INITIAL DECISION NO. 321
ADMINISTRATIVE PROCEEDING
FILE NO. 3-12401

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
	:	
CONNIE S. FARRIS	:	INITIAL DECISION
	:	November 7, 2006
	:	

APPEARANCES: Jose F. Sanchez and Catherine D. Whiting for the Division of Enforcement, Securities and Exchange Commission

Richard A. Schonfeld for Respondent Connie S. Farris

BEFORE: Robert G. Mahony, Administrative Law Judge

PROCEDURAL HISTORY

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on August 28, 2006, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleged that on August 3, 2006, a final judgment was entered against Respondent Connie S. Farris (Farris) permanently enjoining her from future violations of Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Exchange Act and Rules 10b-5 and 15d-14 thereunder, and from aiding and abetting violations of Section 15(d) of the Exchange Act and Rules 12b-20 and 15d-13 thereunder, in SEC v. Global Express Real Estate Investment Fund I, LLC, Civ. Act. No. CV-S-03-1514-KJD (LRL), in the United States District Court for the District of Nevada. In addition, the OIP alleges that the final judgment prohibited Farris from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act, ordered disgorgement of $23,232,441 along with prejudgment interest of $746,253.13, and imposed a civil penalty of $120,000.

Farris filed her Answer on September 15, 2006. At a prehearing conference on September 28, 2006, the Division of Enforcement (Division) was granted leave to file a motion for summary disposition. On October 6, 2006, the Division filed a Motion for Summary Disposition and Supporting Memorandum (Memorandum), and Declaration of Catherine D. Whiting in support which contained the following exhibits, which are admitted into evidence:

Exhibit A: Commission's complaint in SEC v. Global Express Real Estate Investment Fund I, LLC, Civ. Act. No. CV-S-03-1514-KJD (LRL) (D. Nev. Dec. 4, 2003) (Complaint);

Exhibit B: SEC v. Global Express Real Estate Investment Fund I, LLC, Civ. Act. No. CV-S-03-1514-KJD (LRL) (D. Nev. Dec. 18, 2003) (Preliminary Injunction and Orders);

Exhibit C: SEC v. Global Express Real Estate Investment Fund I, LLC, Civ. Act. No. CV-S-03-1514-KJD (LRL) (D. Nev. Mar. 28, 2006) (Order)

Exhibit D: SEC v. Global Express Real Estate Investment Fund I, LLC, Civ. Act. No. CV-S-03-1514-KJD (LRL) (D. Nev. Aug. 3, 2006) (Final Judgment).

The Division is requesting that Farris be permanently barred from participating in the securities industry. (Memorandum at 8, 12.) On October 11, 2006, Farris filed her Opposition to Motion for Summary Disposition and Supporting Memorandum (Opposition). Attached to Farris's Opposition was her Opposition to Motion for Summary Judgment with Exhibits from the underlying civil action and of which she requested official notice be taken and the arguments and evidence therein be incorporated by reference. (Opposition at 2.) Pursuant to Rule 323 of the Commission's Rules of Practice, 17 C.F.R. § 201.323, I take official notice of the attachments to Farris's Opposition.

STANDARDS FOR SUMMARY DISPOSITION

Rule 250(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.250(a), provides that after a respondent has filed an answer 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, 17 C.F.R. § 201.323.

Rule 250(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.250(b), requires the administrative law judge promptly to grant or deny the motion, or to defer decision on the motion. The administrative law judge may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and if the party making the motion is entitled to summary disposition as a matter of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On December 4, 2003, the Commission filed its Complaint in the United States District Court for the District of Nevada, SEC v. Global Express Real Estate Investment Fund I, LLC,

Civ. Act. No. CV-S-03-1514-KJD (LRL), which charged Farris with violations of Section 17(a) of the Securities Act, Section 10(b) and Rules 10b-5 and 15d-14 of the Exchange Act in connection with the sales of shares in Global Express Real Estate Investment Fund I, LLC (the Fund). (Div. Ex. A at 14-16, 18; Answer at 2). The Complaint also alleged that Farris aided and abetted violations of Section 15(d) and Rules 12b-20 and 15d-13 of the Exchange Act. (Div. Ex. A at 17-18.) The Commission filed a motion for summary judgment against Farris, which Farris opposed. (Div. Ex. C at 1.) On March 28, 2006, the district court issued its Order granting the Commission's motion for summary judgment as to Farris. The following is a summary of the uncontroverted findings of fact and conclusions of law found by the district court in the Order.

