

ADMINISTRATIVE PROCEEDING
FILE NO. 3-6856

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :
CHARLES W. STREICHER :

INITIAL DECISION

Washington, D.C.
June 3, 1988

Warren E. Blair
Chief Administrative Law Judge

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APPEARANCES: Charles C. Harper, Nanci Oliver Sloan,
and Tina K. Manning, of the Miami
Branch Office of the Commission, for
the Division of Enforcement.

Charles W. Streicher, pro se.

BEFORE: Warren E. Blair
Chief Administrative Law Judge

These public proceedings were instituted pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act") by order of the Commission dated June 12, 1987 which was amended on August 3, 1987 ("Order"). As amended the Order directed that a determination be made whether allegations made by the Division of Enforcement ("Division") against the respondent, Charles W. Streicher ("Streicher"), were true and what, if any, remedial action would be appropriate in the public interest.

In substance the Division alleged that Streicher had been permanently enjoined on September 30, 1986 from further violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by the United States District Court for the Southern District of Florida. Additionally the Division alleged (1) that on April 7, 1986 in the United States District Court for the Southern District of Florida Streicher pled and was adjudicated guilty of one count of conspiracy, 18 U.S.C. §371, and one count of mail fraud, 18 U.S.C. §§1341, 2; (2) that on May 5, 1986 in the United States District Court for the Southern District of Ohio Streicher pled and was found guilty of two counts of wire fraud, 18 U.S.C. 1343, 2; and (3) that on May 5, 1986 in the Court of Common Pleas, Hamilton County, Ohio

Streicher pled and was found guilty of three counts of grand theft.

In his answer to the Division's allegations, Streicher admitted that he had been permanently enjoined on September 30, 1986 by the United States District Court for the Southern District of Florida from further violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. He also admitted that on April 17, 1986 in the United States District Court for the Southern District of Florida he pled and was adjudicated guilty of one count of conspiracy, 18 U.S.C. §371, and one count of mail fraud 18 U.S.C. §1341, 2. ^{1/} Because his answer was filed pro se, Streicher was advised by letter dated July 7, 1987 of his right to be represented by counsel of his own choice and of his various procedural rights if he chose to represent himself in these proceedings. At the outset of the hearing that commenced on October 5, 1987 Streicher was reminded of his right to counsel and further advised on the procedural rights accorded to him in connection with

^{1/} The amended Order of August 3, 1987 adding the Division's allegations that Streicher had been found guilty of two counts of wire fraud in the United States District Court for the Southern District of Ohio and been found guilty of three counts of grand theft in the Court of Common Pleas, Hamilton County, Ohio was issued after Streicher had filed his answer. He did not file an answer to the additional charges.

the hearing including, among others, his right to cross-examine witnesses called by the Division, to object to the admission into the record of oral and documentary evidence, and to present evidence on his own behalf.

As part of the post-hearing procedures, successive filings of proposed findings, conclusions, and supporting briefs were specified. Timely filings thereof were made by the parties.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon observation of the witnesses.

RESPONDENT

Streicher, 40 years of age and a graduate of the University of Mississippi, held various sales positions with securities firms in Memphis, Tennessee prior to employment with a Fort Lauderdale, Florida securities firm in 1975. In May, 1976 he became a securities salesman for E.S.M. Government Securities, Inc. ("ESM"), another Fort Lauderdale securities firm dealing principally in United States Government and United States Government-guaranteed securities with other financial institutions and securities firms throughout the country. During his employment with ESM which lasted until about March 4, 1985, Streicher was registered with the National

Association of Securities Dealers and licensed to sell securities by the states of Tennessee, Florida, Louisiana, and Ohio.

ESM and E.S.M. Securities, Inc. ("ESM Securities"), the latter a securities firm registered with the Commission, were subsidiaries of E.S.M. Group, Inc. ("Group"). Streicher was a vice-president of Group from about February, 1979 to around March, 1985, and was also a Group director from about January, 1980 until about March, 1985. As of March 4, 1985 he owned approximately six percent of the stock of Group. E.S.M. Financial Group, Inc. ("Financial") was an affiliate of Group during the period from 1976 to 1984.

