ADMINISTRATIVE PROCEEDING
FILE NO. 3-7419

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
ROBERT L. RIDENOUR

INITIAL DECISION

Washington, D.C.
April 8, 1991

Warren E. Blair
Chief Administrative Law Judge

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APPEARANCES: Barbara A. Mallon and Dexter Johnson, of the Commission's Chicago Regional Office, for the Division of Enforcement.

Robert L. Ridenour, pro se.

BEFORE: Warren E. Blair, Chief Administrative Law Judge.

These public proceedings were instituted by an order of the Commission dated November 7, 1990 ("Order") issued pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether allegations made by the Division of Enforcement ("Division") against Robert L. Ridenour ("Ridenour" or "respondent") were true and what, if any, remedial action would be appropriate in the public interest.

In substance, the Division alleged that on July 12, 1989 Ridenour had been permanently enjoined from violating the antifraud provisions of the Securities Act of 1933 ("Securities Act") and of the Exchange Act, and from violating the broker-dealer registration provisions of the Exchange Act. Additionally, the Division alleged that Ridenour wilfully violated the antifraud provisions of the Securities Act and of the Exchange Act and Rule 10b-5 thereunder, and wilfully violated Section 15(a)(1) of the Exchange Act by failing to register as a broker-dealer.

Because no appearance was filed by counsel on respondent's behalf and the answer to the Division's allegations was personally signed by Ridenour, a letter dated November 29, 1990 was sent to respondent advising him of his right to counsel and of his other rights if he chose to represent himself at the hearing. At the outset of the hearing, which commenced on January 16, 1990, Ridenour acknowledged receipt of the letter of November 29, 1990 and stated that he chose to proceed without counsel.

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

Ridenour, who resides in West Des Moines, Iowa, is a CPA with a graduate business degree. In 1972 he became employed by a public accounting firm and in 1974 joined the Des Moines office of a nation-wide securities firm as a registered representative. He was trained by that firm in the sale of fixed-income securities and serviced institutional accounts. In 1979, when his employer began to move its Des Moines institutional department to Minneapolis, Minnesota, Ridenour chose to stay in Des Moines and became a registered representative with Dean Witter Reynolds, Inc. in its institutional bond department. In that capacity he had responsibility for soliciting government securities and bond transactions for the firm.

PERMANENT INJUNCTION

As a result of a complaint filed by the Commission, a permanent injunction was entered against Ridenour on July 12, 1989 by the United States District Court for the Southern District of Iowa 1/ enjoining him from future violations of the antifraud

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1/ SEC v. Robert L. Ridenour, Civil Action No. 85-343-E (S.D. Iowa, filed July 12, 1989, aff'd 913 F.2d 515 (8th Cir. 1990).

provisions of the Securities Act 2/ and of the Exchange Act 3/ and from violations of the broker-dealer registration provisions 4/ of the Exchange Act. The court also ordered Ridenour to disgorge $470,287.23 which represented the net trading profits that Ridenour realized from fraudulent trades during the period November, 1979 through January, 1984.

On September 5, 1990 the United States Court of Appeals for the Eighth Circuit affirmed the judgment of the district court with the exception of the amount of profits Ridenour was required to disgorge, which was reduced by $2,241.27 to a total of $468,045.96.

VIOLATIONS

In addition to allegations that Ridenour wilfully violated Section 15(a)(1) of the Exchange Act by failing to register as a broker-dealer, the Division alleged that the wilful violations of the antifraud provisions of the Securities Act and of the Exchange Act and Rule 10b-5 thereunder were committed by Ridenour over a period lasting from November, 1979 to April, 1984 while he was associated as a registered representative with a registered broker-dealer. Allegedly the fraud violations arose out of Ridenour's interpositioning himself between his customers and the true market in a trading scheme dealing in United States government, municipal,

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2/ Section 17(a) of the Securities Act, 15 U.S.C. §77q(a)(1),(2), and (3).

3/ Section 10(b)(5) of the Exchange Act, 15 U.S.C. §78j(b) and Rule 10b-5 thereunder, 17 CFR 240.10b-5.

4/ Section 15(a)(1) of the Exchange Act. 15 U.S.C. §78o(a)(1).

and corporate debt securities without his disclosing material facts concerning the prices paid or received by customers, the nature of his beneficial interest in the nominee accounts he used to effect transactions, and the profits he derived from the transactions in question.

