ADMINISTRATIVE PROCEEDING
FILE NO. 3-6271

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
BRUCE PAUL	:

INITIAL DECISION

Washington, D.C.
February 1, 1984

Ralph Hunter Tracy
Administrative Law Judge

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APPEARANCES:	Anne C. Flannery, Margaret M. McQueeney, Sandra L. Dolan, David A. Lestch, attorneys, New York Regional Office, for the Division of Enforcement Aaron Karp and Howard M. Sommers, attorneys, for Bruce Paul
BEFORE:	Ralph Hunter Tracy Administrative Law Judge

On July 26, 1983 the Commission issued an Order pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act) instituting a public proceeding to determine whether allegations made by the Division of Enforcement (Division) against the respondent Bruce Paul (Paul) were true and what, if any, remedial action would be appropriate in the public interest.

The Order, as amended,[1] alleged that on May 5, 1983 a judgment of conviction was entered against respondent Paul, upon his plea of guilty to two counts of an indictment, in the United States District Court for the Southern District of New York, which involved the taking of a false oath, the making of a false report, and perjury.[2]

The evidentiary hearing was held at New York, N.Y., on October 4, 1983. Paul was represented by counsel; proposed findings of fact, conclusions of law, and supporting briefs were filed by Paul and by the Division.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon observation of the witnesses.

1/ Paragraph B, Section I, of the Order was amended at the commencement of the hearing with the consent of respondent Paul.

2/ United States v. Bruce Paul, S 83 Cr. 14 (S.D.N.Y.)

Respondent

Paul is 40 years of age and attended the University of Buffalo and the Bernard Baruch Graduate School of Business and Public Administration of the City College of New York. Since 1975 he has been employed as a registered representative with Edward A. Viner & Co., a broker-dealer registered with the Commission and a member of the New York Stock Exchange. Paul is married and resides with his family in Purchase, N.Y., a suburb of New York City.

Criminal Conviction

Section 15(b)(6) of the Exchange Act provides, in relevant part, that the Commission may impose remedial sanctions on a person associated with a broker-dealer if it finds, on the record after notice and opportunity for hearing, that sanctions would be in the public interest and that such associated person has been convicted, within ten years of the commencement of the proceedings, of any offense specified in Section 15(b)(4)(B) of the Exchange Act. That section lists, *inter alia*, felonies involving the taking of a false oath, the making of a false report, or perjury.

On February 9, 1983, a fourteen-count indictment was filed in the United States District Court

for the Southern District of New York against respondent Paul. On March 14, 1983, trial of the charges in the indictment against Paul began. On March 16, 1983, after two days of trial, respondent Paul pled guilty in open court to counts thirteen and fourteen of the indictment. In connection with, and as a condition of, his plea of guilty to these two counts, the remaining counts one through twelve, were dismissed.

Paul was found guilty of unlawfully, willfully, and knowingly making and subscribing income tax returns for the calendar years 1977 and 1978. These returns, filed with the United States Internal Revenue Service, he verified by written declarations as having been made under the penalties of perjury, but which tax returns he knew were not true, correct, and complete as to every material matter.[3/]

On May 4, 1983, Paul was sentenced to pay a fine of $10,000; imposition of sentence as to imprisonment was suspended; and he was placed on probation for three years with a special condition that

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3/ Title 26, U.S. Code, Section 7206 (1).

he contribute 250 hours of community service during the period of his probation, as directed by the Probation Department.

Public Interest

Having found that Paul has been convicted of felonies involving perjury in connection with the filing of false income tax returns for two years, it is necessary to consider the remedial action appropriate in the public interest.

In his post-hearing brief respondent takes the position that the evidence introduced by the Division[4/] relates solely to respondent's conviction for Federal income tax evasion whereas at the same time it establishes "that all the allegations of alleged securities violations were dismissed." Therefore, it is argued, since the conviction did not entail any securities violations, it is not appropriate to impose sanctions under Section 15(b)(6). Accordingly, no showing has been made that the public interest will be served by imposing further penalties upon respondent.