CRIMINAL CONVICTIONS

As the record reflects, on April 7, 1986 a plea agreement entered into on April 7, 1986 between Streicher and the United States Attorney for the Southern District of Florida was filed in the United States District Court for the Southern District of Florida. Pursuant to that agreement Streicher entered pleas of guilty and on January 26, 1987 a judgment of conviction was entered in the United States District Court for the Southern District of Florida on one count of conspiracy in violation of Title 18 U.S.C. §371, and one count of mail fraud in violation of Title 18 U.S.C. §§1341, 2.

Streicher was sentenced to serve four years on each count, to run consecutively for a total sentence of eight years imprisonment. ^{2/} At the time of the hearing in these proceedings, Streicher was serving time at a federal prison camp and is presently incarcerated.

As alleged by the Division, Streicher pled guilty and was found guilty on May 5, 1986 by the United States District Court for the Southern District of Ohio on two counts of wire fraud in violation of 18 U.S.C. §§1343, 2. Judgment of conviction was entered by the court on February 2, 1987 and two consecutive sentences of five years imprisonment were imposed to run concurrently with the sentence imposed in the Southern District of Florida. ^{3/}

Also on May 5, 1986, Streicher pled guilty in the Court of Common Pleas, Hamilton County, State of Ohio to three counts of grand theft rising out of his activities at ESM. The extent of the thefts was placed at \$7,000,000 on Count 1, \$11,000,000 on Count 2, and \$20,000,000 on Count 3. Sentences of one and one-half years imprisonment in the Ohio penitentiary on Counts 1 and 2 and 1 year for Count 3 were imposed on April 8, 1987 with the terms to run consecutively but concurrently with Streicher's

2/ United States of America v. Charles Wilhelm Streicher, 86-6076-CR (S.D. Fla. Jan. 26, 1987).

3/ United States of America v. Charles W. Streicher, CR-1-86-054 (S.D. Ohio Feb. 21, 1987).

federal sentence. ^{4/}

PERMANENT INJUNCTION

As a result of a complaint filed by the Commission against Streicher and others, a permanent injunction by consent was entered against Streicher on September 30, 1986 by the United States District Court for the Southern District of Florida enjoining him from further violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in the offer and sale and in connection with the purchase or sale of U.S. Government or U.S. Government guaranteed securities, or any other security of any issuer. ^{5/} The permanent injunction remains in effect.

PUBLIC INTEREST

Each of Streicher's convictions and the permanent injunction entered against him constitute statutory bases for remedial action by the Commission. ^{6/} It is necessary therefore to consider the record with a view of determining what, if any, remedial action authorized under Sections 15(b) and 19(h) of the Exchange Act is

^{4/} State of Ohio v. Charles W. Streicher, Case No. B861746 (Ct. C.P., Hamilton Cty., Ohio April 8, 1987).

^{5/} Securities and Exchange Commission v. Marvin L. Warner, et al., Civil Action 86-6742-CIV-GONZALEZ (S.D. Fla. Sept. 30, 1986).

^{6/} Sections 15(b)(4)(B) and (C), 15(b)(6), and 19(h)(2) of the Exchange Act.

appropriate in the public interest.

The Division argues that the criminal convictions and the permanent injunction entered against Streicher, taking into consideration his participation in the ESM fraud that led to those actions against him, demonstrate that he should be barred from association with any broker or dealer. Streicher contends that the facts do not demonstrate a knowing participation or assistance in the ESM fraud on his part and offers to consent to the entry of an order which in effect would allow him to reenter the securities business as a salesman for the first year after his release, allow him to work in a supervisory capacity with a broker-dealer during the next two years, and after three years allow unrestricted association with any broker or dealer.

Upon careful consideration of the record and the arguments and contentions of the parties, it is concluded that in the public interest Streicher should be barred from association with any broker or dealer.

