INITIAL DECISION RELEASE NO. 319
ADMINISTRATIVE PROCEEDING
FILE NO. 3-12323

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	:	
	:	INITIAL DECISION
JEFFREY L. GIBSON	:	September 22, 2006

APPEARANCES: Alana R. Black for the Division of Enforcement, Securities and Exchange Commission

Buddy B. Presley, Jr., and Timothy R. Simonds for Respondent Jeffrey L. Gibson

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Jeffrey L. Gibson (Gibson) from association with any broker or dealer or investment adviser. He was previously enjoined from violating the antifraud provisions of the securities laws, based on his wrongdoing in 2002 to 2005 in connection with his misappropriation of funds he raised from the sale of securities in a limited partnership intended to buy and manage car washes in northern Georgia.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) against Gibson on June 5, 2006, 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 he was enjoined in May 2006 from violating the antifraud provisions of the federal securities laws, based on his wrongdoing while associated with a registered investment adviser and with a broker-dealer. Gibson was served with the OIP on June 8, 2006, and timely filed his Answer to the OIP on June 27, 2006. Pursuant to the schedule set at the August 29, 2006, prehearing conference, the Division of Enforcement (Division) filed a Motion for Summary Disposition on September 8, 2006, and Gibson filed his

opposition on September 15, 2006.[1] The administrative law judge is required by 17 C.F.R. § 201.250(b) to act "promptly" on a motion for summary disposition.

This Initial Decision is based on (1) the Division's Motion for Summary Disposition; (2) Gibson's opposition; and (3) Gibson's Answer. There is no genuine issue with regard to any fact that is material to this proceeding.[2] All material facts that concern the activities for which Gibson was enjoined were decided against him in the civil case on which this proceeding is based. Any other facts in his pleadings have been taken as true, pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Gibson was enjoined in May 2006 from violating the antifraud provisions of the federal securities laws, in the civil action entitled SEC v. Gibson, 4:05-CV-163-RLV (N.D. Ga.) (SEC v. Gibson), based on his wrongdoing while associated with a broker-dealer and an investment adviser. The Division urges that he be barred from association with any broker-dealer or investment adviser. Gibson argues that there are genuine issues of material fact that mitigate his misconduct and that the Division has failed to prove that Gibson should receive any type of sanction in this case.

C. Exhibits Admitted into Evidence

The following items, of which official notice is taken pursuant to 17 C.F.R. §§ 201.250(a), .323, in the Division's Motion for Summary Disposition at Exhibits I-IV, are admitted into evidence as Division Exhibits I-IV:

August 5, 2005, Complaint in SEC v. Gibson, (Div. Ex. I);

May 8, 2006, Consent of Defendants Jeffrey L. Gibson and Investment Property Management, LLC (IPM), in SEC v. Gibson (Div. Ex. II);

May 9, 2006, Final Judgment in SEC v. Gibson (Div. Ex. III); and

July 11, 2006, Order Amending the May 9, 2006, Final Judgment in SEC v. Gibson (Div. Ex. IV).

[1] Leave to file the Motion for Summary Disposition was granted at the prehearing conference, pursuant to 17 C.F.R. § 201.250(a).

[2] In view of the disposition of the proceeding in this Initial Decision, the October 12, 2006, hearing date scheduled at the prehearing conference is moot.

The following items included in Gibson's Opposition, at Exhibits 1 through 32, are admitted into evidence as Respondent Exhibits 1 through 32:

Affidavit of Jeffrey Lynn Gibson (Resp. Ex. 1);

Declaration of Delores Belk (Resp. Ex. 2);

Declaration of Carolyn D. Bellah (Resp. Ex. 3);

Declaration of Terry A. Cagle (Resp. Ex. 4);

Declaration of William A. Carver (Resp. Ex. 5);

Declaration of Linda D. Clark (Resp. Ex. 6);

Declaration of Robert Copeland (Resp. Ex. 7);

Declaration of James Larry Darks (Resp. Ex. 8);

Declaration of Bettye Dunwoody (Resp. Ex. 9);

Declaration of Joseph Fulton (Resp. Ex. 10);

Declaration of Jesse Goodman (Resp. Ex. 11);

