INITIAL DECISION RELEASE NO. 254
ADMINISTRATIVE PROCEEDING
FILE NO. 3-11519

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

In the Matter of	:	
	:	
IAN L. RENERT	:	INITIAL DECISION
	:	July 27, 2004
	:	

APPEARANCES: Frank C. Huntington for the Division of Enforcement, Securities and Exchange Commission

Ian L. Renert, pro se

BEFORE: Robert G. Mahony, Administrative Law Judge

The Securities and Exchange Commission (Commission) initiated this proceeding with an Order Instituting Proceedings (OIP) on June 15, 2004, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that on April 14, 2004, the United States District Court for the District of Connecticut entered a Final Judgment of Permanent Injunction, Disgorgement, and Other Relief against Ian L. Renert (Renert): (i) permanently enjoining him from violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder, Sections 206(1) and 206(2) of the Advisers Act, and Section 7(d) of the Investment Company Act of 1940 (Investment Company Act); (ii) ordering him to pay disgorgement of $717,276, plus prejudgment interest of $117,264; and (iii) ordering him to pay a civil penalty of $250,000. SEC v. Renert, Civil Action No. 3:01cv1027 (PCD).

On June 22, 2004, Renert filed a letter denying that he committed any of the violations alleged in the underlying proceeding. I have construed Renert's letter as his answer.[1] On June 23,

[1] On June 30, 2004, the Division of Enforcement (Division) informed Renert that the documents required to be produced for inspection and copying were available pursuant to Rule 230 of the Commission's Rules of Practice.

2004, I issued an order requiring the Division to file a motion for summary disposition by July 9, 2004, and requiring Renert to file his response by July 23, 2004. On July 8, 2004, the Division filed a motion for summary disposition, a memorandum of law, and a declaration of Frank C. Huntington.[2] On July 13, 2004, Renert filed a letter stating that he does not intend to appear at a hearing on the merits in this proceeding. On July 19, 2004, Renert filed an additional letter stating that he did not intend to appear at the prehearing conference scheduled for July 26, 2004.

STANDARD FOR SUMMARY DISPOSITION

Pursuant to Rule 250(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.250(a), a party may make a motion for summary disposition as to any or all allegations in the OIP against a Respondent. The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323 of the Commission's Rules of Practice. According to Rule 250(b) of the Commission's Rules of Practice, the administrative law judge may grant the motion for summary disposition if there is no genuine issue of material fact and the party making the motion is entitled to summary disposition as a matter of law.

Although Renert now denies any wrongdoing in the underlying proceeding, he is collaterally estopped from relitigating issues already litigated therein.[3] The Barr Financial Group, Inc., 81 SEC Docket 828, 840 (Oct. 2, 2003) (citing Demitrios Julius Shiva, 52 S.E.C. 1247, 1249 (1997); Blinder, Robinson & Co. v. SEC, 837 F.2d 1099, 1108 (D.C. Cir. 1988)).

FINDINGS OF FACT

The material facts in this proceeding are not in dispute. On June 6, 2001, the Commission

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[2] Attached to the declaration are six exhibits relating to the underlying proceeding: (1) the court docket; (2) the complaint; (3) the withdrawal of Renert's answer; (4) a copy of the final judgment; (5) a copy of the June 30, 2004, letter sent by the Division to Renert informing him of his right to inspect and copy the documents required to be produced pursuant to Rule 230 of the Commission's Rules of Practice; and (6) an expert report by Philip Green. I will cite to the six exhibits attached to the declaration as (Div. Ex. __.). Pursuant to Rule 323 of the Commission's Rules of Practice, 17 C.F.R. § 201.323, I have taken official notice of Div. Exs. 1-4.

