ADMINISTRATIVE PROCEEDING
FILE NO. 3-7333

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)
	)
ROBERT D. BOOSE	)
	)

INITIAL DECISION

Washington, D.C.
February 11, 1991

Brenda P. Murray
Administrative Law Judge

ADMINISTRATIVE PROCEEDING
FILE NO. 3-7333

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)	
	)	INITIAL DECISION
ROBERT D. BOOSE	)	

APPEARANCES: John Courtade and Robert E. Anderson for the Securities and Exchange Commission, Division of Enforcement.

Robert D. Boose, pro se.

BEFORE: Brenda P. Murray, Administrative Law Judge

The Securities and Exchange Commission (Commission) initiated this public proceeding on April 25, 1990, to determine whether the allegations were true that Robert D. Boose was a registered representative with a registered broker-dealer from July 1985 to June 16, 1986, and that he was convicted on July 1, 1987, of conspiracy to commit securities fraud, to afford respondent an opportunity to establish any defenses to the allegations, and to determine what, if any, remedial action was appropriate pursuant to Sections 15(b)(6) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act). 1/

I presided at a one-day hearing in Washington, DC, on September 27, 1990, at which respondent Robert D. Boose appeared without counsel. I accept the corrections proposed by counsel for the Division to the transcript of that hearing.

The parties all filed briefs. I received the last brief on December 17, 1990.

My findings and conclusions are based on the record and my observation of the witnesses' demeanor. The standard of proof applied is preponderance of the evidence.

Issue

As pertinent here, Section 15(b)(6) of the Exchange Act provides that the Commission shall censure or place limitations on the activities or functions of any person at the time of the alleged misconduct associated with a broker or dealer, or suspend

---

1/ The order also alleged illegal conduct by Michael T. Hines. The Commission has accepted an offer of settlement from Mr. Hines. (Exchange Act Release No. 28476 (September 27, 1990), 47 SEC Docket 0599)

for a period not exceeding 12 months, or bar any such person from being associated with a broker or dealer if it finds that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has been convicted of a felony which involves conspiracy to commit securities fraud.

Findings as to Conviction

It is true as alleged in the Order Instituting Public Proceedings that Mr. Boose was convicted of conspiracy to commit fraud in connection with the purchase or sale of Laser Arms Corp. securities which were not registered on a national securities exchange in violation of 18 U.S.C. §371 based on actions taken while he was associated with a registered broker-dealer. (United States v. Robert Dean Boose, No. CR 86-299 (D.N.J. 1987), aff'd, No. 87-5500, unpublished op.(3d Cir. 1988)) As a result of this conviction, Mr. Boose was sentenced to three years in prison, fined $2,000, and ordered to pay $10,000 in restitution. He was incarcerated from July 1986 to August 1988.

Public Interest Arguments

The Commission's Division of Enforcement (Division) contends the cumulative impact of Mr. Boose's past conduct demonstrates that he is not fit to participate in the securities industry and that a bar is in the public interest. In addition to Mr. Boose's 1987 conviction for conspiracy to commit securities fraud, the Division cites his criminal conviction in 1976 and resulting 18-month incarceration for atrocious assault and battery on a police officer, his arrests in August 1976 for breaking and entering and

in June 1980 for assault, the year's probation he received in 1986 based on charges of cocaine possession, the National Association of Securities Dealers' (NASD) report which shows that Mr. Boose was employed by 11 broker-dealer firms in 1983-87 and that two firms terminated him for cause in 1986, the fact that Mr. Boose signed and submitted employment applications, NASD Form U-4 Uniform Application for Securities Industry Registration or Transfer, which contain material misrepresentations and omit material information, and that Mr. Boose refuses to acknowledge that his conduct contributed to the damage suffered by investors in Laser Arms securities.

Mr. Boose contends it is not in the public interest to bar him from employment in the securities industry because his actions did not damage the public. He sold one block of Laser Arms securities to the trading desk of a securities firm. He maintains that he never solicited the public to buy Laser Arms shares, and that the $190,000 proceeds from the sale of the block of stock should have been returned to the purchaser since the firm where he was employed did not remit the proceeds to the seller. Mr. Boose claims his conviction in 1987 for conspiracy to commit securities fraud was based on erroneous factual conclusions, and that the Division is trying to penalize him for going forward with the hearing in this administrative proceeding because it here advocates a more severe sanction than it offered him during settlement discussions.

Public Interest Findings

For all the following reasons, I find that a less severe

sanction will not suffice to protect the public and that it is necessary to bar Mr. Boose from association with any broker or dealer. (Steadman v. S.E.C., 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd, 450 U.S. 91 (1981)) The Laser Arms self-cooling can debacle was a sophisticated fraud of major proportions in which the public lost approximately $3.66 million. This elaborate security fraud conspiracy involved false financial certificates, false certificates of incorporation, make-believe executives and large scale press coverage of a miracle product used to promote the sale of worthless stock and defraud investors and the United States government. A jury found Mr. Boose's conduct in this factual situation so egregious as to constitute a criminal violation. An appellate court affirmed Mr. Boose's criminal conviction based on a jury verdict of guilty to the charge of conspiracy to violate the securities laws and not guilty of employing manipulative and deceptive practices in connection with the purchase of stock. The appellate court found that Mr. Boose allowed a person to set up a customer account at a registered broker-dealer based on information he knew was fictitious, and that the evidence was overwhelming that Mr. Boose sold Laser Arms common stock which he knew was worthless for $190,000 to a firm that was making a market in the stock. The egregious nature of this conduct by itself mandates a bar but there are additional considerations.