Declaration of Ed Haley (Resp. Ex. 12);

Declaration of Wanda W. Harris (Resp. Ex. 13);

Declaration of Jeff W. Hixson (Resp. Ex. 14);

Declaration of W. Hal Howard (Resp. Ex. 15);

Declaration of Bill O. Krech (Resp. Ex. 16);

Declaration of Anna L. Lassiter (Resp. Ex. 17);

Declaration of Beth Foster Long (Resp. Ex. 18);

Declaration of David M. O'Neal (Resp. Ex. 19);

Declaration of K. Douglas Patterson (Resp. Ex. 20);

Declaration of Charles W. Payne (Resp. Ex. 21);

Declaration of James H. Peters (Resp. Ex. 22);

Declaration of John A. Playfair (Resp. Ex. 23);

Declaration of Vicki L. Prichard (Resp. Ex. 24);

Declaration of Edward J. Reachard, Jr. (Resp. Ex. 25);

Declaration of Stephen R. Riley (Resp. Ex. 26);

Declaration of William H. Ryan, Jr. (Resp. Ex. 27);

Declaration of Charlotte B. Scott (Resp. Ex. 28);

Declaration of Nancy E. Sharpe (Resp. Ex. 29);

Declaration of John B. Shober (Resp. Ex. 30);

Declaration of Dwight H. Sparks (Resp. Ex. 31); and

Declaration of R. Joanna Adams (Resp. Ex. 32).

II. FINDINGS OF FACT

Gibson was (and is) permanently enjoined from violating the antifraud provisions of the federal securities laws – Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act.[3] SEC v. Gibson, 4:05-CV-163-RLV (N.D. Ga. May 9, 2006); Div. Ex. III. The injunction was entered by consent of Gibson. Div. Exs. II, III. Additional sanctions included a civil penalty of $25,000 and disgorgement of $427,760.23. Div. Exs. III, IV. Gibson has paid the penalty and disgorgement. Answer at 2; Resp. Ex. 1 at 2. Gibson had worked in the securities industry for more than twenty-five years and had no disciplinary history with the Commission prior to the injunctive action. Resp. Ex. 1 at 1.

[3] The Commission does not permit a respondent to re-litigate issues that were addressed in a previous civil proceeding against the respondent. See Michael J. Markowski, 55 S.E.C. 21, 26-27 (2001), pet. denied, No. 01-1181 (D.C. Cir. 2002) (unpublished); John Francis D'Acquisto, 53 S.E.C. 440, 444 (1998); Demitrios Julius Shiva, 52 S.E.C. 1247, 1249 (1997).

The wrongdoing that underlies Gibson's injunction is set forth in the Commission's complaint in SEC v. Gibson (Div. Ex. I) and is as follows:[4] Gibson, of Chattanooga, Tennessee, is part owner and associated person of a registered investment adviser located in Rossville, Georgia, a registered representative of a broker-dealer, and a certified financial planner. He owns IPM, his co-defendant in SEC v. Gibson. From at least December 2002 through April 2003, Gibson solicited investment advisory clients to invest in American Car Wash Fund, LP (ACW), a limited partnership controlled by IPM as its general partner. Gibson formed ACW in November 2002 for the purpose of buying and managing coin-operated car washes in northern Georgia. Gibson, through IPM, sold securities in the form of forty-three ACW limited partnership interests, raising approximately $875,000. Thirty-eight of the limited partners were also clients of Gibson's advisory business. Through IPM, Gibson managed the car wash operations and had total control over ACW's bank accounts.

The private placement memorandum (PPM) that Gibson provided to prospective investors stated that after organizational expenses, investors' funds would be invested in money market funds or government securities until the funds could be invested in projects. However, from December 2002 to August 2005 Gibson misappropriated from ACW at least $450,000 in investors' funds that he converted to his own personal use by writing checks payable to cash on ACW bank accounts.[5] The misuse of ACW funds began while the sale of interests in ACW was ongoing, exceeded any payments to which Gibson and IPM might have been entitled under the PPM, and was contrary to Gibson's representations to investors concerning the intended use of

[4] In administrative proceedings based on a consent injunction, the Commission considers the allegations in the complaint in determining whether a remedial, disciplinary sanction is in the public interest. Marshall E. Melton, 80 SEC Docket 2812, 2814-16, 2822-25 (July 25, 2003). A respondent who has consented to an injunction is not permitted to contest the factual allegations of the injunctive complaint. Melton, 80 SEC Docket at 2824-25.

