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ADMINISTRATIVE PROCEEEDING
FILE NO. 3-6265

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
TRENTON H. PARKER & ASSOCIATES, INC. (8-18218)	:
TRENTON H. PARKER & ASSOCIATES ASSET MANAGEMENT CORPORATION (801-12440)	:
TRENTON H. PARKER	:

INITIAL DECISION

January 31, 1984
Washington, D.C.

Warren E. Blair
Chief Administrative Law Judge

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APPEARANCES: Lillian H. Filegar and Edward A. Lewkowski, of the Denver Regional Office of the Commission, for the Division of Enforcement.

Trenton H. Parker, pro se and for Trenton H. Parker & Associates, Inc., and Trenton H. Parker & Associates Asset Management Corporation.

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

These public proceedings were instituted by an order of the Commission dated July 6, 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 Trenton H. Parker & Associates, Inc. ("Associates"), Trenton H. Parker & Associates Asset Management Corporation ("Asset Management"), and Trenton H. Parker ("Parker") had engaged in the misconduct alleged by the Division of Enforcement ("Division"), whether Associates and Parker had been permanently enjoined from violations of the Securities Act of 1933 ("Securities Act"), whether Parker had pleaded guilty to federal income tax violations and mail fraud in the purchase and sale of securities, and what, if any, remedial action would be appropriate in the public interest.

In substance, the Division alleged that Associates and Parker wilfully violated Sections 5(a) and (c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in the purchase and offer and sale of unregistered securities of The International Mining Exchange, Inc. ("Mining") by fraudulent means, and that Associates, wilfully aided and abetted by Parker, wilfully violated Sections 15(b) and 17(a) of the Exchange Act and Rules 15b3-1 and 17a-5(d) thereunder by failing to file an amended Form BD and required audited financial statements.

The Division also alleged that Associates and Parker had been permanently enjoined on or about May 21, 1981, as amended June 2, 1981, by the United States District Court for the District of Colorado from violations of the Securities Act and Exchange Act in connection with the offer and sale of securities of Mining and that Parker pleaded guilty before the United States District Court for the District of Colorado to federal income tax violations and mail fraud in connection with the offer and sale of Mining securities. Additionally, the Division alleged that Asset Management, wilfully aided and abetted by Parker, had wilfully violated Section 204 of the Advisers Act and Rule 204-1 thereunder by failing to file an amended Form ADV setting forth the current business address of Asset Management and failing to file required annual reports on Form ADV-S.

In an undated letter mailed in an envelope postmarked July 26, 1983 which was deemed a sufficient answer for the purposes of Rule 7 of the Rules of Practice, [1/] Parker advised that he was acting pro se in this matter and demanded that the Commission take whatever steps necessary to assure his presence at the hearing. By letter dated August 9, 1983, Parker was advised that the hearing would be held at either the federal prison camp at Safford, Arizona or the

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1/ 17 CFR 201.7.

Metro Correctional Center in Tucson, Arizona, depending upon where he would be incarcerated on October 18, 1983, the date to which the hearing was postponed. In the same letter Parker was advised of his right to be represented by counsel of his own choosing and of other rights he had as a respondent appearing pro se. He was further advised that if he had good reason for not appearing on October 18, 1983, he should write stating the reason and requesting a change of date for the hearing.

No request for postponement was received from Parker, but at the hearing on October 18, 1983 held at the Metro Correctional Center, Tucson, Arizona, he complained that the prison facility had denied him his rights to obtain an attorney. Upon consideration of his arguments, the facts relating to that complaint, and his failure to communicate with the Commission before commencement of the hearing, it was concluded that Parker had not been diligent in seeking to obtain counsel and that the hearing should not be delayed. 2/

During the course of the hearing Parker appeared pro se and represented Associates and Assets Management. As

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2/ Parker also moved to transfer the hearing to Denver, Colorado, to enable him to obtain evidence he asserted would contradict the Division exhibits. That motion was also denied because of his lack of diligence and the unlikely probative value of the documents he sought to produce.

part of the post-hearing procedures, succesive filings of proposed findings, conclusions and supporting briefs were specified. A timely filing thereof was made by the Division, but respondents did not take advantage of the opportunity to do so.

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

Associates, a Delaware corporation with its principal place of business in Colorado, has been registered as a broker-dealer under the Exchange Act since March 5, 1975, and Asset Management, a Colorado corporation located in Colorado, has been registered as an investment adviser under the Advisers Act since December 20, 1976. Parker is president and sole owner of Associates and of Asset Management. During the periods alleged, he also was president and chief executive officer of Mining.