Section 15(b) was drafted to enable the Commission to consider whether a person whose honesty and integrity have been seriously impugned

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4/ The Division introduced into evidence: (1) the sentence; (2) the Judge's questioning of respondent upon his plea of guilty (the allocution); (3) a copy of the indictment. These documents were received without objection by the respondent.

should be barred from the securities business.[5/] Initially, Section 15(b)(4)(B) of the Exchange Act covered only crimes involving the securities business. However, the Commission's Special Study of the Securities Markets pointed out that conviction of other crimes, such as embezzlement and fraud, unrelated to securities, although not disqualifying under the existing statute, could indicate as much potential danger to the investing public as offenses related to the securities business. Accordingly, Section 15(b)(4)(B) was amended in 1964 to include, as a bar, a wide variety of economic crimes and to bring within its coverage salesmen of a brokerage firm. The 1975 amendments to the Exchange Act again expanded the scope of 15(b)(4)(B) by adding, as additional grounds, the conviction for a felony or misdemeanor involving the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense.[6/]

5/ In the Matter of Alexander Smith, 22 S.E.C. 13, 20 (1946).

6/ See S. Jaffe, Broker-Dealers and Securities Markets, 84 (1977).

There is no doubt that respondent's plea of guilty to the two counts of tax evasion brings him within the perjury provision of Section 15(b)(4)(B) of the Exchange Act and thus makes him subject to sanction by the Commission.

In United States v. Levy,[7/] the court said:

> When we come to the statute [Title 26, U.S. Code, Section 7206(1)] it is a perjury statute and perjury is one of the most serious offenses known to the law. See United States v. Lewis, 475 F.2d 571, 573 (5th Cir. 1975) and Kolaski v. United States, 362 F.2d 847, 848 (5th Cir. 1966).

During the allocution at the criminal trial the court requested Paul to tell in detail what he did. He stated that he opened or caused to be opened, funded, held an interest in, controlled and derived capital gains and dividend income from brokerage accounts in the names of his mother-in-law and his aunt during the tax years 1977 and 1978; and that the capital gains and income in those accounts were not reported on his Federal income tax returns for the tax years 1977 and 1978.

Over the years the Commission has held, in numerous cases, that members of the securities industry must maintain high ethical standards; that

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7/ 533 F.2d 969,973 (5th Cir. 1976).

the continued participation and confidence of the investing public require honesty and integrity on the part of each individual member.[8/]

Although the respondent was not convicted of securities violations, his activities closely parallel the facts found by the Commission in two cases:

Norman H. Green, et al,[9/] involved the concealment of stock purchases. The Commission said:

> The securities industry demands adherence to "high standards of commercial honor and just and equitable principles of trade." . . . Green engaged in deliberate deception in an effort to conceal his unauthorized transaction. In a business that depends as heavily on candor and fidelity to one's word as the securities business, such deceit is of the utmost seriousness. Hence a bar cannot be considered excessive or oppresive.

Paul engaged in deliberate deception in an effort to conceal his activities through nominee accounts in other names.

Leo Glassman,[10/] involved a securities salesman who opened and maintained brokerage accounts in

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8/ Archer v. SEC, 133 F.2d 795,803 (8th Cir. 1943), aff'g 11 S.E.C. 635 (1942); cert. denied 319 U.S. 767 (1943); Leo G. Siesfeld, 11 S.E.C. 746, 751 (1942); Paul F. Kendrick, Securities Exchange Act Release No. 16475/January 8, 1980, 19 S.E.C. Docket 153, 156.

9/ 46 S.E.C. 298,299 (1976).

10/ 46 S.E.C. 209, 211 (1975).

the maiden names of his wife and mother.

Similarly, Paul opened and maintained brokerage accounts in the names of his aunt and mother-in-law.

In Glassman the Commission said:

> We view Glassman's actions as extremely serious . . . . Sanctions cannot be assessed mechanistically. Due regard must be given to the "facts and circumstances that differentiate one man's case from another's. 11/ We are not here to punish Glassman. We are here to protect the public interest from future harm at his hands."

The Commission and the courts have long held that a sanction serves only as a remedial device for the protection of the public interest. In Associated Securities Corp. v. SEC, 12/ the court said:

> Irreparable injury to the petitioners is urged on the ground that they are excluded from the securities business and thus from earning their livelihoods in their chosen vocation. Serious as this personal injury may be, it is not of controlling importance as primary consideration must be given to the statutory intent to protect investors. 13/ Exclusion from the securities business is a remedial device for the protection of the public. 14/

11/ Citing Robert F. Lynch, 46 S.E.C. 5, 10 n.17 (1975).

12/ 283 F.2d 773, 775 (10th Cir. 1960).

13/ Stadia Oil & Uranium Co. v. Wheelis 251 F.2d 269, 275 (10th Cir. 1957).

14/ Wright v. SEC, 112 F.2d 89, 94 (2nd Cir. 1940); Pierce v. SEC, 239 F.2d 160, 163 (9th Cir. 1956).