[3] The issues involved in the underlying proceeding were actually litigated. Renert filed an answer on September 7, 2001, and filed numerous motions. (Div. Ex. 1.) On October 17, 2003, the district court granted Renert's motion to withdraw his answer and a default judgment was entered against him by the court clerk. (Div. Exs. 1, 3.) The mere fact that the final judgment was entered after Renert defaulted does not mean that the issues in the underlying proceeding were not "actually litigated" because Renert participated substantially in the litigation prior to being defaulted. See Bush v. Balfour Beatty Bahamas, Ltd., (In re Bush), 62 F.3d 1319, 1322-25 (11th Cir. 1995); FDIC v. Daily (In re Daily), 47 F.3d 365, 368-69 (9th Cir. 1995).

filed a complaint against Renert in the United States District Court for the District of Connecticut, based on alleged violations of certain provisions of the federal securities laws. (Div. Ex. 2.) The complaint alleged the following: From at least June 1997 through June 2000, Renert was the owner and control person of Hawthorne Sterling & Co. (Hawthorne), an unregistered investment adviser, and was the architect of a $22 million fraudulent offering of interests in unregistered offshore mutual funds.[4] (Div. Ex. 2 at 5.) Renert and Hawthorne induced more than 700 investors in 49 states and more than 100 investors overseas to purchase interests in 30 entities known as the Hawthorne Sterling Family of Funds. (Div. Ex. 2 at 8.) Renert and Hawthorne misrepresented through the internet, offshore seminars, and a network of sales agents that the funds would invest in bank debentures, which were actually fictitious prime bank instruments. (Div. Ex. 2 at 8.) Renert and Hawthorne failed to disclose that Renert used fund assets to engage in day trading in internet stocks, losing at least $2.2 million, and to fund a mortgage on one of Renert's homes. (Div. Ex. 2 at 11.)

On October 17, 2003, the district court granted Renert's motion to withdraw his answer and a default judgment was entered against him by the court clerk. (Div. Exs. 1, 3.) On April 14, 2004, the district court entered a final judgment against Renert: (i) permanently enjoining him from violating Sections 5(a), 5(c), and 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Sections 206(1) and 206(2) of the Advisers Act, and Section 7(d) of the Investment Company Act; (ii) ordering him to pay disgorgement of $717,276, plus prejudgment interest of $117,264; and (iii) ordering him to pay a civil penalty of $250,000. (Div. Ex. 4.)

CONCLUSIONS OF LAW

Section 203(f) of the Advisers Act provides that the Commission shall impose a sanction against a person associated with an investment adviser if such a person is enjoined from any action, conduct, or practice specified in Section 203(e)(4) of the Advisers Act. Pursuant to Section 203(f) of the Advisers Act, the Commission may censure, place limitations on the activities of such a person, suspend that person for a period not exceeding twelve months, or bar that person from being associated with an investment adviser if the Commission finds, on the record and after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest.

As president and control person of Hawthorne, Renert was an associated person of an investment adviser. See Section 202(a)(17) of the Advisers Act. Renert was permanently enjoined from a practice specified in Section 203(e)(4) of the Advisers Act. The only remaining question is whether a sanction is appropriate in the public interest.

SANCTIONS

In determining whether a sanction in the public interest, I am guided by the following factors:

[4] Renert admitted that he was the president of Hawthorne. (Div. Ex. 3.)

> [T]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981) (citation omitted). The severity of a sanction depends on the facts of each case and the value of the sanction in preventing a recurrence. Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963); Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

Renert's conduct was egregious and recurrent. From 1997 through 2000, Renert raised $22 million in a fraudulent offering of interests in unregistered offshore mutual funds from more than 700 investors in 49 states and more than 100 investors overseas. Renert misrepresented that the funds would be invested in bank debentures and failed to disclose that he used fund assets to engage in day trading in internet stocks and to fund his personal mortgage. Renert's conduct was done with a high degree of scienter. He has given no assurances against future violations and has not recognized the wrongful nature of his conduct. Instead, Renert claims that his sales were made in compliance with the securities laws. Given his past conduct and his utter failure to recognize any wrongdoing, a strong likelihood exists that he will violate the securities laws in the future. I conclude that the public interest requires that Renert be permanently barred from association with an investment adviser.

ORDER

IT IS ORDERED that the Division of Enforcement's motion for summary disposition against Ian L. Renert is GRANTED; and

IT IS FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, Ian L. Renert is hereby BARRED from association with any investment adviser.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

Robert G. Mahony
Administrative Law Judge