PERMANENT INJUNCTION

As a result of a complaint filed by the Commission, a permanent injunction was entered on May 21, 1981 3/ by the United States District Court for the District of Colorado enjoining Parker and Mining from conduct in violation of the registration provisions of the Securities Act

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3/ As amended June 2, 1981.

and the antifraud provisions of the Securities Act and Exchange Act in connection with the offers, purchases, and sales of any securities and, in particular, investment contracts based upon gold tax shelter investment programs offered by Mining. 4/ Although Associates was also named as a defendant by the Commission, the Court's order did not enjoin Associates from antifraud violations but directed Associates and Parker to file amendments to Associates' Form BD correcting inaccurate information therein. The Court further ordered Associates to file audited financial statements while registered with the Commission.

It appears from the record that Parker was permanently enjoined from 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, but the record does not sustain the Division's allegation that Associates was enjoined from committing such violations. Further, it is concluded from review of the Court's order and the record otherwise that neither Associates nor Parker has been permanently enjoined from engaging in or continuing violations of Sections 15(b) and 17(a) of the Exchange Act and Rules 15b3-1 and 17a-5(d) thereunder within the meaning of Section 15(b)(4) of that Act.

4/ S.E.C. v. International Mining Exchange, Inc., 515 F. Supp. 1062 (D. Col. 1981).

CRIMINAL CONVICTIONS

As evidenced by the Judgement and Probation/Commitment Order [5] entered March 29, 1982 in the United States District Court for the District of Colorado, [6] Parker pleaded "Guilty" on March 26, 1982 to mail fraud, [7] wilfully assisting in the preparation of fraudulent income tax returns, and failure to file income tax returns. [8] As charged in the indictment, Parker's crimes arose out of the offer and sale of Mining securities in the form of gold mine tax shelters.

Parker was immediately sentenced to serve five years imprisonment on three tax counts. Imposition of sentence was suspended and Parker placed on probation for five years on one count of mail fraud. A special condition of probation requires Parker to make full restitution to defrauded mining investors.

VIOLATIONS

Underlying the permanent injunction and his criminal convictions were Parker's activities, and those of Mining, in offering and selling investment contracts of Mining which were represented to afford gold tax shelters to investors.

5/ Div. Ex. 10

6/ United States v. Trenton H. Parker, 81-CR-122 (D. Col. March 26, 1982).

7/ 18 U.S.C. §§1341, 1343 and 2.

8/ 26 U.S.C. §§7203 and 7206(2).

The same activities are the predicate for the Division's allegations in these proceedings that Associates and Parker violated the antifraud provisions of the securities acts. Details regarding those activities are spelled out in considerable detail in the counts of the indictment on which Parker was convicted and the findings in the injunctive order against Parker and Mining. 9/

Sections 5(a) and (c) of the Securities Act 10/

It appears from the record that commencing on or about September, 1979 and continuing to about May 21, 1981, Parker and Mining offered and sold contracts for a "Gold Tax Shelter Investment Program" ("Gold Tax Shelters") based on placer gold mining concessions located in French

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9/ Parker is collaterally estopped from relitigating issues that were actually litigated and adjudicated in his prior criminal proceeding and he and Associates are estopped from relitigating issues actually litigated and adjudicated in the injunctive action. Parklane Hoisery Co. v. Shore, 439 U.S. 322 (1979); United States v. Podell, 572 F.2d 31, 35 (2d Cir. 1978); S.E.C. v. Dimensional Entertainment, 493 F. Supp. 1270 (S.D.N.Y. 1980); S.E.C. v. Everest Management Corp., 466 F. Supp. 167 (S.D.N.Y. 1979). Relying upon the doctrine of collateral estoppel and documentary evidence, the Division called no witnesses in support of its allegations.

10/ Sections 5(a) and (c) of the Securities Act, 15 U.S.C. §§77e(a) and 77e(c), 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.

Guiana, South America, and from about December 20, 1979 until May 21, 1981 offered and sold an identical program based upon unpatented gold mining claims located near Juneau, Alaska. It further appears, as determined in the Parker injunctive action, [11] that the Gold Tax Shelters constituted "investment contracts" and were therefore "securities" within the meaning of the Securities Act. Inasmuch as no registration statement had been filed or was in effect under the Securities Act with respect to the Gold Tax Shelters offered and sold by Parker, and no exemption from registration was available, it is concluded that in offering and selling those securities Parker wilfully violated Sections 5(a) and (c) of the Securities Act.

