

INITIAL DECISION RELEASE NO. 354
ADMINISTRATIVE PROCEEDING
FILE NO. 3-13008

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

In the Matter of :
: INITIAL DECISION
MITCHELL M. MAYNARD and : August 18, 2008
DORICE A. MAYNARD :

APPEARANCES: James S. Goldman and Bradford E. Ali for the Division of Enforcement,
Securities and Exchange Commission

Mitchell M. Maynard and Dorice A. Maynard appeared pro se

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

PROCEDURAL BACKGROUND

The U.S. Securities and Exchange Commission (Commission) issued its Order Instituting Administrative Proceedings (OIP) on April 16, 2008, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The Division of Enforcement (Division) made its investigative file available to Mitchell M. Maynard and Dorice A. Maynard (together, Respondents).¹ Respondents filed an Answer and Motion for a More Definite Statement on May 9, 2008. On May 16, 2008, at a telephonic prehearing conference, I permitted the Division to file a motion for summary disposition pursuant to 17 C.F.R. § 201.250.² (Tr. 19.) On May 19, 2008, I denied Respondents' motion for a more definite statement in an Order Following Prehearing Conference.

The Division's Motion for Summary Disposition (Motion), filed on June 2, 2008, has six exhibits. Exhibit 1 is the Proposal for Decision in Mitchell M. Maynard and Dorice A. Maynard, Docket No. 02-009-S, issued by Vermont's Department of Banking, Insurance, Securities, and Health Care Administration (Vermont Securities Division) Hearing Officer, Phillip J. Cykon, on

¹ The Division's Opposition to Respondents' Motion to Compel Disclosure/Issuance of Subpoena, filed June 26, 2008, at 2.

² I will cite to the telephonic prehearing transcript as "(Tr. __.)."

February 4, 2004; Exhibit 2 is the Vermont Securities Division Commissioner's Findings of Fact, Conclusions of Law and Order, signed on January 3, 2007; Exhibit 3 is Respondents' Answer to the OIP and Motion for a More Definite Statement, dated May 8, 2008; Exhibit 4 is Respondents' Wells Submission submitted to the Division, dated April 4, 2007; Exhibit 5 consists of various Internet printouts of Respondents' current business, Premium Producers Group, LLC (Premium); and Exhibit 6 is the State of California Department of Corporations' Decision, effective October 16, 2007, denying the application of Mitchell M. Maynard, dba Terra Vista Financial Planner, for an investment adviser certificate, and barring Respondents from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser.

Respondents filed an opposition to the Division's Motion on July 3, 2008 (Opposition). The Opposition has six exhibits. Exhibit A is Respondents' Proposed Findings of Fact and Conclusions of Law, dated October 22, 2003, submitted by counsel in the underlying Vermont proceeding; Exhibit B is Respondents' Written Exceptions and Request for Oral Argument, dated February 18, 2004, submitted by counsel in the underlying Vermont proceeding; Exhibit C is an email to MCP Premium customers and an Internet posting by Dorice Maynard on January 19, 2007; Exhibit D includes documents concerning an examination in 2000 by the Commission's then Pacific Regional Office of the Leveraged Index Management Company (LIMCO) and The Optimal Fund, Inc.; Exhibit E is a letter, dated December 28, 2000, from the Assistant Regional Director of the Commission's Pacific Regional Office concerning the results of the books and record examination of LIMCO; and Exhibit F is a letter, dated May 18, 2001, from Respondents' counsel to the Commission's Pacific Regional Office.

The Division filed a Reply Memorandum in Support of its Motion for Summary Disposition on July 11, 2008 (Reply).³

On June 27, 2008, I denied Respondents' Motion to Compel Disclosure; Issuance of Subpoenas, with Exhibits A and B. See Mitchell M. Maynard and Dorice A. Maynard, Admin. Proc. Rulings Rel. No. 643 (June 27, 2008).

ALLEGATIONS

The OIP alleges that the Vermont Securities Division issued a decision and order against Respondents based on violations of multiple provisions of Vermont's Securities Act, 9 V.S.A. § 4224a, that became final on February 2, 2007. See Mitchell M. Maynard and Dorice A. Maynard, Docket No. 02-009-S. (Motion Ex. 2.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

My findings and conclusions are based on the entire record, which consists of the OIP, all filed pleadings, including Respondents' Answer, motions and attached exhibits, responses,

³ I will cite to the Motion as "(Motion at ___)," Respondents' Opposition as "(Opposition at ___)," and the Division's Reply as "(Reply at ___)."

orders, and the prehearing conference transcript. I have considered and rejected all arguments and proposed findings and conclusions that are inconsistent with this Initial Decision. I find the following facts to be true.

