ADMINISTRATIVE PROCEEDING
FILE NO. 3-8112

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)
	)
ALEXANDER V. STEIN	)
	)

INITIAL DECISION

Washington, D.C.
June 20, 1994

Brenda P. Murray
Chief Administrative Law Judge

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APPEARANCES: Lawrence L. Kiser, for the Division of Enforcement, Pacific Region\Seattle District Office, Securities and Exchange Commission.

Alexander Stein, pro se for respondent

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

The Securities and Exchange Commission initiated this proceeding on August 5, 1993 pursuant to Sections 203(e) and (f) of the Investment Advisers Act of 1940 ("Advisers Act"). I held a one-day hearing at the Federal Correctional Institution in Sheridan, Oregon on October 19, 1993. Mr. Stein appeared pro se. The Commission's Division of Enforcement ("Division") presented one witness and three exhibits - the Grand Jury indictment in United States v. Alexander V. Stein, CR 92-150 (D. OR) dated October 27, 1992, the jury verdict and criminal minutes in that case dated May 20, 1993, and a letter from the Assistant United States Attorney who testified in this proceeding to the sentencing judge dated August 18, 1993. 1/

When the hearing opened, Mr. Stein presented me with a motion to postpone. Mr. Stein objected to having the hearing at this time claiming that he did not have sufficient time to prepare and that he lacked the materials and witnesses needed to conduct his defense. Mr. Stein did not receive notice that the hearing scheduled originally for September 14 would be held October 19 until October 13, 1993 because he was moving between correctional facilities. However, this short notice is not prejudicial because he knew from the Order Instituting Proceedings issued in early August 1993 that a hearing was imminent, he received notice of the

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1/ I ordered the Division to provide Mr. Stein with a list of its witnesses and exhibits prior to the hearing. Mr. Stein had copies of the exhibits before the Division offered them in evidence (Tr. 15, 16, 33). I refused to allow in evidence a letter from Mr. Stein's attorney in the criminal case dated August 10, 1993 to Mr. Stein's probation officer commenting and objecting to a draft presentencing report in United States v. Alex V. Stein, No. 92-150-RE.

original September 14 hearing date, and he did not claim in any of his several pretrial motions or make a statement filed with his answer to the allegations that he could not to defend himself without certain materials or witnesses. In his motion to postpone, Mr. Stein did not specify exactly what materials he claimed to need (Tr. 79-82). At the conclusion of the hearing, he described them as follows (Tr. 82):

> Trial transcripts, sentencing transcript, original advisor application, field report, Dan McCullough investigative reports, victim records from attorney, IRS spreadsheets, grand jury testimony. 2/

I denied the motion to postpone but gave Mr. Stein an opportunity to tell me at the end of the hearing whether there was something he would have offered in evidence if he had been given additional time and I would consider it as a late-filed exhibit (Tr. 13-14). He did not do so.

The Division called Mr. Stein to testify but he declined to do so citing his right not to incriminate himself under the Fifth Amendment of the United States Constitution. He refused to state

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2/ In response to Mr. Stein's request for reconsideration of my ruling, I took official notice of the original investment adviser registration form of AVS Research, Inc. ("AVS"), an Oregon corporation of which Mr. Stein was President and only shareholder (Ruling on Motion, November 10, 1993).

On brief, Mr. Stein argues that he was prevented from adequately cross examining the Division's witness because he did not have access to the district court trial and sentencing transcripts (Post-Hearing Reply Brief, 11). Throughout this proceeding, Mr. Stein has attempted to attack the conduct of the government in his criminal trial which I have tried to explain to him was inappropriate in this proceeding (Tr. 39-82).

whether he had been associated with an investment adviser because "I'm not here to give testimony on the record." (Tr. 11-12).

Mr. Stein did not call any witnesses or present any exhibits.

Both parties filed briefs. The Division filed the last brief on March 16, 1994.