The Fund is a Nevada limited liability company headquartered in Las Vegas, Nevada. From January 31, 2002, through December 4, 2003 (the relevant period), the Fund was in the business of making and purchasing entire or fractionalized interest in mortgage loans and deeds of trust and paid out the interest income in the form of monthly returns. (Div. Ex. C at 5.) The Fund registered its offering "units" with the Commission in October 2001, and began the offering in late 2001. (Div. Ex. C at 7.) As of November 14, 2003, the Fund reported raising $14.5 million in cash and $34.5 million in fractionalized interests in trust deeds. (Div. Ex. C at 7.)

Farris was the sole shareholder, officer, and director of the Fund's manager, Global Express Mortgage Corporation (GECM), and held NASD Series 22 and 63 licenses. (Div. Ex. C at 5-6; Answer at 2.) Farris also owned and controlled Global Express Securities, a Florida corporation and broker-dealer registered with the Commission. (Div. Ex. A at 4-5; Div. Ex. C at 4, 6.) Investors bought investments in the Fund through Global Express Securities. (Div. Ex. C at 6; Answer at 2.) During the relevant period, Farris provided investors with offering materials, including a prospectus and relevant amendments and supplements to the prospectus, that represented all proceeds of the offering would be used to make mortgage loans or to purchase interests in mortgage loans. (Div. Ex. C at 9.) The offering materials also represented that any repayment of principal from the mortgage loan investments would be used to acquire or invest in new mortgage loans, and that any unused funds would be deposited in interest bearing accounts, and that investors would receive a return in the form of monthly distributions from interest and fees earned by the Fund on its loans and other assets. (Div. Ex. C at 9, 10.) The offering materials did not disclose that the investor funds would be used for any other purpose. (Div. Ex. C at 9.) Nor did the offering materials disclose that any other funding sources would be used to pay investors' monthly returns, or that GECM or anyone else could or would make capital contributions or loans to support the monthly return to investors. (Div. Ex. C at 10.)

From May 2002 to December 4, 2003, the Fund consistently reported and paid monthly returns to investors equaling more than 12% per year. (Div. Ex. C at 12.) During 2003, the Fund received interest income of only $368,095, but paid investors $2.8 million from January 1, 2003, to September 30, 2003, exceeding the interest income by over $2.4 million. (Div. Ex. C at 12.) To make up this shortfall, Farris relied on: capital contributions from herself and her other Global Express entities; cash from the sale of units to new investors; loan repayments of principal to the Fund, and; proceeds from the sale of real estate obtained by the Fund through foreclosures. (Div. Ex. C at 12.) None of this was disclosed in the offering materials or public filings. (Div. Ex. C at 12.)

Throughout 2003, the Fund was in a precarious financial situation and losing value as it was saddled with non-performing assets. (Div. Ex. C at 12.) Farris knew or should have known the Fund, as of April 2003, did not generate sufficient interest in income on its loans to pay investors the promised monthly returns. (Div. Ex. C at 12.) Farris admitted that she set monthly rates of return for the Fund based on a combination of the amount of interest payments and fees she expected to receive from borrowers as well as the rate of interest she believed she could charge to borrowers for future loans. (Div. Ex. C at 13.) Thus, the rates of return were not based on the actual amount of interest payments and fees received by the Fund. (Div. Ex. C at 13.)

By making regular monthly distributions to investors, and without disclosing the source of the payments or the manner in which the rates of return were calculated, Farris operated a Ponzi-like investment scheme, giving investors the false and misleading impression that their investments were safe, guaranteed, and profitable. (Div. Ex. C at 13.) In addition, Farris commingled assets of the Fund using them to pay for undisclosed and unauthorized business expenses of other Global Express affiliated entities she controlled, entities from which she directly received $1.4 million. (Div. Ex. C at 15, 18.)

