INITIAL DECISION RELEASE NO. 376
ADMINISTRATIVE PROCEEDING
FILE NO. 3-13309

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
April 22, 2009

In the Matter of	:	
	:	INITIAL DECISION AS TO
MICHAEL W. CROW AND	:	MICHAEL W. CROW
ROBERT DAVID FUCHS	:	
	:	

APPEARANCES: David Stoelting and Valerie Szczepanik for the Division of Enforcement, Securities and Exchange Commission

Michael W. Crow appears pro se [1]

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP) on December 12, 2008, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that, on November 13, 2008, the United States District Court for the Southern District of New York issued a Final Judgment in SEC v. Crow, No. 1:07-CV-03814-CM-MHD, that permanently enjoined Michael W. Crow (Crow) and Robert David Fuchs (Fuchs) from aiding and abetting violations of certain sections of the Exchange Act and Exchange Act rules, and ordered them to disgorge substantial sums and pay penalties of $250,000 and $125,000, respectively.[2] Crow filed an Answer on January 28, 2009.

I granted the Division of Enforcement's (Division) request to file a Motion for Summary Disposition as to Crow on January 14, 2009. On March 9, 2009, the Division filed a

[1] Martin P. Russo and Alison B. Cohen withdrew as counsel by letter filed March 31, 2009, pursuant to 17 C.F.R. § 201.102(d)(4).

[2] On April 6, 2009, the Commission issued an Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940 as to Respondent Robert David Fuchs, Exchange Act Release No. 59711.

Memorandum of Points and Authorities in Support of the Division of Enforcement's Motion for Summary Disposition Against Respondent Michael W. Crow and a Declaration of David Stoelting with the following eight exhibits: (1) First Amended Complaint in Crow, filed August 17, 2007; (2) Final Judgment in Crow, filed November 13, 2008; (3) Findings of Fact and Conclusions of Law in Crow, filed November 5, 2008; (4) Plaintiff's Proposed Supplemental Findings of Fact and Conclusions of Law in Crow; (5) Plaintiff's Proposed Findings of Fact and Conclusions of Law in Crow; (6) Excerpts from the trial transcript in Crow; (7) Statement of Dan Purjes, admitted into evidence as Exhibit PX-720 in Crow; and (8) Excerpts from the Form SB-2 Registration Statement of Grant Ventures, Inc., filed September 30, 2004, admitted into evidence as Exhibit PX-4000.18 in Crow, (Motion or Mot.). All the exhibits are matters of public record, and I take official notice of them in this proceeding. See 17 C.F.R. § 201.323.

Crow's Brief in Opposition to the Motion was due on March 31, 2009, and I extended that due date to April 10, 2009. Crow has not made a filing, as of the date of this Initial Decision.

Motion for Summary Disposition

Rule 250(a) of the Commission's Rules of Practice provides that a motion for summary disposition is appropriate after an Answer has been filed and documents have been made available to the respondent for inspection and copying. Both pre-conditions have been met.[3]

I Grant the Motion because it meets the requirements of Commission Rule of Practice 250(b) in that there is no genuine issue of any material fact and the party making the Motion is entitled to summary disposition as a matter of law. (Prehearing conference, Jan. 13, 2009, Tr. 6-11.) See Jeffrey L. Gibson, 92 SEC Docket 2104, 2111-12 (Feb. 4, 2008); Joseph P. Galluzzi, 55 S.E.C. 1110, 1114-15 (2002); John S. Brownson, 55 S.E.C. 1023, 1027, 1028 n.12 (2002). See also 17 C.F.R. § 201.155(a)(2).