Respondents

Respondents, who were married to each other at all relevant times, resided in Vermont prior to March 1999, when they moved to Orange, California. (Answer at 1; Motion Ex. 1 at 2, 5.) Mitchell M. Maynard has been an investment adviser since 1995. (Motion Ex. 1 at 2.) For several years, he was an adviser to individual clients with his company, Maynard Financial Advisory Services, and later he created LIMCO, an investment adviser he incorporated in Vermont on December 14, 1998, to manage his own mutual fund, the Optimal Fund. (Answer at 1; Motion Ex. 1 at 2-3; Opposition Ex. A at 6.)

LIMCO was a joint venture for Respondents. (Motion Ex. 1 at 59.) Dorice A. Maynard was primarily responsible for maintaining LIMCO's books and records. (Motion Ex. 1 at 4.) In addition, Dorice A. Maynard worked with her husband in marketing LIMCO and solicited at least one advisory client. (Motion Ex. 1 at 59-60.) She prepared correspondence to LIMCO investors and discussed LIMCO's business with them. (Motion Ex. 1 at 59.) The record shows that she played a substantive role in the company and her activities went well beyond those of a clerical or ministerial employee. (Motion Ex. 1 at 60.)

LIMCO initially registered with Vermont as an investment adviser. (Answer at 1.) LIMCO was an investment adviser registered with the Commission from April 19, 1999, to January 24, 2001. (Answer at 1; Opposition Ex. A at 7, 29.) At all relevant times, Mitchell M. Maynard served as LIMCO's president, treasurer, and investment adviser representative, while Dorice A. Maynard served as LIMCO's vice president and corporate secretary. (Answer at 2; Motion Ex. 1 at 4; Opposition Ex. A at 7.)

The Commission's Pacific Regional Office conducted an examination of LIMCO in 2000 and the Commission ordered it to deregister. (Motion Ex. 1 at 5.)

Actions by the State of Vermont

The State of Vermont initiated charges against Respondents on March 4, 2002. (Motion Ex. 1 at 1.) A Hearing Officer of the Vermont Securities Division held a seven-day hearing at which Respondents were represented by counsel and had an opportunity to present evidence. The Hearing Officer issued a seventy-six page Proposal for Decision, including Findings of Facts and Conclusions (Proposal for Decision) on February 4, 2004. (Motion Ex. 1.) Respondents appealed the Proposal for Decision to the Commissioner of the Vermont Securities Division, who considered Respondents' written exceptions and oral argument and, on January 3, 2007, issued Findings of Facts and Conclusions that stated it incorporated the Proposal for Decision and accepted, adopted, and affirmed "the Hearing Officer's findings, conclusions and

recommendations in part, with the exceptions noted below.”⁴ (Motion Ex. 2 at 2, 4.)

The Vermont Order became final on February 2, 2007, by operation of law after Respondents failed to appeal.⁵ It barred Respondents for five years from any association or employment with a registered broker-dealer or investment adviser, or any “federal covered” investment adviser; required Respondents to pay \$400,000 in restitution; and imposed a \$20,000 administrative penalty. (Answer at 2; Motion Ex. 2 at 17-18.)

The Vermont Order found that the following allegations in the OIP were true. Respondents violated the following:

Provisions of Vermont’s Securities Act, 9 V.S.A. § 4224a (fraudulent and other prohibited practices), including section 4224a(a)(1) (prohibiting employing a device, scheme, or artifice to defraud in connection with the sale of a security); section 4224a(a)(2) (prohibiting the making or omitting of an untrue statement of material fact in connection with the sale of a security); section 4224a(a)(3) (prohibiting engaging in an act, practice, or course of business that operates as a fraud or deceit upon a person in connection with the sale of a security); and section 4224a(e)(5) (prohibiting engaging in unethical or dishonest practices in providing investment advice).

(Motion Ex. 1 at 63-65, 68-70.)

The Vermont Order found that, as alleged in the OIP:

From at least December 1998 to June 2001, at the time they were associated with LIMCO, the Respondents (i) misappropriated investor funds, including by diverting large investments in LIMCO to themselves; (ii) made numerous misrepresentations or omissions about LIMCO’s performance and financial condition, including by showing investors high projected rates of return which had no reasonable basis; and (iii) engaged in unethical or dishonest practices, including by failing to disclose a prior bankruptcy to investors.

(Motion Ex. 1 at 63-75.)

⁴ It is undisputed that the Commissioner substantially affirmed the Hearing Officer’s Proposal for Decision. The Commissioner’s exceptions are his rulings that: (1) it is not necessary to establish scienter for a violation of 9 V.S.A. § 4424a(a) so he did not affirm the Hearing Officer’s finding and conclusion that scienter had been proven; (2) Mitchell M. Maynard had not been shown to have violated 9 V.S.A. § 4224a(b)(1); and (3) reduced the restitution amount to \$400,000 and the bar to five years with the right to reapply after one year. (Motion at 2 n.1; Motion Ex. 2 at 10, 13, 17.) I will refer to the Commissioner’s Findings, Conclusions and Order and what it affirmed as the “Vermont Order.” (Motion Ex. 2.)