During this period, the Fund filed annual and quarterly Form 10-Q reports, which included material misrepresentations and omissions regarding the Fund's operations and finances. (Div. Ex. C at 14.) Farris, as chief executive officer of the Fund, signed and certified as accurate and complete each of the Fund's annual and quarterly reports that were filed with the Commission in 2003, and reviewed and approved all disclosures. (Div. Ex. C at 15.)

The district court issued its Final Judgment against Farris on August 3, 2006. (Div. Ex. D; Answer at 2.) The Final Judgment permanently enjoined Farris from future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rules 10b-5 and 15d-14 thereunder, and from aiding and abetting violations of Section 15(d) of the Exchange Act and Rules 12b-20 and 15d-13 thereunder. The Final Judgment also prohibited Farris from acting as an officer or director of any issuer with a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act, ordered disgorgement of $23,232,441, along with prejudgment interest of $746,253.13, and imposed a civil penalty of $120,000. (Div. Ex. D.)

Farris has appealed the decision of the district court to the United States Court of Appeals for the Ninth Circuit. (Answer at 2; Opposition at 3.) Farris's pending appeal before the Ninth Circuit does not preclude the Commission from bringing and deciding this proceeding. See Joseph P. Galluzi, 78 SEC Docket 1125, 1130 n.21 (Aug. 23, 2002.)

I conclude that Farris has been permanently enjoined from violating the federal securities statutes within the meaning of Section 15(b)(4)(C) of the Exchange Act, and that at the time of her conduct she was associated with a broker-dealer registered with the Commission. Farris is foreclosed from contesting the facts underlying the civil injunctive action. The Commission has consistently applied the doctrine of collateral estoppel to prevent respondents from relitigating factual findings and conclusions previously determined again in a Commission administrative proceeding. See John Francis D'Acquisto, 53 S.E.C. 440, 444 (1998); Michael J. Markowski, 74

S.E.C. Docket 1537, 1542 (Mar. 20, 2001), pet. denied, No. 01-1181 (D.C. Cir. 2002) (unpublished).

SANCTIONS

Section 15(b)(6) of the Exchange Act provides that the Commission shall impose sanctions if it is in the public interest to do so, with respect to a person who has been enjoined from violations of the federal securities statutes where the person was associated with a broker or dealer at the time of the misconduct. The following considerations, as well as deterrence, are relevant in making a public interest determination:

> [T]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, 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, 1282 n.31 (1999); Donald T. Shelton, 51 S.E.C. 59, 86 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995). The severity of the sanction depends on the facts of each case and the value of the sanction in preventing recurrence. See Richard C. Spangler, Inc., 46 S.E.C. 238, 254 n.67 (1967); Leo Glassman, 46 S.E.C. 209, 211-12 (1975). "Ordinarily, and in the absence of evidence to the contrary, it will be in the public interest to . . . suspend or bar from participation in the securities industry . . . a respondent who is enjoined from the antifraud provisions." Marshall E. Melton, 80 SEC Docket 2812, 2825-26 (2003).

The antifraud violations, permanent injunction, considerable disgorgement, and civil penalty, together, establish that Farris's conduct was egregious. In fact, the district court appointed receiver has received over 900 claims totaling over $54 million. (Div. Ex. C at 13.) Her conduct was recurrent and ongoing, occurring over a year-long period in which she took several affirmative steps to keep the Ponzi-like scheme afloat. Farris regularly manipulated transactions and made blatant misrepresentations regarding the Fund's interest income, use of investor proceeds, and Fund assets. Thus, it is not surprising that the district court stated that Farris "acted with the highest degree of scienter." (Div. Ex. C at 35.) Farris has not acknowledged her unlawful conduct, and has yet to provide assurances against future violations. The nature of the violations at issue, along with Farris's refusal to recognize the magnitude of her misconduct, makes the likelihood of future violations high.

Considering the Steadman factors in their entirety, I find that it is in the public interest to bar Farris from association with any broker or dealer. There are no mitigating circumstances.

ORDER

Based on the findings and conclusions set forth above:

IT IS ORDERED that the Division of Enforcement's motion for summary disposition against Respondent Connie S. Farris is GRANTED;

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Respondent Connie S. Farris is barred from association with any broker or dealer.

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.

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Robert G. Mahony
Administrative Law Judge