Underlying Streicher's criminal convictions was a monumental fraud in which Streicher participated with other principals of ESM and Group, a fraud which eventually resulted in losses in excess of \$300,000,000 and the bankruptcy of ESM in March, 1985. Central to the accomplishment of the fraud which lasted from about January, 1977 to

March, 1985 were the complicity of a partner in a national certified public accounting firm who provided audits and certifications of financial statements for the years 1977-1984 covering up the fraud, and the concealment of ESM's losses by shifting those losses to the books of Group, which were unaudited. The losses were further concealed by fraudulent journal entries transferring the losses from Group to ESM Financial whose books also went unaudited.

Net losses suffered by Group and its subsidiaries and affiliate for the years 1978-1984 totaled over \$185,000,000 and were for the most part the result of ESM's securities trading. Despite these losses and ESM's eventual insolvency, which occurred no later than 1980, ESM was able to remain in business by using funds obtained from improper multiple sales and bank pledging of securities belonging to "Repo" participants and from excess collateral provided by a few major "Reverse Repo" participants. ^{7/}

^{7/} A "Repo" is a repurchase agreement under which a broker-dealer [here ESM] sells securities to a customer with a simultaneous agreement to buy those securities back at a later date for an agreed price plus interest. A "Reverse Repo" is a reverse repurchase agreement whereby the broker-dealer [here ESM] buys securities from a customer with a simultaneous agreement to sell those securities back to the customer at a future date for an agreed price plus interest. Although structured as a
(CONTINUED ON NEXT PAGE)

Although Streicher was not one of the principals who in 1976 conceived and devised the fraudulent scheme which served to mask ESM's financial transactions and resulting losses, he came to learn in 1981 that Financial had sustained losses in the neighborhood of \$100,000,000. He also became aware in 1981 of the method by which ESM was able to conceal its losses by placing false journal entries on its books to shift those losses to Group and Financial. Despite this knowledge, Streicher continued to engage in transactions with customers on behalf of ESM and continued to send out letters enclosing deceptive ESM financial statements to customers and prospective customers who relied upon those statements in deciding

7/ (CONTINUED FROM PREVIOUS PAGE)

"buy" and "resale" of a security, a "Repo" is actually a method of short-term lending whereby customers with excess funds agree to loan money to a firm such as ESM with the loan to be collateralized with various types of securities and with the expectation by the customer that the collateral will be held for his benefit for the term of the loan. To evidence his collateral, a "buy" confirmation is used, and when the loan period expires a "sell" confirmation evidences termination and payment. A "Reverse Repo" is essentially the reverse side of a "Repo". In a "Reverse Repo" the customer, often a financial institution, "sells" a quantity of securities to a company such as ESM with the customer ("seller") agreeing to buy back the securities at a later date for an agreed-upon price plus interest. In effect, the customer thus borrows cash. (See Division Exhibit 1, at 29-30; Tr. 10/5/87, at 49).

whether to enter into financial transactions with ESM. At no time did Streicher inform his customers about the \$100,000,000 in losses that had been transferred out of ESM. Nor did Streicher notify ESM customers of the \$256,000,000 in losses suffered by ESM which was disclosed to him in the latter part of January, 1985 by the ESM auditor, but instead continued during business as usual without disclosure of those enormous losses until March 1, 1985 when ESM closed its doors for the last time.

In the years 1980 through 1985 ESM paid Streicher a total of approximately \$1,492,000 from ESM in salary, commissions, and bonuses, with his annual compensation in 1980 being \$220,000 and thereafter ranging from \$167,000 in 1981 to \$550,000 in 1984. For the brief period in 1985 ending March 1, the last day ESM was open for business, Streicher received about \$300,000. Additionally over the years, and largely during the period of July, 1981 and December, 1984 Streicher borrowed heavily from Financial to the extent that at ESM's closing he owed Financial approximately \$700,000 in principal and accrued interest. About \$290,000 of the borrowings which occurred in 1982 were attributable to Streicher's need to cover his positions on the Chicago Board of Trade where he had lost great deal of money.