The charges in this proceeding parallel the charges leveled against Ridenour in the injunctive action which resulted in the entry of the permanent injunction noted above. Following several days of trial held on facts and issues which are identical to those involved in these proceedings, the district court entered comprehensive findings of fact, conclusions of law, and its order. 5/

Prior to the hearing in this matter the Division requested an opportunity to submit a prehearing brief on the issue of collateral estoppel for the purpose of expediting the hearing and eliminating unnecessary proof or arguments. The Division's request was granted and the Division was directed to file an initial brief and respondent was given the opportunity to reply. Upon consideration of the briefs filed by the parties, it was concluded that the doctrine of collateral estoppel was applicable to preclude respondent from relitigating any issue previously resolved by the district court in the injunctive action, and further concluded that the public interest issue present in these proceedings was not before the district court in the injunctive action. 6/

5/ Division Exhibit 2.

6/ Pre-Hearing Order on Collateral Estoppel (Jan. 9, 1991), 47 SEC DKT 2191; 1991 SEC LEXIS 36.

The following summary of the district court's findings relates to the various charge at issue in the injunctive action:

Ridenour was employed from September, 1979 through April, 1984 as a registered representative in the institutional bond department of the Des Moines, Iowa offices of Dean Witter Reynolds, Inc. ("Dean Witter"), a registered broker-dealer, to solicit government securities and municipal bond transactions for his employer. Dean Witter provided him with the essential equipment and information he needed in his work.

Ridenour's customers at Dean Witter included various Iowa banks and individuals whom he solicited to purchase government securities and who relied on respondent to quote the fair market price for government securities transactions. Among others, his customers included Toy National Bank in Sioux City, Iowa ("Toy Bank"), United Central Bank in Des Moines, Iowa ("UCB"), and First Community Bank and Trust of Traer, Iowa ("First Community Bank"). Many of Ridenour's customers, including Toy Bank and First Community Bank, maintained correspondent accounts at UCB. UCB acted as clearing agent for the corresponding accounts' securities transactions and issued confirmations of purchases and sales of securities and collected or disbursed funds for the corresponding accounts' transactions. Ridenour's customers were not aware that with respect to the Toy Bank or First Community Bank accounts, the actual contra-party 7/ was in fact respondent who was using nominee

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7/ Contra-parties refers to the combination of a customer on one side and a dealer on the other.

accounts at Toy Bank and First Community Bank to conceal the fact that he was the actual beneficiary of the transactions.

Ridenour's customers dealt with respondent in his capacity as a Dean Witter representative and expected him "to level with them so that they would receive a fair market price." 8/ While employed at Dean Witter, respondent effected personal securities transactions and established personal accounts in names other than his own at the Toy Bank and the First Community Bank.

From November, 1979 through November, 1981, respondent effected 129 "matched transactions" in his nominee accounts at Toy Bank and First Community Bank consisting of buy-and-sell transactions for the same security, same quantity, and usually the same settlement date. Nearly all of the "matched transactions" involved UCB on one side of the transactions and UCB issued confirmations of the securities transactions to the Toy Bank and First Community Bank nominee accounts and to respondent's customers, the contra-parties to those transactions. In effect, Ridenour purchased securities from customers for himself without informing them, and within a short period of time, sometimes a few minutes, would liquidate the securities at a profit which amounted to a total of $412,635.97 during the period from November, 1979 through November, 1981. After November, 1981 through January, 1984, additional trades by Ridenour resulted in additional profits of at least $57,651.26, making his profit from November, 1979, a total of $470.287.23.

8/ Division Exhibit 2, at 3-4.

Beginning in December, 1980 and through January, 1984, respondent used the name "Investment Security Company" as the nominee on his securities transactions at Toy Bank. Trading profits were paid, at Ridenour's direction, with checks which were drawn by Toy Bank payable to Investment Security Company and either mailed to respondent or picked up by him at Toy Bank.

Toy Bank and First Community Bank mailed confirmations of Ridenour's personal transactions to his residence. The parties on the other side of respondent's matched transactions did not know through confirmations or otherwise that the Toy Bank and First Community Bank trades, which appeared to be effected for the banks' portfolios, actually benefited respondent personally. Ridenour did not inform his customers that he purchased from and sold to them through his accounts at Toy Bank and First Community Bank, that he did not quote them the fair market prices, and that as a result he obtained profits from his customers' securities transactions.

Contrary to Dean Witter's policy, respondent did not inform his supervisors, and they did not know, the extent or nature of his personal securities transactions, and gave Dean Witter false information concerning his personal securities accounts. Respondent violated several rules of employment with Dean Witter and would have been dismissed as an employee had Dean Witter known of the violations.