⁵ Respondents cite their “financial and economic situation” as the reason for their failure to appeal the Vermont Order. (Answer at 2; Wells Submission at 4.)

Specifically the Vermont Order found:

1. Most of LIMCO's eleven investors were Vermont residents who invested a total of \$482,293 who had little or no experience in equity investing. (Motion Ex. 1 at 5.) None of LIMCO's investors recovered any of their investments in LIMCO. (Motion Ex. 1 at 6.) Respondents filed for bankruptcy in 2002, discharging all their obligations to LIMCO shareholders. (Motion Ex.1 at 6.)
2. Mitchell Maynard promoted himself as a genius with trading systems and touted designations from highly respected academic institutions. (Motion Ex. 1 at 4.)
3. Respondents withdrew approximately \$150,000 as salary and \$45,000 in consulting fees from LIMCO from January 1999 to January 2001, without disclosing the amounts to LIMCO investors. (Motion Ex. 1 at 5-6.)
4. Respondents withdrew money from LIMCO for their personal expenses, including groceries, housing, car rental, and health insurance. Mitchell M. Maynard was found to have been "living off of LIMCO." These withdrawals were not disclosed to LIMCO investors. (Motion Ex. 1 at 7, 10-12.)
5. Despite the fact that LIMCO's value declined rapidly from March 1999 until it was closed, and that it had a negative value after June 1999, Respondents issued stock certificates and account reports to LIMCO investors that had no rational basis to the value of LIMCO stock. These false valuations caused investors to believe they were investing in something of value when, in fact, they were purchasing worthless stock certificates and led investors to believe their investments were safe when they were not. (Motion Ex. 1 at 13.)
6. LIMCO's initial business plan, created by Mitchell M. Maynard in 1998, projected that by the end of LIMCO's first year of operation, it would have assets under management of \$50 million; LIMCO would be profitable after the first three months of operations; there would be a twenty-five percent return on investor equity within the first year and a one hundred percent return on investors' equity in the second year had no reasonable basis in fact and was unfounded. (Motion Ex. 1 at 3, 18.)

Respondents' Positions

Respondents' voluminous defense consists of arguments that the Vermont Order is in error and the examination by the Commission's Pacific Regional Office is materially related to the allegations in the OIP. (Opposition) These arguments are unpersuasive. The examination by the Pacific Regional Office has no relevance to the existence of the Vermont Order. Respondents are aware that the doctrine of collateral estoppel prevents them from contesting the merits of the Vermont Order in this proceeding. (Tr. 8-9; Opposition at 1.) See Conrad P.

Seghers, 91 SEC Docket 2293, 2301 (Sept. 26, 2007) (citing Jose P. Zollino, 89 SEC Docket 2598, 2605 & n.20 (Jan. 16, 2007); Charles Trento, 82 SEC Docket 785, 789-90 (Feb. 23, 2004); Joseph P. Galluzzi, 55 S.E.C. 1110, 1115-16 (2002); Ira William Scott, 53 S.E.C. 862, 866 (1998); Demitrios Julius Shiva, 52 S.E.C. 1247, 1249 (1997); Timothy Mobley, 52 S.E.C. 592, 595 n.9 (1996); C.R. Richmond & Co., 46 S.E.C. 412, 414 n.12 (1976)).

SUMMARY DISPOSITION

Rule 250(a) of the Commission's Rules of Practice provides that, after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying, a party may make a motion for summary disposition of any or all allegations of the OIP with respect to that respondent. The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323 of the Commission's Rules of Practice. Rule 250(b) of the Commission's Rules of Practice provides that the hearing officer may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law.

Respondents do not dispute the existence of the basis for the proceeding, which is that the Vermont Securities Division found that they committed multiple violations of Vermont's securities laws and barred them from association or employment with a broker-dealer or investment adviser for five years. (Answer at 2.) Accordingly, I GRANT the Division's Motion because there are no genuine issues with regard to any material fact and the Division is entitled to summary disposition as a matter of law.

SANCTIONS

The Division recommends that the Commission bar Respondents from association with an investment adviser. (Tr. 10; Motion at 1, 13.)

Section 203(f) of the Advisers Act, incorporating Section 203(e)(9), authorizes the Commission, where a person was associated with an investment adviser at the time of the misconduct, to censure, place limitations on the activities of a person, suspend for up to twelve months, or bar such person where it is in the public interest to do so, if the person is subject to a State's securities commission's final order that bars the person from association with an entity regulated by such commission or constitutes a final order based upon violations of laws prohibiting fraudulent, manipulative, or deceptive conduct.

