. Blinder will commit further violations if permitted to remain

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6/ The Court of Appeals found:

> On January 15, 1985, Blinder, Arnold L. Kimmes (Kimmes), and Michael D. Wright (Wright) entered into an agreement concerning Blinder's securities brokerage firm, Blinder, Robinson & Co., Inc. (Blinder Robinson). Upon demand and at prearranged prices, Kimmes and Wright were to provide substantially all of the securities for "blind pool" corporations. The blind pool corporations were created and secretly controlled by Kimmes and Wright, who used figurehead officers and false registration statements to disguise their actual control. Blinder Robinson subsequently obtained one hundred percent of the securities of two blind pool corporations, Onnix Financial Group, Inc. and Executive Capital, Inc.
>
> Blinder Robinson sold the blind pool corporations' securities to its customers without informing them that the purportedly initial "public offering" of the blind pool securities was a sham. Additionally, Blinder Robinson failed to provide the purchasers of the blind pool stock with prospectuses. Because the buying public was unaware of Blinder's secret agreement, Blinder Robinson's unlimited access to the securities of Kimmes's and Wright's corporations effectively created a rigged market. As a result, Blinder profited through riskless transactions and arbitrarily established prices.

U.S. v. Blinder, 10 F.3d at 1471 (footnote omitted).

an active participant in the securities industry because he does not acknowledge that he did anything wrong. See SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978).

In addition to the criminal and civil actions referred to in the Order, this record shows Mr. Blinder's consistent flagrant refusal to obey the securities laws and regulations. In 1992, the Commission affirmed an order of the National Association of Securities Dealers that censured, fined and suspended Mr. Blinder for 90 days for "charging customers excessive and fraudulent markups." Meyer Blinder, 50 S.E.C. 1215 (1992). The United States District Court for the District of Colorado enjoined Mr. Blinder and others from violating the anti-fraud provisions of the securities statutes in SEC v. Blinder, Robinson & Co., Inc., 542 F. Supp. 468 (1982), aff'd, SEC v. Blinder, Robinson & Co., Inc., Fed. Sec. L. Rep. (CCH), ¶99,491 (10th Cir. 1983), cert. denied, 469 U.S. 1108 (1985). The trial court found:

> It is clear that the Blinder-Robinson sales force practiced a program of deliberately deceptive misinformation which Blinder orchestrated. Even if the evidence did not demonstrate his active role, this court would hold [Mr.] Blinder liable for the acts of sales representatives whom he supervised. ... This is not a case of "recklessness"; the defendants acted with a knowing "intent to deceive, manipulate, or defraud" under Ernst & Ernst.

542 F. Supp. at 475, 477. 7/

There is nothing in the record to indicate that anything less than the most severe sanction should be assessed against Mr.

7/ This injunction resulted in Commission Administrative Proceeding No. 3-6380 which is pending before the Commission.

Blinder. There is no support for his belief that "[t]he SEC is after me ... it is the biggest conspiracy of this country, putting me away when I was doing nothing but good and helping people" (Tr. 64; 74-75). The fact that Mr. Blinder received public accolades for his charitable contributions (Respondent's Exhibits 1, 2, 4, 6, 7, 9-13, 15) is not mitigating where he and a corporation he controlled were ordered to disgorge some $24 million they received from illegal acts (SEC v. Blinder, Robinson & Co., No. 90-4534 (E.D. Pa. Aug. 21, 1992)). 8/

On the other hand, Mr. Blinder's threats of violence against individuals support my judgement that he should not be allowed to participate in the securities industry (Division Exhibit 12). At the sentencing hearing, the judge referred to:

> an affidavit of Mark Shoutou ... who claims that Blinder threatened to shoot him. You have a memorandum of a telephone interview between Mark Eurik and John J. Kelley, Jr., during which it was revealed that Mr. Blinder had previously and very explicitly threatened the federal prosecutors in Las Vegas; the deposition testimony even of John Cox, who testified that Blinder had a hit list of people he considered enemies, including members of the Securities and Exchange Commission; and an affidavit of Noel Birns who represented that he heard Blinder discuss on numerous occasions the possibility of having government officials killed.
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> What happened in this courtroom if it's to be considered as a factor with respect to these other matters is far more than a bark. I understand and I think the evidence of what occurred and I don't think there's any dispute is clear that there was affirmative action taken, he

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8/ According to the Assistant U.S. Attorney at the sentencing hearing, creditors of Blinder Robinson will receive about ten cents on the dollar as the result of the settlement of the bankruptcy proceeding and Mr. and Mrs. Blinder will be left with $1.8 million (Division Exhibit 6, 56-57).

> attempted to rush the prosecutor; I don't know what would have happened had he reached him.
>
> But a person who repeatedly does what apparently the record is clear that he does, and these threats coming from a person with the means and temperament that he has, I just can't see how the Court can do anything but take them very seriously.

Division Exhibit 6, 25-27.

Finally, an important consideration in imposing a sanction is the impact it will have in deterring people from illegal actions which damage public investors and the integrity of the security markets. The judge in the criminal case noted that Mr. Blinder for a number of years exercised great power, economic and otherwise (Division Exhibit 6, 63-64). Mr. Blinder attained these things through his activities in the securities industry. To deter Mr. Blinder and others tempted to duplicate his illegal acts, it is necessary to bar Mr. Blinder from participating in the industry. Arthur Lipper Corp. v. SEC, 547 F.2d 171, 184 (2d Cir. 1976).

This record is persuasive that nothing less than the strongest sanction available - a bar pursuant to Sections 15(b) and 19(h) of the Exchange Act without a specified time to reapply - is required to protect the public interest, and that a lesser sanction will not suffice. Steadman v. SEC, 603 F.2d at 1139.

ORDER

Based on the findings and conclusions set forth above 9/, I ORDER that Meyer Blinder is barred from being associated with any

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9/ I have considered all proposed findings and conclusions and all contentions, and I accept those that are consistent with this decision.

broker or dealer and from association with any member of a national securities exchange or registered securities association.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice (17 C.F.R. 201.17(f)). Pursuant to that rule, this initial decision shall become the final decision of the Commission as to each party who has not filed a petition for review pursuant to Rule 17(b) within 15 days after service of the initial decision upon him, unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to a party. If a party timely files a petition for review, or the Commission acts to review as to a party, the initial decision shall not become final as to that party.

Brenda P. Murray
Chief Administrative Law Judge

Washington, D.C.
January 17, 1995