FINDINGS

My conclusions are based on the record and my observations of the witness's demeanor. I applied preponderance of the evidence as the applicable standard of proof.

Respondent

Mr. Stein is a High School graduate who has graduated or attended college in Oregon. He has served in the military, and has no other criminal convictions but the one referred to in this decision (Tr. 38). Mr. Stein acted as a person associated with an investment adviser by advising the public to buy and sell interests in what he falsely represented to be a fully-hedged arbitrage program involving securities listed on the New York Stock Exchange and options for those securities, and he represented that investors would earn up to 50 percent interest on their totally risk free investment (Exhibit 1, 3; Tr. 61-62, 66). 3/ Mr. Stein did not invest investor funds in a fully-hedged arbitrage program but used the funds to buy homes, cars, clothes, watches and other items and to buy and sell puts and calls (Exhibit 4; Tr. 52-53).

3/ Mr. Stein told investors that he loaned money to individuals who owned New York Stock Exchange listed securities, that he took the stock as collateral, and that he bought put options on the stock to hedge against the stock going down (Exhibit 4, 2).

Mr. Stein's illegal activities were conducted through AVS and AVS Capital Fund, Ltd. In theory AVS advised AVS Capital Fund, Ltd what to buy. In practice it was just Mr. Stein. While investors were shown documents bearing the names of both corporations it was a charade because Mr. Stein was President, single shareholder, and only employee, except for perhaps a secretary, of AVS and AVS Capital Fund, Ltd (Exhibit 1; Tr. 24-25).

Allegations

I find that the allegations set out in the Order Instituting Proceedings are true.

1. On May 20, 1993, after two days of deliberation, a jury found Mr. Stein guilty on 35 counts of securities fraud, wire fraud, mail fraud, and money laundering. (United States v. Alexander V. Stein, CR92-150 (D. OR)). He was sentenced to serve 71 months in prison. Mr. Stein received 11 extra months for forging a document he used in his defense during the trial (Tr. 74).

2. The evidence is persuasive that Mr. Stein was associated with an investment adviser during the applicable time period. Mr. Stein was President and the only shareholder of AVS, an investment adviser registered with the Commission under Section 203 of the Advisers Act on June 1, 1979. The evidence is that Mr. Stein withdrew AVS's registration on August 24, 1982, but continued to hold himself out to the public and to act as a person associated with an investment adviser between 1983 and 1988 using AVS and AVS Capital Fund, Ltd. (Exhibit 1; Tr. 25, 45, 60-62). Section 202 (11) of the Advisers Act defines an investment adviser as a person (a

natural person or a company) who, for compensation, engages in the business of advising others, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities. A person associated with an investment adviser includes someone who is an officer or controls an investment adviser as Mr. Stein did (Section 202 (17)).

I reject Mr. Stein's position that the Commission has no authority to sanction him because he was not associated with a registered investment adviser during the time he committed the illegal acts for which he was convicted. It is the nature of the activities not the existence of a valid registration that determines whether one is acting as an investment adviser or as a person associated with an investment adviser.

3. In the criminal case, the jury returned a guilty verdict on 35 counts based on evidence that Mr. Stein raised approximately $7.5 million from investors operating a Ponzi type scheme - a fraudulent enterprise where the only source of funds to pay old investors promised high returns is new investor funds - through AVS and AVS Capital Fund, Ltd. which he controlled; that Mr. Stein promised public investors a risk-free investment with returns as high as 50 percent annually; that Mr. Stein forged numerous documents as part of his illegal activities, and that he misappropriated the bulk of the funds invested (Exhibits 1, 2 and 4; Tr. 19, 36-38, 46-47, 52-53).