In determining whether sanctions are in the public interest, the Commission considers six factors: (1) the egregiousness of the respondent's actions; (2) whether the violations were isolated or recurrent; (3) the degree of scienter; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his or her conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. No one factor is controlling. See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). Remedial sanctions are not intended to

punish a respondent, but to protect the public from future harm. See Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

The findings in the Vermont Order describe blatantly illegal conduct that is clearly egregious. In addition to the specific findings noted above, the Vermont Order found that: Mitchell M. Maynard did not disclose to LIMCO investors that he filed for bankruptcy in 1994; Respondents misappropriated close to half a million dollars from investors in LIMCO; Respondents pressured inexperienced investors to access home equity and credit lines in order to invest additional money in LIMCO; Mitchell M. Maynard gave a personal commitment to return additional funds he solicited from investors to save their LIMCO investments; and none of LIMCO's investors has recovered any money since Respondents' ultimately filed for bankruptcy in 2002. (Motion Ex. 1 at 5-13, 16, 73-74)

Respondents' illegal actions were not isolated. They continued from at least January 1999 to January 2001. (Motion Ex. 1 at 5-14.) Respondents have shown themselves, by their prior business activities as well as their pro se participation in this proceeding, to be knowledgeable and articulate about securities issues. In addition to proclaiming himself a genius, Mitchell M. Maynard holds himself out as having "earned the designations of Certified Investment Management Consultant and Certified Funds Specialist. He obtained the following licenses: Series 7, 63, 65, 24, Life and Health Variable Annuity, and Property and Casualty." (Motion Ex. 1 at 4, Ex. 5.) Dorice A. Maynard holds herself out as having earned Series 3 and Series 65 licenses and as having been "responsible for managing the daily office operations and client relations of a financial planning practice and an investment advisory firm, including supervising the trading activities of a small commodities-trading practice." (Motion Ex. 5.) I find that Respondents acted with a high degree of scienter based on the blatantly illegal actions described in the Vermont Order, Respondents' extensive credentials and experience in the securities industry, and the lack of any reasonable basis for their actions.⁶ (Motion Ex. 1, 2.)

In the face of an outstanding Vermont Order, which they did not appeal, Respondents do not recognize that their conduct was wrongful or offer sincere assurances against future violations. Respondents have not paid any restitution to their former clients. (Motion Ex. 1 at 6; Reply at 2.) Instead, they refuse to be responsible for their actions and make self-serving excuses. For example, in their Answer, Respondents claim that the findings and conclusions in the Vermont Order are "seriously flawed at best and irresponsible at worst." (Answer at 2.) They assert in their Wells Submission, that the Hearing Officer was paid for by the Vermont Securities Division and thus a "strong bias existed" and that the Commissioner merely "rubber-stamped" the State of Vermont's case against them. (Motion Ex. 4 at 2.) Thus, Respondents have shown virtually no accountability for their actions and, instead, continue to make excuses.

⁶ This finding is in accord with that of the Hearing Officer that "the facts of this case establish by a preponderance of evidence that the entire scheme employed by Respondents was carried out with intent to defraud." (Motion Ex. 1 at 52.) As has been noted, the Vermont Commissioner did not agree with the Hearing Officer that scienter was required for a violation of Vermont Securities Act, 9 V.S.A. § 4224a(a) and therefore did not rule on whether Respondents acted with scienter. (Motion at Ex. 2 at 10.)

The evidence shows Respondents' occupation as owners of a software distributor and education company that, in relevant part, offers Certified Equity Index Annuity Specialist and Personal Retirement Specialist designations, advice on equity indexed annuities, and matches investment advisers with insurance agents, provides ample opportunity for future violations of the Advisers Act. (Motion Ex. 5, Reply at 2.) In addition, as a result of a filing by Respondents, the State of California, Department of Corporations' Decision, effective October 16, 2007, denied the application of Mitchell M. Maynard, dba Terra Vista Financial Planner, for an investment adviser certificate, and barred Respondents from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser. (Motion Ex. 6.)

In mitigation, Respondents state they have expressed remorse in the form of an email and Internet-posted press release issued by Premium. (Opposition Ex. C.) This press release, dated January 17, 2007, predates Respondents' Answer and Opposition, dated May 8, 2008, and July 2, 2008, respectively. The latter documents make it clear that Respondents maintain their innocence and feel no remorse for investors in LIMCO who lost everything they invested and to whom restitution has yet to be made.

Viewing the Steadman factors in their entirety, the overwhelming evidence is that the public interest requires that Respondents be barred from association with any investment adviser.

ORDER

I ORDER, pursuant to Section 203(f) of the Investment Advisers Act of 1940, that Mitchell M. Maynard and Dorice A. Maynard are each barred from association with an 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 a 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.

Brenda P. Murray
Chief Administrative Law Judge