

**ADMINISTRATIVE PROCEEDING
FILE NO. 3-8247**

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

In the Matter of)
)
)
STEVEN TELSEY and)
)
FIRST SECURITIES TRANSFER)
)
SYSTEMS, INC.)
_____)

INITIAL DECISION

**Washington, D.C.
September 21, 1994**

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

The Securities and Exchange Commission (Commission) initiated this proceeding on December 2, 1993, pursuant to Section 17A of the Securities Exchange Act of 1934 (Exchange Act). The Order Instituting Proceedings sets out allegations by the Commission's Division of Enforcement (Division) that Mr. Telsey had: (1) violated a 1974 Commission bar prohibiting his association with any broker, dealer, registered investment adviser, or registered investment company, (2) associated since March 13, 1991, with First Securities Transfer System, Inc. (First Securities), a transfer agent, when he was subject to a court-ordered injunction, (3) at least since March 13, 1991, controlled First Securities while the bar and injunction were in effect, and that First Securities filed a false registration statement with the Commission on August 3, 1992. On brief, the Division argues that the main allegation is that Mr. Telsey made false and misleading statements about his involvement with First Securities in First Securities's 1992 filing with the Commission (Division's Reply Brief, 2).

I held a hearing in New York city on February 1, 1994. The Division called one witness. I received 17 exhibits. 1/

Mr. Telsey, a non-lawyer, appeared pro se for himself and for First Securities. Mr. Telsey did not testify and I sustained an objection by the Commission's General Counsel to Mr. Telsey's request to call one of the Division counsel in the proceeding as

1/ I sustained Mr. Telsey's objection and did not allow in evidence a criminal indictment naming Mr. Telsey, dated June 27, 1973. Triumph Capitol's Form 10-K for 1990 is Exhibit 11 (Tr. 141-44). This Commission filing can also come into the record by official notice (Rule 14(d) of the Commission's Rules of Practice, 17 CFR 201.14(d)).

a witness.

The parties filed consecutive briefs. The last brief was filed by the Division on August 1, 1994. 2/

FINDINGS OF FACT

My conclusions are based on the record and my observations of the witness's demeanor. I applied preponderance of the evidence as the applicable standard of proof.

Respondents

Steven Telsey

Mr. Telsey has been actively engaged in some aspect of the securities business since 1960. In February 1974, the Commission found that during the period October 1971 through January 1972, Mr. Telsey, while a general partner at Axelrod & Company, formerly a registered broker-dealer, violated the antifraud provisions of the federal securities law (Stip. Facts No. 1). As a result of these findings, Mr. Telsey consented to a bar from association with any broker, dealer, registered investment adviser, or registered investment company (Steven Telsey, 3 SEC Docket 571 (February 22, 1974)). 3/ The bar issued in 1974 remains in effect against Mr. Telsey.

On March 13, 1991, Judge Louis Stanton, the United States District Court for the Southern District of New York, found that

2/ Respondent received an extended time to file his brief because of his pro se status and health problems.

3/ The Commission had no authority to bar someone from association with a transfer agent until 1987 (Tr. 7-8).

Mr. Telsey had violated the 1974 Commission bar by associating with four broker-dealers in the period between April 1984 and June 1986, and permanently enjoined him from willfully becoming or being associated with any broker, dealer, investment company, or investment adviser. The Court concluded that Mr. Telsey's attempts to conceal the commissions he received from his activities with a registered broker-dealer indicated that he knew that these activities violated the 1974 Commission bar order. The Court ordered Mr. Telsey to disgorge \$560,806.96, which represented the monies he received from these activities and accrued interest (SEC v. Steven Telsey, 89 Civ. 4775 (S.D.N.Y., Mar. 13, 1991)). Mr. Telsey did not pay this amount. 4/ The 1991 injunction against Mr. Telsey remains in effect.

It appears from the record that Mr. Telsey has always controlled Triumph Capital, a public company, and has almost always controlled its wholly owned subsidiary, First Securities. Mr. and Mrs. Telsey acknowledge owning at least ten percent of Triumph Capital's outstanding common stock from soon after its incorporation in 1986 through December 30, 1991 (Stip. Facts No. 6). As of June 30, 1990, Mr. and Mrs. Telsey owned 25.31 percent of Triumph Capital's outstanding stock (Joint Exhibit 11, handnumbered page 35). From April 1987 through December 31, 1991,

4/ Mr. Telsey filed a petition under Chapter 7 of the Bankruptcy Code on September 9, 1991. On complaint filed by the Commission, the Bankruptcy Court for the Southern District of Florida ruled that this debt was not dischargeable. On November 16, 1993, the District Court for the Southern District of Florida reversed, "by consent of the Commission; the appeal was withdrawn; and the Commission's debt was discharged". (Stip. Facts No. 3)

Mr. Telsey was president, secretary, treasurer, and a director of Triumph Capital, Inc. (Stip. Facts No. 6).

