INITIAL DECISION RELEASE NO. 64

ADMINISTRATIVE PROCEEDING
FILE NO. 3-8476

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)	
JAMES ROBERT VOIGTSBERGER, and PETER CHASE ADVISORS, INC.	)	INITIAL DECISION MAY 3, 1995

Appearances: Laura C. Ramsey and Jeannette L. Lewis for the Division of Enforcement, Midwest Regional Office, Securities and Exchange Commission

James Robert Voigtsberger, pro se, and for Peter Chase Advisors, Inc.

Before: Brenda P. Murray, Chief Administrative Law Judge

The Securities and Exchange Commission (Commission) initiated this proceeding by an Order Instituting Proceedings (Order) on September 19, 1994, pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act) and Sections 203(e) and (f) of the Investment Advisers Act of 1940 (Advisers Act). I held a hearing in Tallahassee, Florida, on December 13, 1994. Neither the Division of Enforcement (Division) nor Respondent James Robert Voigtsberger (Mr. Voigtsberger), a non-lawyer who appeared pro se and for Peter Chase Advisors, Inc. (Peter Chase), called any witnesses. The Division offered 14 exhibits which I received and made part of the record. 1/ Mr. Voigtsberger offered no exhibits. The Division filed Proposed Findings of Fact and Conclusions of Law and a Brief on January 20, 1995. Mr. Voigtsberger made no post-hearing filings.

My findings and conclusions are based on the record. I applied preponderance of the evidence as the applicable standard of proof.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Mr. Voigtsberger was a registered representative associated with various broker-dealers from approximately 1970 until 1989, and he was and is the owner, officer, and control person of Peter Chase, an investment adviser registered with the Commission in March 1984. 2/ Based on a criminal indictment charging Mr. Voigtsberger with engaging in a scheme from 1981 until 1993 of defrauding his investment adviser clients of money and property in excess of $350,000 and converting client funds to his personal use, a

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1/ The Division's Exhibit 4 had parts a through f. The number 14 does not include Exhibit 4-f, the transcript of Mr. Voigtsberger's sentencing before U.S. District Court Judge David S. Doty, which the Division did not offer. (Tr. 45-47)

2/ According to Mr. Voigtsberger, his NASD registrations ceased at the end of 1989. The Division contended that he continued to hold securities licenses from the NASD while he was incarcerated at the Federal Correctional Institution in Tallahassee, Florida when the hearing was held in this proceeding. (Tr. 8-9, 43) jury found Mr. Voigtsberger guilty on fifteen counts of mail fraud (18 U.S.C. §1341) in U.S. v. Voigtsberger, Cr. No. 4-93-172 (D. Minn. 1994). On July 21, 1994, Mr. Voigtsberger was sentenced to serve thirty-three months in prison and ordered to pay $70,000 in restitution to eleven individuals.

The Order incorrectly states that Mr. Voigstberger was registered as an investment adviser in his own name, and that he was ordered to pay restitution of approximately $200,000. (Tr. 9, 13) The fact that Mr. Voigstberger was ordered to pay restitution of $70,000 does not indicate that he caused losses at this level. Judge David S. Doty, who presided over the criminal trial, found that Mr. Voigtsberger caused losses of approximately $327,000, and that he owed total restitution to eleven of his former clients of over $200,000. (Exhibit 3 at 4, Findings of Fact at 4 and 5) Judge Doty ordered Mr. Voigtsberger to pay $70,000 based on his "limited assets." (Exhibit 3 at 3 and 5)

The doctrine of collateral estoppel as well as Commission case law preclude Mr. Voigtsberger's position that this proceeding is premature until he exhausts his appeals in the criminal case. 3/ As Judge Regensteiner noted in William A. Calvo, III, Administrative Proceeding No. 3-7038, 1989 SEC Lexis 5159, (Sept. 20, 1989):

