

ADMINISTRATIVE PROCEEDING
FILE NO. 3-8056

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
MICHAEL KEITH HOWARD

INITIAL DECISION

Washington, D.C.
February 25, 1994

Warren E. Blair
Chief Administrative Law Judge

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SECURITIES AND EXCHANGE COMMISSION

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MICHAEL KEITH HOWARD) INITIAL DECISION
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APPEARANCES: Richard H. Walker, Regional Director,
Edwin H. Nordlinger, Kathryn A. Ashbaugh,
Edward K. McCarthy, Gretta J. Heaney, and
Marc B. Frimet, of the Commission's Northeast
Regional Office, for the Division of Enforcement.

Herbert M. Jacobi, for Michael Keith Howard.

BEFORE: Warren E. Blair, Chief Administrative Law Judge

These public proceedings were instituted by order of the Commission dated May 27, 1993 ("Order") issued pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether allegations made by the Division of Enforcement ("Division") against respondent Michael Keith Howard ("Howard") were true, and what, if any, remedial action would be appropriate in the public interest.

In substance, the Division alleged that Howard had been enjoined, on consent, by the United States District Court for the Southern District of New York from further violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

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

The findings and conclusions are based upon the preponderance of the evidence as determined by the record.

RESPONDENT

Howard resides in Huntington Station, New York and from in or about March, 1989 to about April, 1990 was a registered representative with Wellshire Securities, Inc. ("Wellshire"), a broker-dealer registered with the Commission from May 26, 1986 to April, 1, 1992. From in or about April, 1990 to in or about July, 1991 Howard was a registered representative at First Choice Securities Corp. ("First Choice") which was registered with the Commission as a broker-dealer from November, 1985 to May, 1992.

Howard became a registered representative at Lew Lieberman & Co., Inc. from about March 1, 1992 to July, 1992 and from January, 1993 to July, 1993 was a registered representative with Camelot Investment Corp. ("Camelot"). Currently Howard works as a "recruiter" with access to Camelot's offices and telephone lines, but he is not employed by that firm.

PERMANENT INJUNCTION

As a result of a complaint filed by the Commission against Howard and two other defendants, a permanent injunction was entered on May 12, 1993 by the United States District Court for the Southern District of New York enjoining Howard from violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in the offer or sale of securities, or in connection with the purchase or sale of securities. 1/ Howard consented to the entry of the permanent injunction without admitting or denying the allegations of the complaint. The permanent injunction remains in effect.

Public Interest

Having found that Howard has been permanently enjoined from engaging in fraudulent conduct in connection with the purchase and sale of securities and the offer and sale of securities, which injunction constitutes a basis on which the Commission may impose

1/ SEC v. William Joseph Caltabiano, Jr., 92 Civ. 4906 (RWS) (S.D.N.Y. May 12, 1993).

a remedial sanction, 2/ it is necessary to consider the remedial action appropriate in the public interest.

Underlying the permanent injunction are allegations that while Howard was associated as a registered representative with Wellshire and First Choice he made various misrepresentations and omitted material facts in the offer or sale and in connection with the purchase or sale of various "penny stocks" traded over-the-counter. The allegations specifically referred to Howard's making false statements about various issues of securities, making numerous baseless price predictions of rapid rises in the market price of the securities being offered and sold, and making false statements that his stock predictions were based on material inside information. Howard was alleged to have executed unauthorized trades in customer accounts and to have misrepresented the minimum number of shares of securities available for customer purchase. The complaint also alleged that Howard discouraged customer sell orders through high-pressure sales tactics and false and misleading statements. Howard allegedly committed at least fifty-one acts of fraud against at least twelve of his customers who incurred total losses of approximately \$146,000 through investing with Howard while he earned approximately \$32,000 in commissions from trades in the accounts of those customers.

In a summary of the charged violations Howard and his co-defendants were alleged to have utilized "boiler room" sales techniques and fraudulent sales practices to induce customer

2/ 15 U.S.C. §78o(b)(6)(A).

trading in certain over-the-counter securities recommended by Wellshire and First Choice 3/ during the periods they were employed as registered representatives with those firms. 4/ At the hearing Howard declined to testify in his own behalf, did not call any witnesses, and offered no documents for consideration in determining what, if any, remedial action was appropriate in the public interest.

The Division, pointing to the fraudulent and abusive sales practices alleged against Howard which were indicative that he acted with a high degree of scienter in his misconduct, argues that Howard has demonstrated that he is unfit to serve the public as a registered representative and that he deliberately ignored the fiduciary duty owed by registered representatives to investors. In consequence the Division asserts that it is in the public interest to bar Howard from association with a broker or dealer.

Howard concedes that the entry of the injunction is in itself a sufficient basis for the institution of these proceedings and

3/ Div. Ex. 2, at 1.

4/ As noted in Hanly v. SEC, 415 F.2d 589, 597, n. 14 (2d Cir. 1969), a "boiler room" usually is:

... a temporary operation established to sell a specific speculative security. Solicitation is by telephone to new customers, the salesman conveying favorable earnings projections, predictions of price rises and other optimistic prospects without a factual basis. The prospective buyer is not informed of known or readily ascertainable adverse information; he is not cautioned about the risks inherent in purchasing a speculative security; and he is left with a deliberately created expectation of gain without risk.

that conclusions may be drawn based upon the facts alleged in the complaint that led to the entry of the consent degree. However, Howard urges consideration be given to the fact that the Division did not introduce evidence from any customer allegedly victimized by him. "Howard believes that the lack of any customer complaints or actions taken against Howard by either the NASD or the SEC for any event after the events part of the Complaint is a far stronger statement of his integrity than lip-service assurances presented in the Administrative Hearing" 5/ He concludes with the request that no sanction or a minimal sanction be imposed because it has not been demonstrated that it is in the public interest to bar him from association with any broker-dealer.

Howard's arguments are not persuasive. He acknowledges that conclusions may be drawn from the facts alleged in the injunctive action complaint against him, but produced no evidence offsetting the impact of the allegations that through his fraudulent conduct at least 12 of his customers lost approximately \$146,000. His reliance upon his assertion that the lack of customer complaints or actions against him by regulatory authorities for any event after those alleged in the injunctive action is proof of his integrity is misplaced. It is reasonable to assume that after institution of the injunctive action Howard would not aggravate his situation by continuing the boiler-room tactics placed in question by the injunctive complaint. But that cessation of misconduct

5/ Michael Keith Howard's Post Hearing Brief, (December 23, 1993), at 6-7.

under the circumstances hardly demonstrates that Howard is a man of integrity who can be trusted to adhere to the high standards of conduct expected of registered representatives in the securities business.

Upon careful consideration of the record and the arguments and contentions of the parties, it is concluded that in the public interest Howard should be barred from association with any broker or dealer. There is nothing found in the record of these proceedings that tends to mitigate the egregious nature of the misconduct alleged in the complaint nor is there any evidence that Howard now recognizes the error of his past misconduct. There is nothing in the record to generate confidence in the likelihood of his future compliance with the securities law and regulatory provisions which were ignored by him in the past. 6/

O R D E R

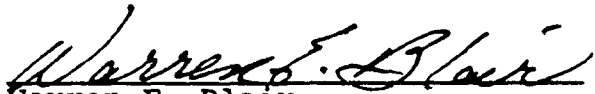
IT IS ORDERED that Michael Keith Howard is barred from association with a broker or dealer.

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

6/ All proposed findings and conclusions submitted to 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.

each party who has not, within fifteen days 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

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