Ridenour did not register as a broker-dealer in relation to his personal transactions with customers and he did not have an exemption from such registration. Although not registered,

respondent, acting for himself and not for Dean Witter, completed numerous transactions in municipal securities and corporate securities during the period from November, 1979 through April, 1984.

Several factors established scienter on the part of Ridenour. Customers lacked the market information respondent possessed as an employee of Dean Witter and they relied upon him to quote them accurate and best available market prices for the purchase and sale of securities. With his knowledge of the true market prices, Ridenour knew that his failure to inform his customers and his employer would mislead customers into relying on his representations and mislead Dean Witter into the belief that he was acting in a fiduciary manner.

The facts respondent failed to disclose to his customers were material to a reasonable trader. The evidence demonstrated that he interposed a personal trading account between his customers' securities transactions and the fair market price of the trades. As a registered representative of Dean Witter, Ridenour had a fiduciary duty to obtain the best available market price for his customers' securities transactions, and by interposing his own account he breached that duty. He thereby realized substantial profits which any trader honestly investing in the market could not achieve.

From November, 1979 through April, 1984 some of Ridenour's activities placed him in the position of being a broker and other of his acts placed him in the position of being a dealer as those

terms are defined in 15 U.S.C.§78c(a)(4) and (5). The SEC did not relieve him of his obligation to register as a broker-dealer and he was not entitled to an exemption from the duty to register as required under 15 U.S.C. §78o(a)(1).

From its findings, the district court determined that Ridenour's interpositioning of his undisclosed personal accounts constituted a scheme to defraud his customers and his employer in violation of 15 U.S.C. §§77q(a)(1),(2), and (3), and of 15 U.S.C. §78j(b) and 17 CFR §240.10b-5. The district court further determined that Ridenour had acted as a broker and a dealer during the period in question and that by failing to register as a broker-dealer he violated Section 15(a)(1) of the Exchange Act.

As noted above, in the ruling prior to the commencement of the hearing in this proceeding it was concluded that the doctrine of collateral estoppel was applicable to the charges made by the Division against Ridenour in this proceeding and that respondent could not relitigate charges which were the same as those sustained in the injunctive action. Accordingly, on the basis of the court's findings, it is found that Ridenour wilfully violated Section 17(a)(1),(2), and (3) of the Securities Act, and Sections 15(a)(1) and 10(b) of the Exchange Act and Rule 10b-5 thereunder.

PUBLIC INTEREST

Having found that Ridenour wilfully violated the antifraud provisions of the Securities Act and Exchange Act and the broker-dealer registration provisions of the Exchange Act, and that he had been permanently enjoined on July 12, 1989 by a United States

District Court from violations of those same provisions of the securities laws, it is necessary to consider the remedial action appropriate in the public interest.

The Division argues that the public interest requires that Ridenour be permanently barred from association with any broker or dealer. In support of its argument the Division calls attention to the nature and extent of Ridenour's violations noted in the findings and conclusions of the court in the injunctive action.

Ridenour properly points out that on the issue of public interest consideration must be given to whether he knew his activities were illegal or improper. He contends that he thought of himself as a customer of the dealers he traded with, including UCB and Dean Witter, and that as such be believed he had no fiduciary duty to the dealers with whom he traded. He further contends that he did not recognize UCB to be "gullible" and that industry custom is that "broker-dealers never disclose profits to customers regardless of the customers' level of knowledge or relationship to the broker-dealer." 9/

Putting aside the fact that the district court found that Ridenour acted with scienter which at the very least under Eighth Circuit precedent constituted a finding that he was grossly reckless, respondent's contentions are seriously flawed. The fact that he looked upon himself as a customer of the dealers in no way addresses the actuality of the conflict of interest he consciously

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9/ Respondent's Proposed Findings of Fact and Conclusions of Law (March 19, 1991), ¶A of Proposed Conclusions of Law.

involved himself in by trading for his personal benefit while at the same time retaining his status as a registered representative in the Dean Witter institutional bond department. Under those circumstances he could not have but known that the very persons who relied upon and did business with him as an employee of Dean Witter would assume unless otherwise advised by him that their transactions with him were not being effected for his personal benefit and profit. They had a right, as the district court found, to rely upon him "to quote them accurate and the best available market prices for the purchase and sale of securities." 10/ That UCB did rely upon Ridenour's knowledge and prices is evidenced by the testimony of James Wieser, called by Ridenour as a witness in this proceeding, that:

> We may have depended on you as a registered rep of Dean Witter to give us the best bid that you could as a registered -- an agent of Dean Witter, but not the best bid that day on that item that would be in the street. 11/

Having created the situation in which his customers were entitled to assume, if not otherwise advised, that he was acting as a representative of Dean Witter, Ridenour cannot now be heard to protest his knowledge of the fraud he perpetrated upon them. Further, he does not speak in his defense to the fraud he committed upon Dean Witter by channeling profits from his transactions into personal accounts unapproved by Dean Witter rather than effecting those profitable trades for the benefit of his employer. There

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10/ Division Exhibit 2, at 16.

