ADMINISTRATIVE PROCEEDING
FILE NO. 3-6542

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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| In the Matter of |
| HENDERSON, INC. |
| WILLIAM ORR HENDERSON |

# INITIAL DECISION

Washington, D.C.
January 6, 1986

Ralph Hunter Tracy
Administrative Law Judge

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APPEARANCES: Norma Iris Garcia and Timothy Smoot of the Los Angeles Regional Office of the Commission, for the Division of Enforcement.

William Orr Henderson, pro se and for Henderson, Inc.

BEFORE: Ralph Hunter Tracy, Administrative Law Judge

This proceeding was instituted by an order of the Commission dated July 12, 1985 (Order,) issued pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 (Advisers Act) to determine whether Henderson, Inc. (registrant) and William Orr Henderson (Henderson) 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 registrant, aided and abetted by Henderson, willfully violated Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-2 thereunder. In addition, the Division alleged that the respondents had been permanently enjoined by a United States District Court from future violations, or aiding and abetting violations, of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206 (1), 206(2), and 206(4) of the Advisers Act and Rule 206 (4)-2 thereunder; and that the Arizona Superior Court had convicted respondents of fraud in connection with their misappropriation of clients' funds.

Respondent Henderson appeared pro se and on behalf of registrant. Proposed findings of fact, conclusions of law, and supporting briefs were filed by the parties.

The findings and conclusions herein are based on the preponderance of the evidence as determined from

the record and upon observation of the witness.

RESPONDENTS

Henderson, Inc. was an Arizona firm incorporated January 13, 1977, with its principal place of business at 4400 E. Broadway, Tucson, Arizona. Registrant has been registered with the Commission as an investment adviser pursuant to Section 203(e) of the Advisers Act since September 13, 1977. Registrant's sole business consisted of advising a number of clients concerning the purchase and sale of securities and commodities.

Respondent Henderson is now about 44 years of age and has been president and sole shareholder of registrant since its inception. He has acted as an investment adviser individually and through registrant since 1977.

FRAUD VIOLATIONS

The Order alleges that during the period from about November 1978 through February 1982 registrant and Henderson willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and that registrant, aided and abetted by Henderson, willfully violated Sections 206 (1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-2 thereunder by employing, directly and indirectly, devices, schemes, and artificies to defraud clients and by

means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.[1/]

It appears from the record that commencing about November 1978 and continuing through February 1982, while acting through registrant as an investment adviser, Henderson converted a total of at least $420,000 from ten different clients in twenty-four separate transactions. In some instances Henderson made unauthorized withdrawals from clients' securities brokerage accounts by forging clients' signatures on the withdrawal requests. However, in most instances Henderson persuaded his clients to invest

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1/ Section 10(b) as here pertinent makes it unlawful for any person to use or employ in connection with the purchase or sale of a security any manipulative device or contrivance in contravention of rules and regulations of the Commission prescribed thereunder. Rule 10b-5 defines manipulative or deceptive devices by making it unlawful for any person in such connection: "(1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person . . ." Section 206 contains analogous anti-fraud provisions. Rule 206(4)-2 prohibits an investment adviser from improperly using clients' funds or securities in his possession or custody.

in CDs (certificates of deposit) and falsely represented to the clients that he would purchase CDs on their behalf.

Acting on Henderson's advice clients instructed their brokerage houses to liquidate portions of their accounts, issue checks for the purchase of CDs, and have the checks delivered to Henderson. Thereupon Henderson forged clients endorsements on the checks and deposited them directly into registrant's or his personal checking account. He then used the funds to pay personal and business expenses.

Henderson periodically prepared and mailed statements to his clients which falsely represented that he had purchased CDs on the clients' behalf and which purportedly represented client assets under his management. However, contrary to his representations, Henderson never purchased CDs on behalf of any of his clients. On several occasions Henderson used clients' funds to replace funds previously stolen from these same clients, and on at least two occasions used client funds to replace those previously stolen from other clients.

In March 1982, one client, Ms. Campbell, became suspicious that Henderson had not invested her money in CDs as he represented. Accordingly, early in April 1982,

she called the First Interstate Bank in Tucson, where the certificates were purported to be and was informed that there were no such certificates. As a result of Ms. Campbell's inquiry, bank officials concluded that there was a risk that Henderson had never purchased CDs for her, and accordingly, placed registrant's corporate checking account at the bank on a special status.