Findings of Fact and Conclusions of Law

The Division filed a First Amended Complaint in the United States District Court for the Southern District of New York on August 17, 2007 (Complaint). (Mot., Ex. 1.) The named Defendants were Crow, Duncan Capital LLC, Duncan Capital Group LLC, Fuchs, Robert MacGregor, and seven Relief Defendants. Crow is age forty-nine and a resident of Fairfield, Connecticut. (Answer at 1.) Crow founded Duncan Capital LLC in 2002, and, in February 2004, he changed the name to Duncan Capital Group LLC (together, Duncan Capital Group). (Mot., Exs. 3 at 2, 5 at 4.) Crow controlled the operation and management of Duncan Capital Group, and it was not registered with the Commission.[4] (Mot., Exs. 3 at 2, 5 at 4.) Duncan Capital's primary business was to provide financial advisory services to small cap companies, including assisting such companies to raise capital. (Mot., Exs. 3 at 2, 5 at 4.)

[3] The Division informed Crow that the Division's files were available for inspection shortly after issuance of the OIP. (Joint Motion for Prehearing Conference filed on January 5, 2009.)

[4] M.W. Crow Family LP, a Relief Defendant in the civil action, wholly owned Duncan Capital Group for most of the relevant period. (Mot., Exs. 3 at 2, 5 at 4.)

In March 2004, Fuchs and Crow created a new entity, Duncan Capital LLC, and it merged with a registered broker dealer, Rockwood, Inc. The result was Duncan Capital LLC (Duncan Capital). (Mot., Exs. 3 at 2, 5 at 5.)

The Complaint alleged, among other things, that

> From November 2003 through at least December 2004 (the "Relevant Period"), defendant Crow, an individual previously enjoined by the United States District Court for the Southern District of California from future violations of the anti-fraud provisions of the federal securities laws,[5] and previously sanctioned by the Commission,[6] unlawfully acted as an unregistered principal of defendant Duncan Capital, a registered broker-dealer. Crow controlled virtually every significant aspect of Duncan Capital's operations and received the vast majority of its profits. Yet Duncan Capital's regulatory filings falsely and improperly omitted to state both Crow's control of the firm and his prior regulatory history.

(Mot., Ex. 1 at 2.)

Following a seven-day bench trial, U.S. District Court Judge Colleen McMahon issued Findings of Fact and Conclusions of Law on November 5, 2008, and a Final Judgment on November 13, 2008.[7] (Mot., Exs. 2, 3.) The Final Judgment found that "[Crow] aided and abetted violations of Sections 15(a), 15(b)(1) and 15(b)(7) of the Exchange Act [15 U.S.C. §§ 78o(a), 78o(b)(1) and 78o(b)(7)], and Rules 15b3-1 and 15b7-1 promulgated thereunder [17 C.F.R. §§ 240.15b3-1 and 15b7-1]." (Mot., Ex. 2 at 2.)

The court's Findings of Fact and Conclusions of Law found that, during the relevant period, Crow was a person associated with Duncan Capital, a registered broker-dealer; Crow acted as an unregistered broker and generally oversaw Duncan Capital's brokerage activities; Crow was Chairman and Chief Executive Officer of Duncan Capital Group; and Crow was an owner and manager of an investment adviser, B&P Management LLC. (Mot. at 6, Exs. 3 at 2, 6,

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[5] In SEC v. Crow, CV-96-1661 S (CGA) (S.D. Cal. Apr. 20, 1998), the court entered a consent judgment against Crow, enjoining him from violating the antifraud provisions of the federal securities laws and barring him from serving as an officer or director of a public company. (Mot., Exs. 3 at 2, 5 at 3.)

[6] Following that judgment, the Commission, by a consent order, denied Crow the privilege of appearing before the Commission as an accountant. See Michael W. Crow, CPA, 66 SEC Docket 3249 (Apr. 22, 1998). (Mot., Exs. 3 at 2, 5 at 4.)

[7] The Judge's Findings of Fact and Conclusions of Law refer to "original findings" and "supplemental findings" from an original pretrial order. (Mot., Ex. 3.) The Division indicates that the references are to "Plaintiff's Proposed Findings of Fact" as original findings, and "Plaintiff's Supplemental Proposed Findings of Fact" as supplemental findings. (Mot. at 3, Ex. 3 at 2, Exs. 4, 5.)