11/ Tr. 228.

again Ridenour must have known that had he sought approval from Dean Witter for his personal trading he would have been turned down.

Respondent makes much of the long experience of Richard Hickman as UCB's most successful salesman and investment manager to bolster his contention that he was not dealing with "gullible" customers, but it appears that respondent views a "gullible" person as being one inexperienced or unknowledgable in the securities field. However, a person may have, as Hickman does, a high degree of expertise in securities, and may still, as Hickman apparently was, be easily deceived or duped by someone he trusts and therefore be considered "gullible."

Respondent's reliance upon industry custom being not to disclose profits to customers is misplaced. The industry custom is applicable only under ordinary circumstances, not the situation here. It appears that Ridenour, recognizing the existence of the industry custom, decided to take advantage of it with a view to hiding behind that custom to keep concealed his illicit profits from his customers. Here again, it may be noted that Ridenour fails to justify the fraud that he committed against his employer by depriving Dean Witter of the profits realized from respondent's personal transactions.

Ridenour attempts to mitigate his culpability with respect to fraud by pointing out that he had traded with UCB for several years and that UCB knew he set up trading partnership to trade in bonds and knew that each trade might be for Ridenour himself or someone

he represented. He also argues that he traded with UCB at prices set by UCB and in accordance with UCB policy. None of this avails Ridenour in view of his further concession that he failed to affirmatively disclose to UCB his profits and also failed to disclose his ultimate profits in transactions with Dean Witter. In his position during the period of the trading in question, his obligations were to make disclosure not only of his profits but of the conflict of interest involved in his trading, and, with respect to Dean Witter, to have obtained approval for his personal trading activities.

Ridenour further and correctly requests that consideration be given to his prior unblemished record in the securities business and the testimony of his witnesses who attested to his honesty and integrity. He also asks that consideration be given to the sincerity of his assurances against future violations and to the fact that considerable hardship has resulted to himself and his family over the past seven years as a result of this case.

Upon careful consideration of the record, including the detailed findings of fact and conclusions of law of the district court in the injunctive action, the views of the Eighth Circuit in affirming, and the arguments and contentions of the parties, it is concluded that, in the public interest, Ridenour should be barred from association with any broker-dealer.

It is clear from the record that Ridenour does not have a realization of the magnitude of his misconduct and deception. In his proposals he continues to stress customary industry practice

of non-disclosure of profits without recognition that the practice is not applicable to the setting in which he was a fiduciary dealing with customers on a basis which demanded that he not interposition himself and profit from transactions at their expense. Further, and surprisingly in light of the district court's findings, he makes no acknowledgement of the error of his ways in effecting trades for his own account of transactions that as an employee of Dean Witter should have been made for the firm's profit. Instead, he argues that his immediate supervisor at Dean Witter knew that he traded bonds away from Dean Witter and that he did not conceal the fact that he was doing so. That argument points up the risk to the investing public that would inhere in allowing respondent to return to or to reapply for readmission to the securities business at any specific time, for it evidences a present lack of understanding of the high standard of conduct that is expected of those engaged in the securities business. Without an appreciation and knowledge of those standards, Ridenour can hardly be expected to adhere to them in the future.

To allow Ridenour to return to the securities business without a strong showing that he no longer poses a threat to the investing public would not be in the public interest. Re-entry must wait upon his establishing over a period of time that he is again worthy of being trusted, and his personal assurances against future violations and the reputation for honesty and integrity he still enjoys amongst those witnesses he chose to call cannot substitute

for that showing. 12/ A bar by the Commission for whatever period necessary for Ridenour's rehabilitation is also consistent with the retention of jurisdiction by the district court in the injunctive action which included, inter alia:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in retaining jurisdiction of this matter, the court will, at an appropriate time, to the extent that it may have authority, consider whether or not it is then appropriate for the defendant to be permitted to again engage in the securities business. 13/

For the present, nothing less than a bar from association with any broker or dealer can suffice to protect the investing public. 14/

O R D E R

IT IS ORDERED that Robert L. Ridenour 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(b) 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/ Division's Exhibit 2, at 26.

14/ 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

Washington, D.C.
April 8, 1991