In their February 9, 2006, consent to the injunction, Gibson and IPM affirmatively stated that "in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, [they] understand that they shall not be permitted to contest the factual allegations of the complaint in this action." Further, they stated they "understand and agree to comply with the Commission's policy 'not to permit a defendant . . . to consent to a judgment . . . that imposes a sanction while denying the allegations . . . in the complaint.'" Div. Ex. II at 6. Finally, they agreed "(i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that [Gibson and IPM] hereby withdraw any papers filed in this action to the extent that they deny any allegation in the complaint." Div. Ex. II at 6-7.

[5] Gibson denies that the misappropriation continued until August 2005 (while not offering an alternate date). However, he is foreclosed from contesting the factual allegations of the August 5, 2005, injunctive complaint, which alleges the misappropriation occurred "[d]uring the period from approximately December 2002 through the present." Div. Ex. I at 6.

their funds. Subsequent to the sales of securities, Gibson and IPM engaged in behavior designed to lull investors into believing that their investments were profitable and to conceal the misappropriation of funds. Between April 17, 2003, and July 19, 2005, they regularly sent letters to ACW investors describing rates of return, dividends, and purchases of properties while not disclosing their ongoing misuse of proceeds. This course of conduct violated Sections 17(a)(1), (2), and (3) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and (2) of the Advisers Act.

In addition to the antifraud injunction, civil penalty, and disgorgement noted above in SEC v. Gibson, the court permanently enjoined and restrained Gibson and IPM from serving as a general partner, or otherwise controlling, ACW, directly or through any entity under their control. Div. Ex. III.

Prior to the filing of SEC v. Gibson, Gibson fully cooperated with the Commission's investigation and provided Commission staff with complete access to the books and records of ACW and related entities. Resp. Ex. 1 at 2. Gibson had invested the funds that he misappropriated in commercial real estate. Answer at 2. Upon the entry of the court's Final Judgment in SEC v. Gibson, the property was sold and the proceeds used for payment of Gibson's disgorgement and civil penalty. Answer at 2; Resp. Ex. 1 at 2.

On or about July 10, 2006, Gibson obtained declarations from thirty-one limited partners in ACW.[6] Resp. Exs. 2-32. Each declarant stated, "I have read and reviewed the contents of the Complaint [in SEC v. Gibson], the Answer filed on behalf of J. Lynn Gibson . . . and the Final Judgment. . . . All of the actions of [IPM] on behalf of the partnership in regards to the proceeds received by the partnership to the present date are ratified, approved and confirmed." Resp. Exs. 2-32 at 1. Each declarant also requested that Gibson "continue to act on my behalf as Investment Advisor." Resp. Exs. 2-32 at 2.

III. CONCLUSIONS OF LAW

Gibson has been permanently enjoined "from engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security" within the meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act and Sections 203(e)(4) and 203(f) of the Advisers Act. Further, Gibson's misconduct underlying the injunctive action occurred while he was associated with an investment adviser and with a broker-dealer.

[6] The content of the three-page declarations, which were dated July 10, 2006, on the first page, and signed on the third page in the presence of a notary, is identical except for the first paragraph. Eight of the declarations state that a special meeting of the partners, chaired by Gibson, was held on July 10. Resp. Exs. 4-6, 9, 15, 17-18, 26. The remainder state that they consent to the actions listed in the declaration without a meeting. Resp. Exs. 2-3, 7-8, 10-14, 16, 19-25, 27-32. In addition to indicating their support for Gibson and ratifying his use of proceeds, the declarants chose a new general partner for ACW, as required by the court. Resp. Exs. 2-32 at 1.

IV. SANCTIONS

The Division requests broker-dealer and investment adviser bars. As discussed below, Gibson will be barred from association with a broker-dealer or investment adviser because of the seriousness of his violation, taking account of the facts and circumstances of his conduct, including the mitigating facts and arguments that Gibson presented.