Ex. 5 at 5, 9-10, 16, Ex. 7 at 2-3, Ex. 8.) During the relevant period, Crow, although not a registered principal of Duncan Capital, controlled virtually every significant aspect of Duncan Capital's operations and received the vast majority of its profits. (Mot., Exs. 3 at 2, 5 at 6-9.) Duncan Capital was a placement agent for approximately twenty securities offerings, from which it raised over $100 million for the issuers, and Crow received millions in cash compensation and warrants. (Mot., Exs. 3 at 2, 5 at 9.)

The court permanently restrained and enjoined Crow and his officers, agents, servants, etc. from aiding and abetting any violation of Sections 15(a), 15(b)(1), and 15(b)(7) of the Exchange Act and Exchange Act Rules 15b3-1 and 15b7-1. (Mot., Ex. 2 at 2-5.)

The court found Crow and Duncan Capital Group jointly and severally liable and ordered them to pay disgorgement of ill-gotten gains of $1,562,337, together with prejudgment interest, calculated from March 1, 2005, through entry of the court's order, filed November 13, 2008, for a total of $1,999,752.87. (Mot., Ex. 2 at 10.) The court also found Crow and others jointly and severally liable and ordered them to disgorge ill-gotten gains of $3,903,474, together with prejudgment interest, calculated from March 1, 2005, through entry of the court's order filed November 13, 2008, for a total of $4,996,351. (Mot., Ex. 2 at 11.)

The court enjoined Crow and others from exercising certain warrants and ordered them to surrender certain warrants to the Commission. (Mot., Ex. 2 at 11.) The court ordered Crow to pay a civil monetary penalty, pursuant to Section 21(d)(3) of the Exchange Act, in the amount of $250,000. (Mot., Exs. 2 at 12, 3 at 7.)

Judge McMahon found that:

> There is no assurance that Crow can be trusted in the future to comply with securities laws. Crow has not acknowledged any wrongdoing. He had been enjoined once already and has acted in breach of the terms of that consent agreement with the SEC. In his actions at [Duncan Capital and Duncan Capital Group], he has demonstrated a willingness to disregard the advice of counsel and he took steps to cover up what he was actually doing. His conduct was egregious and he acted with scienter. In addition, he perjured himself in this court.

(Mot., Ex. 3 at 5.)

Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act authorize the Commission to censure, place limitations on the activities or functions of, suspend for a period up to a year, or bar from association, a person who has been enjoined from conduct in connection with the conduct of a broker, dealer, or investment adviser or in connection with the purchase or sale of any security, where the person was associated with a broker, dealer, or investment adviser at the time of the misconduct and it is the public interest to do so. The evidence is that Crow has been enjoined for conduct that occurred while he was associated with a broker or dealer and an investment adviser.

Public Interest Factors

The issue is what, if any, sanction is in the public interest given that a United States district court, based on findings of violations committed while he was associated with a registered broker dealer and an unregistered investment adviser, has enjoined Crow from aiding and abetting violations of the federal securities laws. The following factors, used to assess the public interest, all indicate that Crow should be barred from association with any broker, dealer, or investment adviser.

> [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); see also Joseph J. Barbato, 53 S.E.C. 1259, 1281 n.31 (1999); Donald T. Sheldon, 51 S.E.C. 59, 86 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995).

Crow's actions were egregious on their face, a fact affirmed by the findings Judge McMahon made following a lengthy bench trial, and the almost five-and-a-half million dollars in disgorgement she ordered, exclusive of prejudgment interest. Based on evidence from Crow and others, Judge McMahon found that Crow acted with scienter and that he perjured himself in court. Crow's actions were not isolated, but continued for over a year, and followed separate proceedings in 1998 where a federal district court enjoined him from future antifraud violations and barred him from serving as an officer or director of a public company, and the Commission, in an administrative proceeding, denied him the privilege of appearing before the Commission as an accountant. Crow's conduct demonstrates that he is an unreformed recidivist who poses a serious future threat to the investing public.

Order

Based on the findings of fact and conclusions of law set forth above, I Order that, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Michael W. Crow is barred from association with any broker, dealer, or 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 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 motion to correct 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.

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Brenda P. Murray
Chief Administrative Law Judge