As an officer of Triumph Capital, Mr. Telsey signed a consent injunction entered by the United States District Court for the District of Columbia on March 20, 1991, noting violations by Triumph Capital of Section 13(a) of the Exchange Act and regulations requiring filing of certain reports and late filing notices (SEC v. Triumph Capital, Inc., Civil Action No. 90-2916 (D. C. March 25, 1991)).

Triumph Capital acquired all the outstanding common stock of First Securities, a Florida corporation, on April 27, 1987. Mr. Telsey's control of Triumph Capital put him in control of First Securities. Site visits by a Commission investigator in November 1991 and in June 1993 found Mr. Telsey exercising day-to-day management of First Securities's operations which consisted of two people, Mr. Telsey and an assistant (Tr. 29-30). Mr. Telsey has been Chair of First Securities's Board from April 1987 to the present. Mr. Telsey ran First Securities and was responsible for preparing First Securities TA-1 filing of August 3, 1992. First Securities listed Mr. Robert Zaubere as its President and a Director on forms filed with the Commission until March 1993 (Stip. Facts Nos. 4 and 5). 5/

In January 1992, Triumph Capital conveyed all the issued and

5/ In 1986, Mr. Zaubere was president of Hughes Capital Corporation, a blind pool acquisition company which has been the subject of numerous lawsuits filed by the Commission (Joint Exhibit No. 11, handnumbered page 34).

outstanding common stock of First Securities to XLR Corporation, a private company controlled by Mr. Telsey. Mr. and Mrs. Telsey have owned over 51 percent of the issued and outstanding stock of XLR Corporation since at least December 30, 1991 (Stip. Facts Nos. 7 and 8).

First Securities Transfer System, Inc.

First Securities, a Florida corporation with its principal place of business in Fort Lauderdale, Florida, has been registered as a transfer agent with the Commission since February 6, 1985. First Securities submitted a TA-W - Notice of withdrawal from registration as transfer agent signed by Steven Telsey as Chairman dated September 30, 1993. That notice has not become effective because this proceeding is pending.

Allegations

The first three allegations in the Order Instituting Proceedings are true.

1. In 1991 the United States District Court for the Southern District of New York in SEC v. Steven Telsey, No. 89 Civ. 4775 (S.D.N.Y. Mar. 13, 1991) found that Mr. Telsey violated the Commission bar (Tr. 22; Stip. Facts No. 2). This finding is conclusive evidence that Mr. Telsey violated the 1974 Commission bar as alleged.

2. and 3. At least since March 13, 1991, Mr. Telsey has controlled and been associated with First Securities. During this time period he was barred from being associated with any broker,

dealer, investment company, or investment adviser and he was subject to a permanent injunction (Tr. 21-22). However, Mr. Telsey is correct that neither his association nor his control status violated either the Commission bar issued in 1974 or the court injunction issued in 1991 (Tr. 18).

The only allegation that remains in dispute is whether First Securities's form TA-1 - Uniform form for registration as a transfer agent was false, and whether Mr. Telsey willfully caused First Securities to make this allegedly false filing on August 3, 1992. Form TA-1, consisting of seven questions on two pages, is to be filed with SEC Supplement to Form TA-1, and a specific schedule depending on the registrant's legal status - A for a corporation, B for a partnership, or C for a sole proprietorship.

First Securities submitted a Form TA-1, a Supplement, and a Schedule B for a partnership even though it indicated on the form that First Securities was a corporation.

I find that First Securities's August 3, 1992, filing was false because:

(1) The filing falsely represented that Robert Zaunere was President and a Director when Mr. Zaunere had none of the duties associated with either of these positions. Mr. Zaunere did not perform any executive or supervisory functions. He was called on an "as needed" basis to service the computer. He had no desk at First Securities's office and he was employed full-time elsewhere (Tr. 30-31). Ms. Connie Sloyan, First Securities's only full-time employee in addition to Mr. Telsey, believed that Mr. Telsey was

First Securities's President (Tr. 45-46). 6/ In June 1993, Mr. Zaunere was upset to find out that Mr. Telsey had represented to the Commission in August 1992 that he was First Securities's President (Tr. 52).

(2) Supplement to Form TA-1, question 2, asks whether any person not named in the schedules exercised or had the power to exercise control over the applicant's management or policies. First Securities falsely answered this question in the negative (Joint Exhibit 5).