The United States Supreme Court has also spoken on the subject of sanctions as being remedial. In DeVeau v. Braisted,[15] the court said:

> Barring convicted felons from certain employments is a familiar legislative device to insure against corruption in specified, vital areas. Federal law has frequently and of old utilized this type of disqualification . . . .
>
> The question in each case where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession.

And in Flemming v. Nestor,[16] the court said:

> In determining whether legislation which bases a disqualification on the happening of a certain past event imposes a punishment, the Court has sought to discern the objects on which the enactment in question was focused. Where the source of legislative concern can be thought to be the activity or status from which the individual is barred, the disqualification is not punishment even though it may bear harshly upon the one affected.

Respondent did not testify in the instant proceeding but produced four character witnesses, two associates from Edward A. Viner & Co., and two customers, who testified that he had a good reputation and was well regarded in the business community.

The president of Viner & Co. testified that since Paul joined the firm in 1975 there has never been a com-

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15/ 363 U.S. 144, 158, 160 (1960).

16/ 363 U.S. 603, 613 (1960).

plaint filed against him by a customer, an emloyee of Viner, or any of the securities regulatory agencies; that Paul is one of the more aggressive registered representatives; and that he is in the top ten of 47 salesmen in generating commissions and has made a good deal of money for his clients. The president was not familiar with Paul's reputation in the industry outside of Viner. Viner & Co. informed the New York Stock Exchange that it wished to retain Paul despite his conviction, and the NYSE in turn filed a report with the Commission under Section 19 of the Exchange Act and Rule 19h-1.

Viner's director of research testified that he has known and worked with Paul since 1975 and considers him a successful broker. He has never heard any criticism of Paul either from his fellow employees at Viner or from his customers. He also stated that he equated success with honesty. He was not fully aware of Paul's conviction on two counts of income tax evasion.

A customer, Dr. A.R., testified that he has known Paul since 1976 and is still doing business with him because he feels that Paul has his interest

at heart. He is not familiar with his reputation as a broker in the industry. He is aware of Paul's conviction and says that has not changed his opinion of Paul in any way.

Mr. G. testified that Paul has been his broker for ten or twelve years, and when Paul joined Viner Mr. G. went with him. Mr. G. said that Paul has had a discretionary account for him for over ten years, that he trusts him completely and that he sees no reason to change his view despite the convictions.

The respondent asserts that no sanctions are necessary. The Division urges a bar from association with any broker or dealer. Respondent has shown a capacity to commit felonies. He is being punished for those offenses, but whether the punishment has a rehabilitating effect remains to be seen.[17/] Expressions of confidence by his employer and customers cannot substitute for a showing over a period of time that he is worthy of being trusted by the investing public.

17/ Petitioner stands a convicted felon and unless the judgment against him is vacated or reversed he is subject to all the disabilities flowing from such a judgment . . . Placing petitioner upon probation did not affect the finality of the judgment . . . Probation is concerned with rehabilitation, not with determination of guilt. Berman v. U.S. 302 U.S. 211,213 (1939)

Upon careful consideration of the record and the arguments and contentions of the parties, it is concluded that the nature and character of the violations require that respondent be excluded from the securities business. As the Court said in Arthur Lipper Corp v. SEC,[18/]

> The purpose of such severe sanctions must be to demonstrate not only to petitioners but to others that the Commission will deal harshly with egregious cases.

ORDER

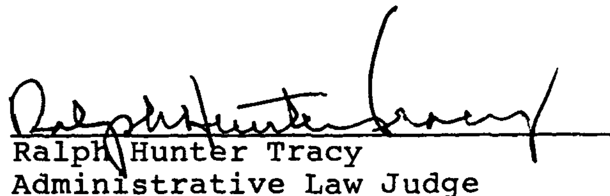
Accordingly, IT IS ORDERED that respondent Bruce Paul is hereby barred from association with any broker or dealer.[19/]

18/ 547 F.2d 171, 184 (2d Cir. 1976), cert. denied 434 U.S. 1009).

19/ 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. SEC, 417 F.2d 1058, 1060 (2d Cir. 1969); Vanasco v. SEC, 395 F.2d 349, 353 (2d Cir. 1968). See, also, Ross Securities, Inc. 41 S.E.C. 509 517, n.10 (1963), where the Commission said: "A determination that future securities activities by a salesman would be consistent with the public interest should be made on the basis of a showing of the nature of the proposed activity and the conduct of the salesman in question prior to and subsequent to the misconduct here found."

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 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. 20/



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