ADMINISTRATIVE PROCEEDING
FILE NO. 3-6544

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
RICHARD HIRSCHFELD

INITIAL DECISION

Washington, D.C.
December 13, 1985

Warren E. Blair
Chief Administrative Law Judge

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In the Matter of RICHARD HIRSCHFELD	INITIAL DECISION

APPEARANCES: Linda D. Fienberg, Benjamin Greenspoon, Lisa A. Gok, and Audrey D. Shields, for the Office of the General Counsel.

Richard Hirschfeld, pro se.

BEFORE: Warren E. Blair, Chief Administrative Law Judge.

By order dated July 19, 1985 ("Order") issued pursuant to Rule 2(e) of the Rules of Practice, the Commission temporarily suspended Richard Hirschfeld ("Hirschfeld"), an attorney licensed to practice in the State of Virginia, from appearing or practicing before the Commission. As the basis of that action the Order sets forth that Hirschfeld, by reason of his misconduct, was permanently enjoined in November, 1984 by the United States District Court for the Southern District of New York from further violations of Sections 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder.

A petition by Hirschfeld to lift the temporary suspension was denied by the Commission on August 29, 1985, at which time the Commission further ordered that a hearing be held to afford Hirschfeld the opportunity to show cause why he should not be censured or temporarily or permanently disqualified from appearing or practicing before the Commission.

At the hearing held on September 23, 1985 Hirschfeld, having elected at the outset of the hearing to proceed with his own representation, was not represented by counsel.[1/]

1/ Hirschfeld initially had counsel of record in these proceedings but on November 15, 1985 moved to substitute himself in lieu and stead of his counsel of record, which motion was granted November 26, 1985.

As part of the post-hearing procedures, successive filings of proposed findings, conclusions, and supporting briefs were specified. Timely filings thereof were made by the parties.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon observation of the witnesses.

RESPONDENT

Hirschfeld, a member of the Virginia bar for the last fourteen years, has practiced primarily in the fields of real estate and corporate law. Additionally, he is a director on the board of Hirsch-Chemie, Ltd. ("Hirsch-Chemie"), a public company with its principal office located in Virginia Beach, Virginia, and has provided legal representation for that company.

DISQUALIFICATION OF RESPONDENT

It is concluded on the basis of the record that respondent should be permanently disqualified from appearing or practicing before the Commission. As stated in the Order and shown by the Office of the General Counsel ("OGC") at the hearing, Hirschfeld was permanently enjoined in November, 1984 by the United States District Court for the Southern District of New York from further violations

of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.[2/] Subsequently the United States Court of Appeals for the Second Circuit affirmed the judgment of the lower court.[3/]

It appears from the district court's findings of fact and conclusions of law in the injunctive action that Hirschfeld is president, treasurer, and chief operating officer of Champion Sports Management, Inc. ("Champion") and that by virtue of his interest in Hirsch-Chemie he became a major stockholder in Champion. In August, 1983 Champion filed a registration statement with the Commission pursuant to the provisions of the Securities Act covering a proposed initial public offering of 5,000,000 units, each consisting of one share of common stock and two common stock purchase warrants, exercisable at a price of $1.25 each. Subsequently, five amendments to the registration statement were filed and on January 19, 1984 the registration statement as amended became effective. Three post-effective amendments were filed in March, 1984. The Champion prospectus dated January 13, 1984 as amended

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2/ SEC v. Champion Sports Management, Inc., 599 F. Supp. 527 (S.D.N.Y. 1984).

3/ SEC v. Champion Sports Management, Inc., 84-6358 (2d Cir. Apr. 26, 1985).

March 19, 1984 was filed as part of the registration statement and was distributed to the public in connection with Champion's offering.[4/]

The Champion prospectus was drafted by the company's counsel and was reviewed by Hirschfeld. The district court found Hirschfeld to have "played an integral part in its final preparation."[5/] A further finding that the prospectus contained materially false and misleading representations led the district court to conclude that Hirschfeld had engaged in a "knowing and willful scheme to violate the law. . . ."[6/]

Misrepresentations and omissions found in the prospectus by the district court distorted facts concerning the organization, operation, and financial condition of Champion. Investors were led to believe that the company, which was organized to recruit, train, and promote professional boxers, had a board of directors which included several famous boxing personalities when in fact and undisclosed was the absence of their participation in Champion's affairs and in its direction which were solely in Hirschfeld's hands. The prospectus also failed to disclose that an

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4/ On July 10, 1984 a prospectus supplement was filed with the Commission and was attached to the prospectus.

5/ SEC v. Champion Sports Management, Inc., 599 F. Supp., at 530.

6/ Id., at 533.

asserted $600,000 asset represented by an unsecured promissory note was, as Hirschfeld knew or should have known, worthless. Also undisclosed was Champion's default on loans called in by its principal bank lender with the consequence of invoking a surety agreement which granted one of the guarantors of the loans 51% of Champion's stock. Additionally, the prospectus falsely represented that the defaulted notes had been purchased by an entity that had agreed to extend the time for repayment of the notes without disclosing that the notes had been transferred, as Hirschfeld knew, by that entity to a third party which had not agreed to the extension.

The district court noted in its conclusions of law that "In connection with the offer, purchase and sale of securities to the public, defendants Hirschfeld and Champion knowingly and recklessly filed with the Commission and disseminated and caused to be disseminated to investors and potential investors a prospectus containing materially false and misleading statements, material misrepresentations and omissions of material fact." [7/] Further, the court concluded that "there is a reasonable likelihood that Hirschfeld will commit further violations of the anti-fraud provisions of the federal securities laws in the future." [8/]

7/ Id., at 534.