In addition, First Securities filed a Schedule B and listed Mr. Zaunere, Ms. Sloyan, and XLR Corp. in a list of "partners" . First Securities did not file a Schedule A for corporations as it should have identifying Mr. Telsey as Chairman and a Director and noting that he exercised control over First Securities's management and policies, and noting further that the Commission had found a control affiliate of First Securities (Mr. Telsey) to have been involved in a violation of its regulations or statutes and had disciplined the control affiliate (Mr. Telsey) by restricting his activities.

(3) Supplement to Form TA-1, question 3, asks whether an individual who controls the firm (Mr. Telsey) had been enjoined by a court in connection with an investment related activity in the last ten years or had been disciplined by the Commission (Joint

6/ Ms. Sloyan was listed on the company's records as a company vice president but her duties consisted of processing certificates and administrative aspects of the business. Mr. Telsey was responsible for management decisions, signing checks, etc. (Tr. 37; Joint Exhibit No. 6).

Exhibit 5). First Securities falsely answered these questions in the negative.

First Securities did not file a Schedule A required for corporations and indicate on the schedule that a person named in the schedule exercised or had the power to exercise control over the applicant's management or policies, and that the Commission had found a control affiliate of the applicant (Mr. Telsey) to have been involved in a violation of its regulations or statutes and had disciplined the control affiliate (Mr. Telsey) by restricting his activities.

(4) The filing did not contain a Schedule A which identified Mr. Telsey as a member of First Securities's Board of Directors and described him as having a similar status and/or function as all the positions listed on the form except legal officer.

(5) The filing did not contain a Schedule A which showed that Mr. Telsey owned more than 5 percent of First Securities's equity securities.

The evidence is overwhelming that Mr. Telsey ran First Securities and that he willfully caused the false filing. Mr. Telsey's keen knowledge of securities regulation which was obvious at the hearing, his considerable experience at responsible positions in the securities industry, and the fact that the printed instructions on the Supplement to Form TA-1 are clear, make it totally implausible that he did not know that First Securities should have filed Schedule A as part of its Form TA-1 filing (Tr. 122). In addition, even the schedule First Securities did file,

schedule B for partnerships, called for information about persons who exercised or had the power to exercise control and First Securities did not identify Mr. Telsey on the schedule.

The fact that Mr. Telsey's name appeared on other First Securities's filings which did not require disclosure of his disciplinary record, supports my conclusion that Mr. Telsey deliberately did not identify himself as the person controlling and running First Securities in the TA-1 filing received August 3, 1992. For example, Steven Telsey signed First Securities's forms TA-2 - Form for reporting activities of transfer agents for the years ended June 30, 1991 and 1992 as Chairman (Stip. Facts No. 9). The form TA-2 for fiscal year 1992 was filed on August 3, 1992, the same day as the form TA-1 which does not mention his name. Mr. Telsey responded to the Commission's transfer agent examination as First Securities's Chairman on March 23, 1992, and he signed the TA-W form as First Securities's Chairman on September 30, 1993.

Finally, Mr. Telsey's record of flagrant, illegal behavior, including behavior aimed at concealing illegal conduct, is persuasive that Mr. Telsey deliberately made a false filing to conceal information about his relationship with First Securities.

7/

I reject Mr. Telsey's defenses. It is irrelevant to the issue

7 The District Court's Final Judgment of Permanent Injunction and Order of Disgorgement found that Mr. Telsey received compensation through prearranged profitable trades in his wife's account for work done in violation of a 1974 Commission bar. It was his attempt to conceal the commissions he received which caused the court to conclude that Mr. Telsey knew that his activities violated the bar. (Joint Exhibit 7).

whether or not persons on the Commission's staff knew since 1987 that he was associated with First Securities. Second, the fact that the Commission initiated the proceeding shortly before First Securities's TA-W filing became effective by operation of law has no bearing on whether the allegations are true. Finally, Mr. Telsey's representations that he has not been involved in the stock transfer business since September 30, 1993, and that First Securities was dissolved on October 1, 1993, do not resolve the issues in this proceeding.

Public Interest - Sanctions and Monetary Penalty

As relevant here, Sections 17A(c)(3) and 17A(c)(4)(C) of the Exchange Act direct the Commission to sanction transfer agents and persons associated with them where the transfer agent and/or person has willfully made or caused to be made a materially false or misleading application for registration or report, has willfully violated the Exchange Act, or has been permanently enjoined from acting as a broker, dealer, or investment adviser.

The Order Instituting Proceedings also cited Section 21B of the Exchange Act for application in this proceeding. That section authorizes the Commission to impose a civil penalty where it finds that a person has willfully violated the statute or has willfully caused someone to have made in a registration statement any false or misleading statement of material fact, or has omitted to state in any application or report a material fact which was required. Section 21B describes the three tiers of penalties and enumerates at least five public interest considerations.