Public Interest

The Advisers Act was the last in a series of Acts designed to eliminate certain abuses in the securities industry which contributed to the stock market crash of 1929 and the depression of the 1930's. These statutes all had the fundamental purpose of achieving a high standard of ethics in the securities business. S.E.C. v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 186 (1963). As the Court noted (Id):

> As we recently said in a related context, "It requires but little appreciation...of what happened in this country during the 1920's and 1930's to realize how essential it is that the highest ethical standards prevail" in every facet of the securities industry. Silver v. New York Stock Exchange, 373 U.S. 341, 366 (1963)

Section 203 (f) of the Advisers Act specifies that the Commission shall sanction someone who at the time of the alleged misconduct was associated with an investment adviser if the sanction is in the public interest and the person has willfully violated provisions of the securities statutes, or has within ten years of the commencement of the administrative proceeding been convicted of a crime involving the purchase or sale of securities, or that arises out of the conduct of an investment adviser, or that involves forgery, when at the time of the misconduct the person was associated with an investment adviser. The evidence is conclusive that Section 203 (f) applies to Mr. Stein, and that the public

interest requires that Mr. Stein should not be allowed to participate in the securities industry in any capacity.

Between twelve and twenty investors lost substantial sums of money, much of it retirement funds, because they trusted Mr. Stein as an investment advisor, a fiduciary who has an affirmative duty to act in the utmost good faith. S.E.C. v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963) (Tr. 36; Exhibit 4, 5 n.3). Mr. Stein is a very clever person without any sense of integrity. The record is filled with examples of Mr. Stein's blatant, illegal conduct. For example, his numerous forgeries included his brother's signature, a document he used to enter a consent settlement with the Oregon Department of Insurance and Finance to lull investors into a false sense of security about their investments, and a document he used during his criminal trial (Exhibit 1, 6-7). In addition, Mr. Stein promised to repay investors when he knew he had spent the funds he would need to do so (Tr. 49-50). Mr. Stein does not acknowledge that he has committed any illegal acts despite his conviction on 35 counts. Even though he told the government that he owed investors over seven million dollars in unreturned principal and over 23 million dollars in unpaid interest, he contests the accuracy of the government's estimate of his losses based on information he supplied because he did not keep any business records (Tr. 44-46). Although he admits he told investors he engaged in fully hedged arbitrage when he did not do so, he claims he did not misrepresent the facts because he did not know what fully hedged arbitrage was (Exhibit 4, 1).

There is not a shred of evidence that mitigates the extensive record of illegal actions that were willful, totally self-serving, and extensive in scope and degree. The testimony of the single witness, the Assistant United States Attorney who prosecuted Mr. Stein, is unrefuted on the record (Exhibit 4, 6-7; Tr. 19, 41, 46-52):

> The defendant, Alexander Stein, is a diabolical liar who has exhibited not a shred of remorse. He defrauded his victims out of over 6.3 million dollars through charm, wit, lies, elaborate forgeries and broken promises upon broken promise. He would have deserved a lengthy period of incarceration if he had merely lost the investors money through investing in projects contrary to his representations. Of course, we now know that he did far more than that - with large portions of the investors money, he bought himself a fur coat, his girlfriend expensive jewelry, Rolex watches to give away as tokens, luxury homes, and Rolls Royce and Ferrari automobiles. I have been a federal prosecutor for 14 years and have never seen this level of extravagance paid for from the theft of others. I, likewise, have never seen as many forged documents as were introduced into evidence during the trial. Alexander Stein is surely in a class by himself.

I find persuasive the witness's expectation that, if allowed, Mr. Stein on his release will return to his old ways of garnering investments from the public for his own gain because until he was stopped these illegal activities were extremely rewarding financially and there is no other way he can earn a living of this magnitude (Tr. 32-33).

ORDER

Based on these findings and conclusions, and pursuant to Sections 203(e) and (f) of the Advisers Act I ORDER that Alexander V. Stein is barred from being associated with any investment adviser.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice (17 C.F.R. 201.17(f)). 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 15 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
Chief Administrative Law Judge

Washington, D.C.
June 20, 1994