> In the D.C. Circuit's recent Blinder Robinson decision, ... the Court stated that the fact that a judgment is pending on appeal ordinarily does not detract from its finality (and therefore its preclusive effect) for purposes of subsequent litigation. Citing Blinder Robinson & Co., Inc. v. S.E.C. 837 F.2d 1099, 1104, n.6 (D.C. Cir. 1988), cert. denied 109 S. Ct. 177 (1988). See also Hunt v. Liberty Lobby, Inc., 707 F.2d 1493 (D.C. Cir. 1983) ("Under well-settled federal law, the pendency of an appeal does not diminish the res judicata effect of a judgment rendered by a federal court"; 1B J.Moore, Moore's Federal Practice, §0.416[3] ("The federal rule is that the pendency of an appeal does not suspend the operation of an otherwise final judgment as res judicata or collateral estoppel."); C.R. Richmond & Co., 46 S.E.C. 412, 414, n.11 (1976).

3/ Answer; Tr. 10-11

Section 15(b)(6) of the Exchange Act requires that the Commission sanction someone who, at the time of the misconduct, was associated with a broker or dealer and who has been convicted, within ten years of when the Commission instituted the proceeding, of mail fraud, 18 U.S.C. §1341, if it finds it is in the public interest to do so. Section 203(f) of the Advisers Act specifies that the Commission shall sanction someone who, at the time of the alleged misconduct, was associated with an investment adviser if the sanction is in the public interest and the person has, within ten years of the commencement of the administrative proceeding, been convicted of violating 18 U.S.C. §1341. Similarly, Section 203(e) of the Advisers Act authorizes the Commission to revoke the registration of an investment adviser if any person associated with the adviser has been convicted of any felony or misdemeanor involving 18 U.S.C. §1341 within ten years of when the Commission instituted the proceeding. All these provisions apply to Mr. Voigtsberger so that the issue is what if any sanction is appropriate in the public interest.

PUBLIC INTEREST

It is well settled that the securities industry presents many opportunities for abuse and overreaching so that it is in the public interest not to allow participation by individuals whose honesty and integrity have been seriously impugned. Richard C. Spangler, 48 S.E.C. 238, 252 (1976); Bruce Paul, 48 S.E.C. 126, 128 (1985). See Archer v. S.E.C. 133 F.2d 795, 803 (8th Cir. 1943), cert. denied, 319 U.S. 767 (1943); Hughes v. S.E.C. 174 F.2d 969, 975-76 (D.C. Cir. 1949). Employment in the securities industry "presents so many opportunities for fraud and overreaching, and depends so heavily on the integrity of its participants" that public investors must be protected against any recurrence of dishonesty. Philip S. Wilson, Securities Act Release No. 23348, 35 SEC Docket 1604 (June 19, 1986).

The selection of an appropriate sanction involves consideration of several elements in the context of the individual fact situation. Elements to be considered include:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), aff'd, 450 U.S. 91 (1981).

Mr. Voigtsberger's criminal conduct was egregious, and extensive in that it continued for about ten years. The Court found that Mr. Voigtsberger's crime was not a simple act of opportunism but a sophisticated fraud perpetrated for more than a decade on unwary investors. (Exhibit 3, 5) His illegal activities occurred in his capacity as an investment adviser, and while he was a registered representative associated with a broker-dealer. "An investment adviser is a fiduciary in whom clients must be able to put their trust." Joseph P. D'Angelo, Advisers Act Release No. 562, 11 SEC Docket 1263, 1264 (December 16, 1976). The position of investment adviser is an occupation which can cause havoc unless engaged in by those with appropriate background and standards. Benjamin Levy Securities, Inc., 46 S.E.C. 1145, 1147 (1978) quoting Marketlines, Inc. v. S.E.C., 384 F.2d 264, 267 (2d Cir., 1967), cert. denied, 390 U.S. 947 (1968).