A different conclusion is reached with respect to Associates' alleged violation of Section 5 because the record does not sustain the Division's position that Associates participated in the offer and sale of the Gold Tax Shelters. Although named as a defendant in the Commission's injunctive action, it is clear from a reading of the several orders entered therein upon which the Division relies to establish the violations by Associates [12] that the Court's findings with respect

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11/ S.E.C. v. International Mining Exchange, Inc., supra, at 1070.

12/ Division Exhibits 8, 9, 13, and 14.

to the Section 5 issue were limited to the activities of Parker and Mining. Accordingly, it is concluded that the Division has failed to prove that Associates committed the alleged violations of Section 5 of the Securities Act.

Fraud Violations [13/]

The fraudulent conduct of Parker in offering and selling the Gold Tax Shelters is established by the Court's findings in the injunctive action and in the charges in the indictment on which Parker was convicted. As alleged by the Division, Parker's fraud entailed the making of false statements regarding the applicable tax deduction available in connection with the Gold Tax Shelters and a failure to disclose an intention to convert the proceeds from the sales of those investment contracts to his own use after depositing the proceeds into offshore bank accounts.

In the injunctive action, the Court found "overwhelming evidence of misrepresentation and material omissions of fact on the part of defendants [Parker and Mining] in the marketing and selling of this program [Gold Tax Shelters]." [14/] Findings were also made that

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13/ Sections 17(a) of the Securities Act, 15 U.S.C. §77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 CFR 240.10b-5, thereunder.

14/ S.E.C. v. International Mining Exchange, Inc., supra, at 1070.

Parker and Mining represented to investors that a federal income tax deduction equal to 500% of their investment would be realized when, in fact, such a tax deduction would be impermissible and fraudulent because Mining did not incur the developmental expenses required by the rules and regulations of the Internal Revenue Service. Additionally, the Court found that Parker and Mining omitted to inform investors that on March 17, 1980, the Internal Revenue Service issued Revenue Ruling 80-72 which limits an investor to a tax deduction equal to his actual investment, thereby precluding the 500% tax deduction.

The indictment further evidences Parker's misrepresentations regarding an investor's tax deductions by the charges that as part of Parker's fraudulent scheme an investor was falsely told that by following the business procedures outlined in a Mining brochure an investor in the Gold Tax Shelters could realize a tax deduction of four to five times his initial investment in the current year and defer the tax for up to eight years. Another part of Parker's scheme and artifice to defraud was to cause investors' funds to be deposited into offshore bank accounts in Georgetown, Grand Cayman or Zurich, Switzerland and to transfer investors' funds from a bank in the United States into a secret Swiss bank account.

Nothing, however, in either the criminal charges

against Parker or the findings in the injunctive action connects Associates with the fraudulent activities of Parker and Mining. Consequently, the Division's reliance upon that proof to inculpate Associates in the fraud is unwarranted. Accordingly, it is concluded that Parker wilfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and that Associates has not been shown to have participated in those violations.

Regulatory Violations

Section 15(b) of the Exchange Act and Rule 15b3-1 thereunder 15/ and Section 17(a) of the Exchange Act and Rule 17a-5(d) thereunder 16/

Rule 15b3-1 requires that a registered broker-dealer file amendments to its application for registration whenever information in the application becomes inaccurate for any reason. Rule 17a-5(d) requires a registered broker-dealer to file audited financial statements annually on a calendar or fiscal year basis.

As found in the injunctive action 17/ and otherwise proved by the Division exhibits, an amendment to Associates' application for registration was not filed as required under

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15/ 15 U.S.C. §78o(b) and 17 CFR 240.15b3-1.

16/ 15 U.S.C. §78q(a) and 17 CFR 240.17a-5(d).

17/ S.E.C. v. International Mining Exchange, Inc., supra, at 1073.

Rule 15b3-1 to disclose that on October 29, 1979 the State of Colorado had revoked Associates' authority to do business in that State because of failure to comply with applicable Colorado laws and regulations. Similarly, the record reflects that Associates failed to file an audited financial statement pursuant to Rule 17a-5(d).

In view of the foregoing, it is concluded that Associates, as alleged by the Division, wilfully violated Sections 15(b) and 17(a) of the Exchange Act and Rules 15b3-1 and 17a5-(d) thereunder and that Parker, who as sole owner of Associates had the responsibility and duty to assure Associates' compliance with those regulatory provisions, wilfully aided and abetted Associates' violations.

