

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-6586

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of  
NORMAN BEHAR  
(801-25751)

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INITIAL DECISION

Washington, D.C.  
June 23, 1986

Warren E. Blair  
Chief Administrative Law Judge

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INITIAL DECISION

APPEARANCES: Charles E. Padgett and Caryn A. Miller,  
of the New York Regional Office of the  
Commission, for the Division of Enforcement.

Christopher Lovell, for Norman Behar.

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

These public proceedings were instituted pursuant to Section 203 of the Investment Advisers Act of 1940 ("Advisers Act") by order of the Commission dated November 20, 1985. The Order directed that a determination be made whether respondent Norman Behar ("Behar"), a sole proprietor, was convicted in the United States District Court for the Southern District of New York of certain crimes, as alleged by the Division of Enforcement ("Division"), whether the application of Behar for registration as an investment adviser should be denied, and what, if any, remedial action pursuant to Section 203(e) and (f) of the Advisers Act is appropriate in the public interest.

In his answer, Behar admitted the alleged convictions but asserted that the sentence imposed was for a period of 42 months, not 45 months as alleged by the Division. Counsel for Behar appeared and participated throughout the hearings and at the outset on December 18, 1985 consented to an extension of time for the conclusion of these proceedings until final determination by the Commission whether to grant or deny respondent's application for registration as an investment adviser. 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

Behar, who filed his application for registration as an investment adviser pursuant to Section 203 of the Advisers Act, has never been registered with the Commission as an investment adviser. From about March, 1975 to August, 1982 he was president and sole shareholder of State Public Adjusters, Ltd. ("Adjusters"), a New York corporation engaged in the business of adjusting claims on behalf of insured persons in their claims against insurers. Behar was initially licensed as a public adjuster by the State of New York in 1972 and retained that license until 1983. Behar presently is a self-employed distributor of portion-controlled foods such as beef, fish, and poultry.

Criminal Convictions

A ten-count indictment was filed on May 14, 1982 in the United States District Court for the Southern District of New York against Behar and a co-defendant, Robert Tiso ("Tiso"). On October 7, 1982 Behar pled guilty to Count 2 of the indictment charging him with Racketeering <sup>1/</sup> and to Counts 3 and 6 which charged him

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1/ 18 U.S.C. §1962(c).

with Mail Fraud. <sup>2/</sup> A judgment of conviction was entered on March 7, 1983 against Behar, and concurrent sentences of 42 months imprisonment on each of the three counts imposed. Behar was also ordered to pay a concurrent statutory forfeiture of \$125,000 on each count. After serving two-thirds of his sentence in the Danbury Federal Prison Camp, Behar was given a mandatory release on August 30, 1985. <sup>3/</sup>

Underlying the Racketeering count against Behar were six acts committed between June, 1978 and November, 1980, three of which involved the commission of arson or the submission of insurance claims for fire loss of property caused by arson. The other three acts committed between March, 1976 and June 1979 were predicated upon false insurance claims, two for purported losses by theft of two automobiles, one of which was Behar's, and the third for a burglary loss which had not occurred. The two Mail Fraud counts to which Behar pled guilty were based upon the fraud devised and perpetrated in the period June, 1978 to November 1980 by use of the mails in the course of filing one of the false fire insurance claims and receiving a check for \$90,000 from the insurance company in settlement.

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<sup>2/</sup> 18 U.S.C. §§ 1341 and 1342.

<sup>3/</sup> Parole was denied following a parole hearing held in January, 1984.

PUBLIC INTEREST

Section 203(c)(2)(B) of the Advisers Act provides that the Commission shall deny registration as an investment adviser if it finds that if the applicant were so registered, the registration would be subject to suspension or revocation under Section 203(e) of the Advisers Act. The latter provision, inter alia, authorizes the Commission to suspend or revoke the registration of an investment adviser if it finds that such action is in the public interest and that the investment adviser has been convicted within ten years preceding the filing of an application for registration of felonies involving certain activities or the violation of Title 18 U.S.C. §§1341 or 1342.

Inasmuch as Behar's convictions occurred during a time and were of a nature that if he were registered his registration could be subject to suspension or revocation, consideration must be given to whether such action would be in the public interest. The record clearly establishes that were Behar a registered investment adviser, the public interest would require his registration to be suspended or revoked because of his felony convictions and the gross conduct that led to those convictions. Accordingly, it is concluded that Behar's application for registration as an investment adviser should be denied.

Respondent concedes that his convictions are an

adequate basis under the Advisers Act for denial of his application if the public interest requires that action. Behar contends, however, that the public interest would be best served by permitting him to become registered so that the market place can make the determination of whether, with full disclosure, to accept or reject him as an investment adviser. Factors which respondent urges in support of his position are that he has not been in trouble prior to or after the crimes he committed and that he has many friends who consider him trustworthy and knowledgeable about the securities markets. Behar also pleads that he has served his time, has suffered the consequences for his past crimes, has been rehabilitated, and is now qualified to be an investment adviser.