I find that the Commission should revoke the transfer agent registration of First Securities, should bar Mr. Telsey from association with any transfer agent, and should impose a penalty of \$5,000 on Mr. Telsey and \$50,000 on First Securities. 8/

Applying the often cited criteria of Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd, 450 U.S. 91 (1981), Mr. Telsey committed a serious, blatant falsification when he willfully caused First Securities to file a registration statement that was materially false and omitted material information. His actions were fraudulent and deceitful, involved a high degree of scienter, and showed a deliberate disregard for regulatory requirements. 9/ Mr. Telsey has not admitted any wrongdoing or given any assurance

8/ This penalty is at the first tier and the Division requested the second tier, i.e., \$50,000 against Mr. Telsey and \$250,000 against First Securities.

9/ The record is not clear whether if Mr. Telsey had told the truth about his relationship with First Securities, the registration would have become effective. Neither the Commission bar nor the District Court injunction, on their face prohibit Mr. Telsey from being associated with a transfer agent. The Division contends that it would have had an opportunity to close the gap in Mr. Telsey's bar if First Securities's filing had disclosed Mr. Telsey's relationship with the firm and his disciplinary record in the securities industry (Tr. 11-12, 17-18, 23-24). I take this to mean that the Division would have recommended that the Commission hold a hearing on whether the registration should become effective, and it would have argued at a hearing that the registration should not be allowed to become effective because Mr. Telsey was subject to a court injunction which, when accompanied by a public interest finding, can be the basis of a sanction.

The evidence is persuasive that Mr. Telsey acted consciously to make sure that he would be able to operate as a transfer agent despite his disciplinary history in the securities industry. On brief, Mr. Telsey argues that he is already effectively barred from the stock transfer business, but at the hearing he took a different position (Response of Steven Telsey, 3; Tr. 23-25).

against future violations except to claim that First Securities is no longer in business. Mr. Telsey claimed at the hearing that First Securities's August 3, 1992, filing was "true and correct in every respect", however, inexplicably, he offered nothing to dispute the Division's evidence (Tr. 19-20). Mr. Telsey's disciplinary record indicates a strong likelihood that he will commit further violations if he is allowed to participate in the industry in any capacity.

On the positive side, there is no evidence that Mr. Telsey was unjustly enriched in the sense that First Securities received more than what was a fair price for the services it rendered, or that individual members of the public were damaged financially by his actions.

One of the most compelling considerations for the imposition of a penalty is deterring violations of the securities laws and regulations so as to preserve free and credible capital markets. Since measures by the Commission and the courts have to date not convinced Mr. Telsey to abide by the rules and regulations, I find it necessary to impose a penalty. 10/ The penalty will be at the lowest level, tier one, because of the positive elements noted above, because this is the first time Mr. Telsey has been assessed

10/ Triumph Capital's Form 10-K for the year ended June 30, 1990, states that the National Association of Securities Dealers, Inc. in April 1988, accepted an offer of settlement from Mr. Telsey which prohibited him for a period of five years from May 31, 1988, from making an application to become associated with an NASD member. The proceeding concerned allegations of violations of the NASD's Rules of Fair Practice (Joint Exhibit No. 11, handnumbered page 34).

a penalty, and since the evidence is that First Securities and Mr. Telsey are unable to pay at a more substantial level. As noted, Mr. Telsey filed a bankruptcy petition on October 9, 1991 under Chapter 7 of the Bankruptcy Code (Stip. Facts No. 3), and he appears pro se in this proceeding. According to Mr. Telsey, First Securities was dissolved on October 1, 1993 (Response of Steven Telsey, 2).

ORDER

Based on the findings and conclusion set forth above, 11/ I ORDER that:

1. the transfer agent registration of First Securities Transfer Systems, Inc. is hereby revoked and its notice of withdrawal from registration is not to become effective;

2. Mr. Steven Telsey is barred from association with any transfer agent;

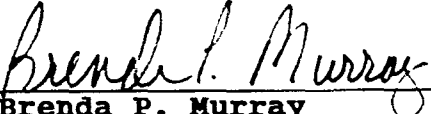
3. First Securities Transfer Systems, Inc. will pay a civil penalty in the amount of \$50,000 and Steven Telsey will pay a civil penalty in the amount of \$5,000. 12/

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

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

12/ Payment should be by certified check payable to the Securities and Exchange Commission, bearing on its face the caption Steven Telsey and First Securities Transfer Systems, Inc., Administrative Proceeding No. 3-8247. The check should be sent to the Office of the Comptroller, Room 2067, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, within 30 days of the issuance of this decision.

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
Chief Administrative Law Judge

Washington, D.C.
September 21, 1994