Mr. Boose's actions did harm the public. The proceeds of Mr. Boose's $190,000 stock sale was part of the total amount of

approximately $700,000 distributed to the 1,397 investors who received approximately 15 cents for each dollar they invested. The public investors in Laser Arms securities consisted mainly of individuals. (Division Exhibit 4C) Several individuals indicated that based on this experience they would not invest in the stock market again. (Tr. 18)

The fact that the district court ordered Mr. Boose to pay $10,000 in restitution demonstrates that he was unjustly enriched as the result of his criminal behavior.

Another reason for finding that a bar is necessary is to deter Mr. Boose and others from future illegal actions affecting the securities markets. Authorities have frequently noted that the securities industry presents many opportunities for abuse and overreaching so that it is in the public interest not to allow participation by individuals whose honesty and integrity have been seriously impugned. (Richard C. Spangler, 46 S.E.C. 238, 252 (1976). See Archer v. S.E.C., 133 F.2d 795, 803 (8th Cir. 1943), cert. denied, 319 U. S. 767 (1943); Hughes v. S.E.C. 174 F.2d 969, 975-76 (D.C. Cir. 1949))

Mr. Boose's apparent candor and insistence that he left security firms because they were not up to his business standards and that he enjoyed a reputation for doing "quality trades on Wall Street" are refuted by the record which is replete with examples of his lack of honesty, integrity, and law abiding behavior. This evidence indicates it is highly unlikely that Mr. Boose can conduct himself in compliance with the law. (Tr. 42) In addition

to the illegal conduct which resulted in his 1987 criminal conviction, Mr. Boose answered questions on the application for employment with a broker-dealer falsely on numerous occasions in the period 1983 through 1987. (Exhibit 33, Tr. 40-41, 43-44). Mr. Boose signed U-4 forms on March 4, 1983, September 29, 1983, September 24, 1984 and June 11, 1984 in which he did not acknowledge his August 1976 arrest for breaking and entering with intent to steal. 2/ Mr. Boose denied any knowledge of this arrest in a 1985 notarized letter to the New York Stock Exchange but acknowledged it in an employment application filed in late 1984 and at the hearing. (Division Exhibit 33 and Tr. 35-36, 40-41) Mr. Boose signed U-4 forms on July 14, 1986, and October 31, 1986, which did not acknowledge either his 1976 arrest for breaking and entering or his 1976 conviction for atrocious assault and battery. 3/ In addition, on the U-4 form he signed on October 31, 1986, he did not acknowledge that in August 1986 he was arrested for possession of cocaine, pled guilty, and received a sentence of one year's probation. Also, in a U-4 form he signed on February 25, 1987, Mr. Boose did not acknowledge his arrest in 1976 for breaking and entering or his 1986 sentence for possession of cocaine.

I find that all the omitted information was required by

2/ There is some confusion in the record on when this arrest occurred. I accept the date of August 1976 which is shown on the U-4 form Mr. Boose signed on October 4, 1984. (Division Exhibit 33)

3/ I assume this conviction was for a felony based on the 18-month jail sentence Mr. Boose served for the offense.

question 22 on Form U-4. I do not agree with the Division that the Form U-4 required Mr. Boose to acknowledge his 1980 arrest for assault. This offense is not within the categories of misdemeanors specified in question 22A paragraphs (1) or (2) and, the evidence is not persuasive that the assault charge against Mr. Boose is included within the term "any felony".

Mr. Boose's presentation is of little relevance in determining the public interest issue because the main thrust of his evidence is that his "kangaroo style" conviction was in error and that he did not commit the crime of conspiracy to commit securities fraud for which he was convicted after a jury verdict. The appellate court affirmed the district court's decision and found that the evidence was overwhelming that Mr. Boose knew that Laser Arms stock was worthless. As Judge Blair noted in his recent order in Robert L. Ridenour, Administrative Proceeding File No. 3-7419 (January 9, 1991), the doctrine of collateral estoppel prevents respondent from relitigating any issue that can be shown to have been previously resolved in federal court, however, respondent can introduce evidence relevant to his degree of culpability and any other evidence relating to what, if any, remedial action is appropriate in the public interest. Mr. Boose's presentation focused on the issue of his guilt in the criminal case. That issue is settled.

Mr. Boose's position that he has suffered enough from his involvement with Laser Arms securities because of the sentence he received and the fact that he served two long years in prison does

not address the issue of whether it is in the public interest to have him as an active participant in the securities industry.

My findings are based only on the evidence in this record and are for the reasons stated so that Mr. Boose's contention that the Division is trying to punish him for not settling is irrelevant to my decision.

I have considered all the findings, conclusions, and contentions proposed. They are accepted to the extent they are consistent with this decision.

Order

Based on the findings and conclusions made above, I ORDER that Robert D. Boose is barred from being associated with any broker or dealer.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice. 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 fifteen 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
Administrative Law Judge

Washington, DC
February 11, 1991