Section 204 of the Advisers Act and Rule 204-1 Thereunder 18/

The Division alleges that Asset Management, wilfully aided and abetted by Parker, wilfully violated Section 204 of the Advisers Act and Rule 204-1 thereunder by failing to file an amended Form ADV setting forth the current business address of Asset Management and by failing to file annual reports on Form ADV-S. The Division correctly notes that Rule 204-1 requires every registered investment

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18/ 15 U.S.C. 80b-4 and 17 CFR 275.204-1.

adviser to promptly file an amendment reflecting its current business address whenever the business address of the registrant is changed and that a registered investment adviser is also required under Rule 204-1 to file annual reports with the Commission.

In support of its allegation that Asset Management failed to file annual reports, the Division introduced the attestation of the Commission's Records Officer, an official duly authorized to execute that attestation, that a diligent search of the Commission's records and files on August 1, 1983 had not disclosed that any annual report of Asset Management had been received by the Commission. To the contrary, Parker testified that the Commission in fact had been given certified annual reports up to the time of his incarceration, and asserted that the filing was made in accordance with Judge Kane's order in the injunctive action. It appears, however, that Parker identified broker-dealer filings made on behalf of Associates as those made in compliance with Asset Management's responsibilities under the Advisers Act. Asset Management was not a defendant in the injunctive action and Judge Kane's order was directed to Associates, not to Asset Management. Accordingly, it is concluded that the record supports a finding that annual reports required under Rule 204-1 were not filed by Asset Management.

With respect to the alleged failure of Asset Management to file an amendment setting forth Asset Management's current business address, the Division introduced a further attestation of the Commission's Records Officer that a diligent search of the Commission's records and files did not disclose any amendments as having been received under the name of Asset Management since the date of March 30, 1977. Inasmuch as Parker testified to the effect that there had been amendments filed in 1977, 1978 and 1979, that Asset Management had moved and that the new addresses were included in the amendments, it is clear that the current business address of Asset Management is other than the 777 Pearl Street, Denver, Colorado shown in the amendment filed by Asset Management on March 30, 1977. Because it appears that the amendments referred to by Parker have never been received by the Commission, it must be concluded that Asset Management has failed to comply with Rule 204-1 with respect to reporting its current business address. The fact that Parker's attorneys may, as he testified, have copies of the amendments cannot affect this conclusion in view of the fact that papers required to be filed pursuant to the rules and regulations promulgated under the Advisers Act are "deemed to have been filed with the Securities and Exchange Commission on the date when they are actually received by it." 19/

19/ 17 CFR 275.0-4(a).

Accordingly, it is concluded that Asset Management, wilfully aided and abetted by Parker, its sole owner, wilfully violated Section 204 of the Advisers Act and Rule 204-1 thereunder.

PUBLIC INTEREST

Having found that Asset Management wilfully violated the Advisers Act, that Associates wilfully violated the Exchange Act, and that Parker wilfully violated the Securities Act and Exchange Act, and that he has been permanently enjoined from engaging in certain practices in connection with the offer and sale of securities and has been convicted of felonies, including mail fraud, in connection with the offer and sale of securities, it is necessary to consider the remedial action appropriate in the public interest.

The Division argues that Parker's violations, the permanent injunction, and his convictions are of a nature and extent that a bar against his associating with a broker-dealer or investment adviser is necessary, and that because Associates and Asset Management are under Parker's absolute control, their registrations should be revoked. A careful consideration of the record and of the views of the Division leads to the conlusion that the public interest requires the remedial action proposed by the Division.

The record argues strongly that Parker's activities were motivated by selfish greed without concern for the interests or welfare of the investors who relied upon his representations in placing their money at risk. Additionally, there is nothing in the record that suggests that after his incarceration Parker could be trusted to act in accordance with the high standards expected and required of broker-dealers and investment advisers.[20] He has abused the trust and the confidence of the investing public and has done so with a callousness that clearly establishes the need to protect investors from his further possible predations by barring him from the securities business.

As to Associates and Asset Management, the wilful violations of the laws and rules regulating their operations are bases for revocation of their registrations. Each is a creature created by Parker to advance his personal interests and each has existed and operated under his absolute control. Under the circumstances, it is concluded that the registrations of these registrants should be revoked.[21]

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

21/ All proposed findings and conclusions submitted have been considered, as have the contentions. To the extent such proposals and contentions are consistent with this initial decision, they are accepted.

ORDER

Accordingly, IT IS ORDERED that the registration of Trenton H. Parker and Associates, Inc., as a broker-dealer is revoked;

FURTHER ORDERED that the registration of Trenton H. Parker & Associates Asset Management Corporation as an investment adviser is revoked; and

FURTHER ORDERED that Trenton H. Parker is barred from association with a broker-dealer or an investment adviser.

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

January 31, 1984
Washington, D.C.