Although not privy to the fraudulent scheme at its

inception, the record makes clear that Streicher came to know sometime in 1981 that a criminal conspiracy was in progress and that by continuing with ESM he would be joining that conspiracy. In 1981 Streicher was told of ESM's \$100,000,000 losses by Pete Summers, a good friend who was then president of Financial and also an officer and director of ESM. At the same time Streicher was told by Summers that during a confrontation with Alan Novick, an officer and director of ESM as well as one of the original conspirators, Novick had said Summers was president of Financial in name only and the losses were none of Summer's business.

After resigning sometime in the first half of 1981 following his confrontation with Novick, Summers sought compensation in exchange for his stock interest in Group. In an effort to help Summers achieve that end, Streicher dictated notes to Summer's wife for use by Summer's attorney. Those notes in substance described how ESM could take losses and borrow money from its customers without their knowledge in order to cover those losses. Streicher further cooperated by helping Summers puzzle out how ESM could transfer losses to an affiliated company through intercompany trades, combinations of trades, and "joggling" the figures.

Shortly after Summers left ESM, Streicher asked

Novick about the \$100,000,000 loss and was told not to worry about it, "we have everything under control and there is nothing to worry about." ^{8/} He then asked Novick whether he was doing anything illegal and the response was, "Charlie, if we were doing anything illegal, do you think we could get audited Financial Statements?" ^{9/}

The conclusion is inescapable that Streicher became aware in 1981 of the \$100,000,000 loss in ESM operations and the means by which the loss was being concealed by other officials of ESM and Group. He was thereby faced with the alternative of leaving an extremely lucrative position with ESM or acquiescing in the deception of ESM's customers by continuing to do business as usual. By choosing the latter course he joined in the criminal conspiracy and his character and fitness to remain in the securities business must be judged in that light.

Streicher's protestations of gullibility, being taken advantage of by his employers, and misplaced trust in those he worked with bear little persuasion when measured against the array of warnings that things were

8/ Tr., at 71.

9/ Id.

greatly amiss in ESM business dealings. Much of what Streicher has urged in mitigation of his offenses he has urged before in connection with his sentencing proceeding in the United States District Court for the Southern District of Florida. ^{10/} There, in response to Streicher's representations to the Court, the Assistant United States District Attorney discounted the claimed lack of knowledge of salient aspects of the fraud and cogently observed:

The problem he has, he has before Your Honor today, and that is an incredible amount of denial. He's an angry man. He hasn't come to terms with what happened. ^{11/}

The observation is equally applicable to Streicher now as then, and because of his refusal to recognize his culpability the danger remains that if he were allowed to reenter the securities business upon release from prison he might well again engage in conduct inimical to the interests of the investing public.

To allow Streicher to return to the securities business without a strong showing that he no longer poses a threat to public interest would impose an undue risk upon the investing public. Reentry into the securities business must wait upon his establishing over a period

^{10/} Case No. 86-6076-Cr., supra.

^{11/} Division Exhibit 10, at 25.

of time that he is again worthy of being trusted, and his present personal assurances that he does not plan to break the law and that he will be "a lot wiser and smarter than before" cannot substitute for that showing. ^{12/} As argued by the Division, this record dictates that Streicher should not be permitted to associate with any broker or dealer. ^{13/}

ORDER

IT IS ORDERED that Charles M. Streicher is barred from association with any broker or dealer.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Rules of Practice.

^{12/} "A determination that future securities activities by [a salesman] would be consistent with the public interest should be made on the basis of a showing of the nature of the proposed activity and the conduct of the salesman in question prior to and subsequent to the misconduct here found." Ross Securities, Inc., 41 S.E.C. 509, 349, 353 (2d Cir. 1968):

^{13/} All proposed findings and conclusions submitted by the parties have been considered, as have their contentions. To the extent such proposals and contentions are consistent with this initial decision, they are accepted.

Pursuant to Rule 17(f) of the Rules of Practice, this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.


Warren E. Blair
Chief Administrative Law Judge

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