A fundamental flaw in respondent's argument is his suggestion that the market place and not the Commission, which has the statutory responsibility, should determine whether he be allowed to engage in business as an investment adviser. The influence of the market place was clearly inadequate to stop the abuses which led to the enactment of the Advisers Act,<sup>4/</sup> and certainly cannot now be substituted for the Commission's judgment on the record before it with respect to the public interest.

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<sup>4/</sup> See, e.g., S. Rep. No. 1775 76th Cong. 3d Sess. (1940) 21-22.

Behar properly calls into consideration the fact that the record does not disclose that he has been in trouble before or after the criminal conduct which resulted in his convictions nor that he has ever had any trouble in the securities markets while making investments for 30 years.<sup>5/</sup> But his previously unblemished record must be weighed in the light of the felonies committed and the fact that his criminal actions spanned a four-year period. His crimes were of an extremely repugnant nature, involving not only a high degree of moral turpitude but a danger to human life, not only to possible occupants of the feloniously burned property but to firefighters as well. Further, in the commission of those crimes he breached the trust placed in him by the State of New York and the insurance companies with which he dealt. An otherwise unblemished record lacks persuasion when faced with a proved capacity to commit such felonies over a long period of time. The fact that his crimes were unrelated to the conduct of a securities business, as emphasized by Behar in citing Bruce Paul, supra, is of no consequence. His multiple crimes clearly evidence a propensity for dishonesty against which the investing public must be protected.

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<sup>5/</sup> Cf. Bruce Paul, Securities Exchange Act Release No. 21789 (February 26, 1985); 32 S.E.C. Docket 936.



Respondent's efforts to bolster his case with character witnesses fall far short of establishing confidence that he can again be trusted to deal with the public in a fiduciary capacity as an investment adviser. The witnesses offered were his personal friends who had satisfactory social and business relationships with him over long periods, but none of them had received sufficient information about Behar's criminal acts to be reliable sureties for Behar's present honesty and trustworthiness. The witnesses had been reticent about seeking details from Behar and in turn he did not volunteer information, suggesting only that there was more to the story than told by his criminal convictions and intimating that he had taken part in the criminal activities under duress. In short, Behar's friends called to testify were willing to stand by him in his hour of need because they trusted him, but had been kept in ignorance by Behar of the details of his crimes which might well have destroyed that trust. Further, as noted by the Division, the witnesses were unfamiliar with Behar's general reputation in the community and had formed opinions based almost entirely upon personal experiences with him. Under these circumstances, little weight can be accorded their testimony in assaying Behar's character and reputation.

Nor does the record provide sufficient assurance that Behar has been rehabilitated to the point that he

should be permitted to act as a registered investment adviser. Unquestionably he regrets being imprisoned and the concomitant loss of self-respect, but his testimony and demeanor on the stand belie his protestations that he would not again violate the law or breach a trust. As stressed by the Division, Behar appears to be unwilling to acknowledge the extent of his criminality which was such as to cause the sentencing judge to deem Behar "in charge of the operation" and "the principal offender"<sup>6/</sup> in the crimes committed. In sharp contrast to the judge's characterization is Behar's attempt to minimize his role by saying "I'm not one to repeat my mistakes. Then the mistake was that I foolishly tried to be a nice person to a couple of people I knew and in so doing I violated the law, and I have no intention of repeating that or any other type of mistake that would be in violation of the law."<sup>7/</sup> Upon cross-examination by the Division Behar continued his efforts to gainsay his guilty pleas, suggesting that his pleas of "guilty" were induced by lack of financial means to fight the charges. The self-deception that Behar engages in with respect to his criminality does not speak well for the likelihood of his

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<sup>6/</sup> Division Exhibit 13, at 7.

<sup>7/</sup> Tr. 58-59.

being able to recognize and honor the fiduciary responsibility imposed upon an investment adviser.

In sum, Behar has not made the strong showing necessary to overcome the adverse effects of his felony convictions. <sup>8/</sup> Such showing is a prerequisite for a finding by the Commission that he would not pose a threat to the investing public if he were allowed to become a registered investment adviser. <sup>9/</sup>

ORDER

IT IS ORDERED that the application of Norman Behar for registration as an investment adviser be, and hereby is, denied.

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


Pursuant to Rule 17(f) of the Rules of Practice, this initial decision shall become the final decision of

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<sup>8/</sup> Because the Division's proposed findings and conclusions relating to possible violations of Section 207 of the Advisers Act lie outside the scope of the Division's allegations in the Order, no consideration has been given to those proposals.

<sup>9/</sup> Except as noted supra, at n. 8, 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.

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.  
June 23, 1986