Judge Doty found that Mr. Voigtsberger obtained money from the victims under false pretenses with no intent to invest the money as promised, that he used the money for his personal and business expenses, and that he did not intend to repay the funds except as necessary to conceal his fraudulent scheme. (Exhibit 3, Findings of Fact 3 and 4) The court found further that Mr. Voigtsberger glossed over the impact his fraudulent conduct had on the victims, especially those who lost part or all of their life savings and have limited ability to recover their losses. (Exhibit 3, Findings of Fact 5)

The presiding judge noted that Mr. Voigtsberger

> has never admitted that he had no right to take the monies from his victims. [Mr. Voigtsberger] continues to deny a scheme to defraud, misuse of funds and blames the government investigation for the collapse of one of his so-called investment projects ... [Mr. Voigtsberger] continues to deny essential factual elements of guilt as well as conduct that the court has found to be true. The court concludes that [Mr. Voigtsberger] has not accepted responsibility. (Exhibit 3, Findings of Fact 4)

Mr. Voigtsberger took significant steps to conceal his criminal conduct, including the use of false lulling letters and tax forms, thus demonstrating a high degree of scienter in that his attempts to cover up make clear that he knew his actions were illegal. (Exhibit 3, Findings of Fact 5)

Severe sanctions are in the public interest where they are necessary to protect the public by deterring wrongdoers and others from eggregious illegal actions which damage public investors and the integrity of the security markets. See Arthur Lipper Corp. v. SEC, 547 F.2d 171, 184 (2d Cir. 1976), cert. denied, 434 U.S. 1009 (1978). Mr. Voigtsberger has not acknowledged that he did anything wrong, despite a judicial determination that he undertook a fraudulent scheme designed to defraud multiple victims. It is therefore reasonable to conclude that he very likely will commit further violations if permitted to remain a participant in the securities industry.

Mr. Voigtsberger's record of illegal conduct, in addition to that detailed in U.S. v. Voigtsberger, Cr. No. 4-93-172 (D. Minn. 1994), makes it abundantly clear that nothing less than a permanent bar will protect the investing public. On February 11, 1992, the National Association of Securities Dealers (NASD) censured Mr. Voigtsberger, fined him $50,000, barred him from association with any NASD member in any capacity, and required that he submit proof of restitution of $80,000 with any future application for association with a member firm. The NASD took this action based on a finding that Mr. Voigtsberger received $80,000 from public customers for investment purposes but instead used the funds for his own benefit. 4/ (Exhibit 2, 7)

In 1993, the State of Minnesota issued a cease and desist order against Mr. Voigtsberger, Peter Chase, Voigtsberger & Co., and PCA Financial Service Corp., for offering or selling unregistered, nonexempt securities. Mr. Voigtsberger, Peter Chase, Voigtsberger & Co., and PCA Financial Service Corp. were not licensed to sell promissory notes, debentures and limited partnership interests in Minnesota. The state entered a default order when Respondents failed to respond. 5/ (Exhibit 2, 5 and 6; Tr. 29-40)

There is no mitigating evidence. 6/

ORDER

Based on the findings and conclusions set forth above, I ORDER that James Robert Voigtsberger is barred from association with any broker, dealer, investment adviser, or any member of a national securities exchange or registered securities

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4/ The NASD also found that Mr. Voigtsberger engaged in private securities transactions without providing prior written notification to his member firm, and he failed to respond to the NASD's request for information. (Exhibit 2, 7)

5/ Mr. Voigtsberger denied that he committed the violations but acknowledged that Minnesota entered the order which is final. (Tr. 30-31)

6/ I have considered all proposed findings and conclusions and all contentions, and I accept those that are consistent with this decision.

association and from participating in an offering of penny stock, and that the registration of Peter Chase Advisors, Inc., as an investment adviser is revoked. 7/

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice (17 C.F.R. 201.17(f)). Pursuant to that rule, this initial decision shall become the final decision of the Commission as to each party who has not filed a petition for review pursuant to Rule 17(b) within 15 days after service of the initial decision upon him, unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to a party. If a party timely files a petition for review, or the Commission acts to review as to a party, the initial decision shall not become final as to that party.

Brenda P. Murray
Brenda P. Murray
Chief Administrative Law Judge

Washington, D.C.
May 3, 1995

7/ This sanction is as broad as possible under the sections of the Exchange Act and the Advisers Act cited in the Order as authority for this proceeding. The authorizing sections of those statutes do not provide authority for barring Mr. Voigtsberger from association with an investment company or a municipal securities dealer as the Division requested.