ADMINISTRATIVE PROCEEDING
FILE NO. 3-6219

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
FINANCIAL PLANNING CENTER OF GREATER WASHINGTON, INC.	:
(801-15007)	:
WALTER H.T. SEAGER	:
	:

INITIAL DECISION

Washington, D.C.
July 25, 1983

Warren E. Blair
Chief Administrative Law Judge

Filed 7-25-83

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(801-15007)	:	
WALTER H.T. SEAGER	:	

APPEARANCES: John L. Hunter, Therese L. Miller, Stanley M. Hecht, and Joan D. Sarles, of the Washington Regional Office of the Commission, for the Division of Enforcement.

Wayne Hartke, of Hartke and Hartke, for Financial Planning Center of Greater Washington, Inc., and Walter H.T. Seager.

Before: Warren E. Blair, Chief Administrative Law Judge

These public proceedings were instituted by an order of the Commission dated February 23, 1983 ("Order") issued pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") to determine whether Financial Planning Center of Greater Washington, Inc. ("registrant" or "FPC-GW") and Walter H.T. Seager ("Seager") had engaged in the misconduct alleged by the Division of Enforcement ("Division"), and what, if any, remedial action would be appropriate in the public interest.

In substance, the Division alleged that respondents wilfully violated Sections 5(a) and (c) and 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and (2) of the Advisers Act by offering and selling unregistered fractional interests in purported large denomination certificates of deposit by means of untrue statements and omissions of material facts concerning the offered investments and by employing devices, schemes, and artifices to defraud in connection with proceeds obtained from investors. In addition, the Division alleged that the respondents had been permanently enjoined by a United States District Court from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and that a United States District court had convicted Seager of mail fraud in connection with the offer and sale of fractional interests in purported large-denomination certificates of deposit.

Answers to the Division's allegations were filed by respondents together with an application to cancel the registration of FPC-GW as an investment adviser because registrant was no longer in existence nor engaged in business as an investment adviser. At the request of counsel for respondents at the commencement of the hearing on March 29, 1983, ruling upon that application was deferred until after the conclusion of the hearing.

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.

RESPONDENTS

FPC-GW, a Virginia corporation, has been registered under the Advisers Act since January 18, 1980. Seager, who formed registrant about August, 1979, has been an officer and director and in direct control of FPC-GW during the relevant period from about August 1, 1979 through December 31, 1981.

At the time registrant was organized, Seager also formed National Financial Planning Centers, Inc. ("NFPC") and was in control of a third corporation, Diversified Equities Corporation. Seager viewed the three corporations as a single integrated operation.

VIOLATIONS

Sections 5(a) and (c) of the Securities Act

It appears from the record that commencing about August, 1979 Seager offered and sold fractional interests in large-denomination certificates of deposit to at least fourteen persons who invested $269,000 [1/] and that Seager made use of the mails and the telephone in interstate commerce to offer and sell those fractional interests. It further appears that Seager's undertakings to combine individual investments and invest the aggregate proceeds in high interest certificates of deposit in which investors would have undivided shares constituted "investment contracts" and therefore "securities" within the meaning of the Securities Act. [2/] Inasmuch as no registration statement had been filed or was in effect under the Securities Act with respect to the securities offered and sold by Seager, and no exemption from registration was available, it is concluded that in offering and selling the

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1/ Although respondents contest the total amount of money involved, no evidence was presented contradicting the chart of investor transactions included in Division's Exhibit 3. Respondents also deny that Seager's violations commenced as early as August, 1979, but the credible evidence and inferences to be drawn therefrom sustain the Division's contention. In any event, respondents concede that they did not feel it necessary to prove that the violations did not occur until some time later.

2/ Cf. SEC v. W.J. Howey, 328 U.S. 293 (1946).

alleged fractional interests, Seager wilfully violated Sections 5(a) and (c) of the Securities Act. [3/]

A different conclusion is reached with respect to registrant's alleged violation of Section 5 because the record does not sustain the Division's position that registrant participated in the offer and sale of the fractional interests. While it is true that at the outset of the hearing respondents' counsel characterized Seager and his corporations as a single large operation, his statement must be considered in the context of the colloquy then taking place which related to the need for registrant to file an answer in order to avoid an inadvertent default under the Rules of Practice. There is no indication in the transcript of the remarks of respondents' counsel that he intended to admit that registrant was a participant in Seager's alleged violations. In fact, Seager's answer, which respondents' counsel adopted as that of registrant during the course of that colloguy, specifically denies the alleged violations, thereby putting the Division to its proof.

The other portions of the record relied upon by the Division fall short of establishing the claimed participation

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3/ Sections 5(a) and (c) of the Securities Act make unlawful the use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell or offer to sell any security unless a registration statement is in effect as to a security sold, or a registration statement has been filed as to a security being offered for sale.

of registrant in Seager's alleged misconduct. While the formation and use of registrant as an investment adviser may well have been intended to impress investors with Seager's stability and reliability, the thrust of the testimony of the investor witnesses and the documentary evidence is that registrant had little, if any, impact upon their decisions to purchase the fractional interests offered by Seager. Accordingly, it is concluded that registrant did not commit the violations of Section 5 of the Securities Act alleged by the Division.