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. See Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act. The Commission considers factors including:

> the 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) (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. Melton, 80 SEC Docket at 2814. Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. Schield Mgmt. Co., 87 SEC Docket 848, 862 & n.46 (Jan. 31, 2006).

In proceedings based on an injunction, the Commission examines the facts and circumstances underlying the injunction in determining the public interest. Melton, 80 SEC Docket at 2814. "An injunction, by its very nature, is predicated on conduct that . . . violate[s] laws, rules or regulations." Id. at 2822. The Commission considers an antifraud injunction to be particularly serious. Id. at 2823. The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. Richard C. Spangler, Inc., 46 S.E.C. 238, 252 (1976).

B. Sanctions

Gibson's conduct was egregious and recurrent. It started while he was selling interests in ACW to investors, continued for more than two years, and ended only when the Commission investigated and sued him. A high degree of scienter is indicated by Gibson's antifraud violations of Securities Act Section 17(a)(1), Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Section 206(1).

Gibson suggests that his conduct was mitigated because he invested the misappropriated funds in commercial real estate and subsequently (after the dates of injunction and OIP) obtained

investor ratification of his use of the funds. This argument, however, does not accord with Commission precedent in cases where respondents used investor funds in a manner inconsistent with representations in offering materials and later obtained investor ratification. See Christopher A. Lowry, 55 S.E.C. 1133, 1139-40 (2002), aff'd, 340 F.3d 501 (2003); Wilshire Disc. Sec., Inc, 51 S.E.C. 547, 549-51 & n.15 (1993). Further, as the Commission has often emphasized, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. See Lowry, 55 S.E.C. at 1145; Arthur Lipper Corp., 46 S.E.C. 78, 100 (1975).

As Gibson argues, his prompt payment of his disgorgement and penalty indicates recognition of the wrongful nature of his conduct. However, the degree of his recognition of the wrongful nature of his conduct and of the sincerity of his assurances against future violations is lessened by his conduct in obtaining after-the-fact ratification of his misappropriation of funds. In doing so, he provided a copy of his Answer in SEC v. Gibson to investors after he had agreed to withdraw it and not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis.

Gibson has worked for more than twenty-five years in the securities industry and is currently associated with an investment adviser and a broker-dealer and is a certified financial planner. Thus, his occupation will present opportunities for future violations. Gibson's violations are recent, ending only in 2005. The degree of harm to investors in ACW is quantified in Gibson's ill-gotten gains of $427,760.23 that the court ordered him to disgorge; Gibson mitigated the harm by paying the disgorgement. Moreover, while a lack of a disciplinary record is a mitigating factor, it is not an impediment to imposing a bar for a respondent's first adjudicated fraud violation. Robert Bruce Lohman, 80 SEC Docket 1790, 1797 (June 26, 2003); Martin R. Kaiden, 54 S.E.C. 194, 209 (1998).

Gibson argues that his conduct did not relate to his role as an associated person of a broker-dealer or investment adviser. Actually, most of the ACW investors, whom he solicited, were also his advisory clients, and thirty-one of them stated that they wished Gibson to "continue to act on my behalf as Investment Advisor." Further, Exchange Act Section 15(b) and Advisers Act Section 203(f) authorize the Commission to impose sanctions against an associated person of a broker-dealer and investment adviser, respectively, if he has been enjoined from engaging in conduct in connection with the purchase or sale of any security. The law does not limit the sanctions to those whose violative conduct occurred in their capacity as associated persons. Lowry, 55 S.E.C. at 1144 & n.25; see also Ahmed Mohamed Soliman, 52 S.E.C. 227, 231 (1995) (Commission revoked respondent's investment adviser registration and barred him from association with a broker-dealer or investment adviser based on his conviction for submitting fraudulent documents to the Internal Revenue Service). Additionally, Gibson's misappropriation of investor funds shows a lack of honesty and judgment and indicates that he is unsuited to function in the securities industry. Broker-dealer and investment adviser bars are also necessary for the purpose of deterrence.

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, JEFFREY L. GIBSON IS BARRED from associating with any broker or dealer.

IT IS FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, JEFFREY L. GIBSON IS BARRED from associating with any 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 a 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 a 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.

_____

Carol Fox Foelak
Administrative Law Judge