On April 8, 1982, Henderson attempted to deposit a client's check, whose endorsement he had forged, into registrant's corporate checking account and to obtain a cashier's check. First Interstate Bank questioned the endorsement, refused to deposit the check, and confiscated it. Subsequently, on April 20, 1982 Henderson was questioned by an FBI agent, to whom he admitted that he had attempted to convert two clients' checks in order to cover a shortage of funds in Ms. Campbell's brokerage account. He also admitted to having taken a total of $187,500 from Ms. Campbell's brokerage account without her authorization and having used the money for his personal expenses.

On June 18, 1984, the Arizona Superior Court, upon Henderson's plea of guilty for himself and registrant, convicted both respondents on three Class II felony counts of fraudulent schemes and artifices involving the theft of

investment funds from clients. [2/] The court then sentenced Henderson to three concurrent ten-year prison terms; placed registrant on probation for seven years; ordered Henderson to make restitution of approximately $1,700,000 to his clients; and ordered the forfeiture of all of respondents' assets for the purpose of making restitution. At the time of the hearing in this matter Henderson was still serving his sentence at an Arizona state prison camp.

As a result of a complaint filed by the Commission against registrant and Henderson, a permanent injunction was entered on March 16, 1984 by the United States District Court for the District of Arizona enjoining them from violating the antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206 (1), 206(2), and 206(4) of the Advisers Act and Rule 206 (4)-2 thereunder. Respondents consented to the permanent injunction.

Based upon the foregoing record and the testimony of respondent, Henderson, who was the only witness in this proceeding, it is found that registrant and Henderson willfully violated Section 10(b) of the Exchange Act and Rule

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2/ State of Arizona v. William Orr Henderson and Henderson, Inc., Crim. No. 12537 (Pima County, June 18, 1984).

10b-5 thereunder, and that registrant, aided and abetted by Henderson, willfully violated Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-2 thereunder. It is found, also, that Henderson clearly had the scienter necessary to establish the violations.

PUBLIC INTEREST

Having found that registrant and Henderson committed the violations alleged in the Order and that Henderson had been convicted on three felony counts involving theft and fraud by the Arizona Superior Court, which imposed an aggravated prison sentence of ten years for each count; and further that registrant and Henderson had been permanently enjoined by a United States District Court from violating the antifraud provisions of the Exchange Act and the Advisers Act, it is necessary to consider the remedial action appropriate in the public interest.

The Division argues that registrant's and Henderson's violations are of such nature and extent as to require the revocation of registrant's registration and the barring of Henderson from association with any registered investment adviser.

Henderson states that his former clients would

like him to make restitution but that if he is barred from ever dealing in the securities industry again, his chances of making meaningful restitution are significantly reduced.

In the capacity of an investment adviser, Henderson owed an even more stringent duty to his clients than would a securities salesman. As the Supreme Court stated in Securities and Exchange Commission v. Capital Gains Research Bureau,[3/] an investment adviser is a fiduciary who owes his clients "an affirmative duty of utmost good faith and full and fair disclosure of material facts." The very enactment by Congress of the Advisers Act evinced recognition of the nature of the advisory relationship and of the need for a regulatory scheme to protect investors from persons who may engage in fraudulent and deceptive practices.[4/]

Respondent has shown a capacity to commit felonies. He is being punished for those offenses, but whether the punishment will have a rehabilitating effect remains to be seen. Only a showing over a period of time would indicate that he is worthy of being trusted by the investing public.

Upon careful consideration of the record and the

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3/ 275 U.S. 180, 194 (1963).

4/ Abrahamson v. Fleschner, 568 F.2d 862, 870 (2d Cir. 1977); Securities and Exchange Commission v. Meyers, 285 F. Supp. 743, 746 (D.C. Md. 1968).

arguments and contentions of the parties, it is concluded that the nature and character of the violations require that registrant's registration as an investment adviser be revoked and that Henderson be barred from association with any investment adviser.

ORDER

Accordingly, IT IS ORDERED that the registration of Henderson, Inc. as an investment adviser is revoked;

FURTHER ORDERED that William Orr Henderson is barred from association with any investment adviser.[5/]

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

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen days after service of the initial decision upon him, filed a petition for review pursuant to

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5/ It should be noted that a bar order does not preclude the person barred from making such application to the Commission in the future as may be warranted by the then existing facts. Fink v. S.E.C., 417 F.2d 1058, 1060 (2d Cir. 1969); Vanasco v. S.E.C., 395 F.2d 349, 353 (2d Cir. 1968); Ross Securities, Inc., 41 S.E.C. 509, 517 n. 10 (1963).

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. 6/

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6/ All proposed findings, conclusions, and contentions have been considered. They are accepted to the extent that they are consistent with this decision.