Fraud Violations

In offering and selling the unregistered fractional interests, Seager, as alleged by the Division, violated the anti-fraud provisions of the Securities Act and of the Exchange Act by making untrue statements of material facts and omitting to state material facts concerning:

1) the pooling of investor funds to purchase large-denomination certificates of deposit;

2) the nature and amount of interest to be paid on these certificates of deposit;

3) interest and tax benefits available from participation in these certificates of deposit;

4) the identity of banks which purportedly had agreed to offer these certificates of deposit; and

as also alleged by the Division, by employing devices, schemes and artifices to defraud and engaging in acts, practices and courses of business which operated as a fraud and deceit by:

1) using proceeds of investor funds to make principal and interest payments to other investors;

2) commingling of investor funds;

3) converting investor funds for personal and other uses; and

4) not purchasing large-denomination certificates of deposit.

The alleged misconduct of Seager was clearly established by the Division through the testimony of the investor witnesses and the supporting documentary evidence admitted in the record. Essentially, Seager's fraud arose out of a conversion to his own use of approximately $269,000 which investors had entrusted to him for purchase of fractional interests in large-denomination certificates of deposit.

One investor witness, G.G., turned over a total of $55,000 to Seager at various times during the period in question on his representations that he would use the money to purchase fractional interests in certificates of deposit carrying high rates of interest. Of that amount, Seager returned approximately $12,000, including payments which Seager misrepresented as interest on her fractional interests. Most of that $12,000 was received about November 6, 1981 [4/] after G.G. requested liquidation of what she believed to be the principal and interest of a participation in a certificate of deposit. Around that same date, G.G. visited Seager for the purpose of liquidating the principal

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4/ Seager drew a check for $10,612.50 payable to G.G. against NFPC's checking account. That account had been drawn down to a balance of $841.92 on November 4, 1981, but a deposit of another investor's $50,000 on the next day supported the payment to G.G.

and interest due on a $25,000 participation which supposedly matured on November 1, 1981. Seager immediately drew and handed to her a check for $37,429.24 drawn on the account of NFPC. That check was twice dishonored for insufficient funds in the account, and G.G. demanded that Seager replace that check with a cashier's check. As a result of that demand, G.G. received a telephone call on December 10, 1981 from Seager's lawyer, who told her that Seager had not invested her money in certificates of deposit.

P.M. met with Seager in the latter's office in November, 1980 for the purpose of developing a financial investment plan, and followed up that meeting with a telephone call to Seager in September, 1981 when P.M. expected to have money to invest as a result of selling his home. P.M. and his wife kept an appointment with Seager on October 1, 1981 in which they outlined their limited financial resources and indicated they wanted to invest about $10,000. Seager informed them that he was then arranging to purchase a large certificate of deposit of a Texas bank bearing 20% to 22% interest which would mature April 1, 1982 and told them that if they acted right away they could buy a portion of it. P.M.'s wife thereupon drew a check for $12,500 payable to NFPC and P.M. handed it to Seager to buy the recommended investment. P.M. became concerned about his investment in mid-December, 1981 after reading a newspaper article about Seager. When P.M. attempted to reach Seager by telephone he was referred to Seager's counsel, who told P.M. that the S.E.C. had

impounded all documents and that he could not discuss the matter. A letter written by P.M. to Seager's counsel went unanswered, and P.M. took no further action to recover his money. It further appears from the record that the $12,500 check given to Seager by P.M. for investment was deposited in an NFPC checking account and that checks were thereafter drawn by Seager against that account to pay personal living expenses. On October 26, 1981 that account was overdrawn by $3,023.82.

R.L., who had known and bought securities from Seager in the early 1970's, received a telephone call on October 23, 1981 in which Seager asked if he would be interested in investing a minimum of $15,000 in a certificate of deposit of the Republic National Bank of Dallas. R.L. indicated a possible interest, particularly in connection with his firm's profit-sharing plan, and told Seager he would let him know. R.L. then spoke about the investment with D.C., a co-trustee with R.L. in the profit-sharing plan. Learning that funds were available in the plan and that D.C. also would be interested in personally investing additional money, R.L. decided he could also put in some of his own funds to reach the required $15,000. He then called Seager, who within the hour went to R.L.'s office to give R.L. details regarding the investment and to receive the money. During that visit Seager told R.L. and D.C. that the certificate of deposit would bear 22 1/4% interest and that their investment would be the same

as depositing money in an insured savings account at the bank. Seager also stated that their money would be used in connection with purchasing a 6-month certificate of deposit which he had negotiated with Republic National Bank, that Riggs National Bank would act as escrow agent or trustee for individuals who invested, and that because of the timing of the investment in relation to the tax year, the bank would send them a Form 1089 to use in connection with their tax returns. Before leaving, Seager received checks for $8,100, $2,900, and $4,000, which represented the respective investments of the profit-sharing plan, R.L. and D.C.