8/ Id.

The past conduct alluded to by the court involved securities violations from which two other injunctions against violations of the antifraud provisions of the securities laws ensued.[9/] Besides the latest and the two earlier injunctions against Hirschfeld, the OGC introduced evidence that on March 16, 1977 the Commission authorized the issuance of an order, pursuant to Rule 2(e)(3)(i) of the Commission's Rules of Practice temporarily suspending Hirschfeld from appearing or practicing before the Commission.[10/]

A showing having been made that Hirschfeld was permanently enjoined in November, 1984 by the United States District Court for the Southern District of New York from further violations of securities laws, Hirschfeld has the burden to show cause why he should not be permanently disqualified from appearing or practicing before the Commission.[11/] Hirschfeld has not carried that burden.

Neither in his testimony during the hearing nor in his post-hearing proposals and brief does Hirschfeld contest the authority of the Commission to discipline a practitioner before it. He does contend, however, that

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9/ SEC v. Hirschfeld Bank of Commerce, No. 74 Civ. 533 (E.D. Va. Feb. 18, 1975); SEC v. Hirschfeld , No. 76 Civ. 3887 (E.D. Pa. Dec. 21, 1976).

10/ The Order of Temporary Suspension was later withdrawn.

11/ 17 C.F.R. 201.2(e)(3)(iv).

he has inordinately suffered financially and in reputation by reason of the 1984 injunction and the staff investigations that preceded the institution of that action. He urges that these proceedings be dismissed with no sanctions imposed against him.

Hirschfeld attempts to brush off the seriousness of his offenses and his participation in the activities which formed the predicate of the 1984 injunctive action. He concedes that he erred and acknowledges a mistake of judgment in attributing full value to the $600,000 note found worthless by the district court. He does not address specifically the other misrepresentations, omissions, and misleading statements which were found by that court to have tainted the Champion prospectus. Hirschfeld also attempts to minimize his offenses by insinuating that except for an ex parte communication conversation in chambers between the administrator of the Commission's New York Regional Office and Judge Ward, the presiding judge, the 1984 injunction would not have been issued, and further that the action would not have been brought had the New York Regional Office not been engaged in an "institutionalized vendetta" against him.

The impression conveyed by Hirschfeld's testimony and arguments is that he is incapable or unwilling to recognize the gravity of the violations underlying the 1984 injunction against him. This impression is reenforced by

his casual dismissal of the two earlier injunctions by reference to the facts that the first was not against him as a respondent but against the bank of which he was chairman, and that the second was issued against him 11 years ago when he was 29 years old and had been engaged in the practice of law for five years. Nowhere can be found assurances that Hirschfeld has learned from either his earlier experiences or the last injunctive action that the securities laws administered by the Commission must be meticulously complied with by practitioners appearing before it. 12/ The conclusion reached by the district court in issuing the 1984 injunction was that "Defendant Hirschfeld's knowing and wilful conduct in this case, together with his past conduct and ongoing involvement with public companies, demonstrates that there is a reasonable likelihood that Hirschfeld will commit further violations of the antifraud provisions of the federal securities laws in the future." 13/ There is nothing in the present record that invites a different conclusion.

For consideration in connection with the public interest and to support his claims of altruism and

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12/ Cf., Touche Ross & Co. v. S.E.C., 609 F.2d 570 (2d Cir. 1979).

13/ SEC v. Champion Sports Management, Inc., supra, at 534.

the adverse effects of the publicity he has received, Hirschfeld submitted numerous exhibits to his brief. Although those exhibits indicate that Hirschfeld is generous with his time and money in contributing to a number of worthy causes, and that he was subjected to a great amount of adverse publicity arising out of the aborted Champion venture, those considerations cannot dispel the concern that if Hirschfeld were allowed to practice before the Commission he would again abuse that privilege. The noted commendable qualities in Hirschfeld simply cannot assure against repetition of the offenses that have already required the Commission to devote a disproportionate part of its time and resources in repeated corrective injunctive actions against him. 14/

It is therefore concluded that to allow Hirschfeld to continue to appear and practice before the Commission without a strong showing, absent here, that he no longer poses a threat to the integrity of the Commission's processes and to the public interest would offer undue risk to the investing public. In view of the danger of a repetition of his

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14/ Contrary to the OGC position that a practitioner's "financial loss or damage to his reputation" is irrelevant on the question of protection of the integrity of the Commission's processes, it appears appropriate to consider those factors in evaluating the likelihood of repetition of the offensive conduct.

misconduct, it does not appear possible at this time to specify a time limit for the disqualification that is being imposed upon Hirschfeld. Re-admission to appear and practice before the Commission must await a showing over a period of time that he has regained the qualifications expected of Commission practitioners. As argued by the OGC, the conclusion based on this record must be that only a permanent disqualification from practice before the Commission can adequately safeguard the public interest. 15/

ORDER

IT IS ORDERED, pursuant to Rule 2(e)(3)(iii) of the Commission's Rules of Practice, 17 CFR 201.2(e)(3)(iii), that Richard Hirschfeld is hereby permanently disqualified from appearing or practicing before the Commission.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Rules of Practice.

Pursuant to Rule 17(f) of the Rules of Practice, this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen days

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15/ All proposed findings and conclusions submitted by the parties have been considered, as have their contentions. To the extent such proposals and contentions are consistent with this initial decision, they are accepted.

after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.

Warren E. Blair
Chief Administrative Law Judge

Washington, D.C.
December 13, 1985