In December, 1981 R.L. became concerned about not receiving any notice from the bank regarding the $15,000 investment and called Seager to insist that he produce some evidence of what had been done with the money. Seager agreed to a meeting at R.L.'s office on December 9. Instead of Seager's appearance, R.L. received a call about 6 p.m. from H.B., another of Seager's investors, informing him that Seager was at H.B.'s office and that Seager had admitted that he had not made the investment and that Riggs National Bank would not confirm any investment in a certificate of deposit. Since then no payment of interest or repayment of principal has been received on the $15,000 investment. Again it appears that the checks received by Seager from R.L. and D.C. for investment were deposited in NFPC's

checking account on October 27 and 28, 1981 and that Seager drew against that money to take care of personal expenses.

Based upon the foregoing, it is concluded that Seager wilfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The record does not support the Division's allegations that FPC-GW was a participant in Seager's fraud and it is therefore concluded that FPC-GW cannot be found to have committed the alleged violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder or of the anti-fraud provisions of Sections 206(1) and 206(2) of the Advisers Act. It follows that Seager cannot be found to have aided and abetted those violations of the Advisers Act alleged to have been committed by FPC-GW.

CRIMINAL CONVICTION

On January 28, 1983 the United States District Court for the Eastern District of Virginia, upon Seager's plea of "Guilty" convicted Seager on two counts of mail fraud. 5/ Seager was thereupon sentenced to serve two three-year periods of imprisonment concurrently. 6/ At the time of the hearing in this matter, Seager was still serving time at a federal prison camp.

5/ 18 U.S.C. §1341

6/ United States of America v. Walter H.T. Seager, Crim. No. 82-00289-A (E.D. Va. January 28, 1983).

PERMANENT INJUNCTION

As a result of a complaint filed by the Commission against Seager, NFPC, and FPC-GW, a permanent injunction was entered on January 21, 1982 by the United States District Court for the Eastern District of Virginia enjoining them from offering and selling fractional interests in certificates of deposit or any other securities in violation of Sections 5(a) and (c) and Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. 7/

Public Interest

Having found that Seager wilfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and that he had been convicted January 28, 1983 for a felony involving 18 U.S.C., §1341 and had been permanently enjoined by a United States District Court from engaging in certain practices in connection with the offer and sale of securities, and that FPC-GW had been permanently enjoined by that Court from engaging in similar conduct and practices, it is necessary to consider the remedial action appropriate in the public interest.

The Division argues that Seager's violations are of a nature and extent that a bar against his associating with a broker-dealer or investment adviser is required in the public

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7/ SEC v. National Financial Planning Centers, Inc., C.A. No. 81-1170-A (E.D. Va. January 21, 1982).

interest, and that because of FPC-GW's complicity in Seager's activities, and the permanent injunction entered against it, revocation of FPC-GW's registration as an investment adviser is warranted. Respondents concede that remedial action is appropriate, but urge that Seager be permitted to remain in the securities business working under tight supervision that would guarantee the public's safety, and that FPC-GW's registration as an investment adviser be canceled.

Upon careful consideration of the record and the arguments and contentions of the parties, it is concluded that in the public interest Seager should be barred from association with any broker-dealer or investment adviser and that FPC-GW's registration as an investment adviser should be revoked.

Contrary to respondents' views, there is nothing persuasive in the record to indicate that Seager could at the end of his incarceration be trusted to act in accordance with the high standards expected and required of broker-dealers and investment advisers.[8/] He has shown a capacity to abuse the trust of his clients and to commit felonies. He is being punished for those offenses, but whether the punishment has a rehabilitating effect remains to be seen. Expressions of confidence in Seager by friends and neighbors which respondents submitted cannot substitute for a showing

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8/ Cf. Joseph P. D'Angelo, 11 SEC Docket 1263 (1976).

over a period of time that he is again worthy of being trusted by the investing public.

As to FPC-GW, the permanent injunction entered against it establishes sufficient basis for revocation of its registration as an investment adviser. Since it further appears FPC-GW is and always has been under absolute control of Seager, it is concluded that a continuation of FPC-GW's registration as an investment adviser would be inimical to the public interest. The fact that FPC-GW is no longer in business does not require that its registration be canceled where, as here, disciplinary action is necessary in the public interest. 9/ In keeping with that conclusion, respondents' motion for cancellation of FPC-GW's registration as an investment adviser is denied. 10/

ORDER

Accordingly, IT IS ORDERED that the registration of Financial Planning Center of Greater Washington, Inc., as an investment adviser be revoked; and

FURTHER ORDERED that Walter H.T. Seager be barred from association with a broker-dealer or an investment adviser.

9/ Cf. Peoples Securities Company, 38 S.E.C. 186, 188 (1958).

10/ 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.

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 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.
July 25, 1983