

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :
:
CHARLES PHILLIP ELLIOTT :
:

INITIAL DECISION

Washington, D.C.
October 24, 1990

Warren E. Blair
Chief Administrative Law Judge

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INITIAL DECISION

APPEARANCES: Charles C. Harper, William P. Hicks,
 Jeri D. Dresner and Trisha D. Sindler,
 of the Commission's Miami Branch Office,
 for the Division of Enforcement.

Charles Phillip Elliott, pro se.

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

These public proceedings were instituted by an order of the Commission dated October 23, 1989 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 the respondent, Charles Phillip Elliott ("Elliott"), were true, and what, if any, remedial action would be appropriate in the public interest. On June 20, 1990 the Commission issued an amended order ("Order") setting forth additional allegations against respondent.

In substance, the Division alleged that Elliott had been permanently enjoined by a United States District Court from further violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) and Rule 10b-5 thereunder and Section 15(a)(1) of the Exchange Act, and that a United States District Court had convicted Elliott of thirty-seven criminal counts which included violations of the anti-fraud provisions of the Investment Advisers Act of 1940 ("Advisers Act") and the Securities Act as well as commission of mail fraud and of aiding and abetting and conspiracy to commit the mentioned violations.

A letter from Elliott dated November 2, 1989 in which he denied the allegations was deemed a sufficient answer for the purposes of Rule 7 of the Rules of Practice. 1/ Since no appearance by counsel was filed, Elliott was advised in a letter dated November 7, 1989 of his right to counsel and of other rights he had if he chose to represent himself at the hearing. At the

1/ 17 CFR 201.7.

outset of the hearing held on July 17, 1990, Elliott acknowledged receipt of the letter of November 7, 1989 and stated that he was not being represented by counsel.

As part of the post-hearing procedures, successive filings of proposed findings, conclusions, and supporting briefs were specified. Timely filings were made by the parties. 2/

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

RESPONDENT

During the period of time relevant in these proceedings, Elliott, a resident of Naples, Florida, was the president, registered principal, and sole stockholder of Elliott Securities, Inc., a broker-dealer registered pursuant to the Exchange Act, and the president and controlling shareholder of Elliott Mortgage Company, Inc. ("Elliott Mortgage"), a Florida corporation. Additionally, he transacted business as Elliott Enterprises,

2/ In order to assist respondent, because of his financial condition, in the filing of copies of his counterstatement of proposed findings of facts and conclusions of law and supporting brief, respondent was directed to file his proposals and brief directly with the Division which was requested to make the seven copies required under Rule 22(c) of the Rules of Practice and to send respondent's original along with copies to the Commission. The Division has complied with that request, and has moved for leave to cease making copies of various documents respondent subsequently requested to be photocopied and forwarded. Inasmuch as the posthearing filings specified by Rule 16(e) of the Rules of Practice have been completed, the Division's motion is granted.

Elliott Real Estate, Inc., and Elliott Group, Inc.

PERMANENT INJUNCTION

As a result of a complaint filed by the Commission against Elliott, a permanent injunction was entered on March 31, 1987 by the United States District Court for the Southern District of Florida enjoining him from further violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 thereunder and Section 15(a)(1) of the Exchange Act in connection with the offer and sale of securities. 3/ The Court also appointed a receiver of Elliott, Elliott d/b/a Elliott Enterprises, Elliott Mortgage Company, Inc. and Elliott Securities, Inc. Elliott consented to the entry of the permanent injunction and to the appointment of the receiver without admitting or denying the allegations of the complaint. The permanent injunction remains in effect.

CRIMINAL CONVICTIONS

As alleged by the Division and admitted by respondent, Elliott was on March 19, 1990 found guilty of thirty-seven (37) criminal counts, including violations of the anti-fraud provisions of the Advisers Act, violations of the anti-fraud provisions of the Securities Act, mail fraud, aiding and abetting the mentioned violations, and conspiracy to commit the mentioned violations. 4/

3/ SEC v. Charles Phillip Elliott, Civil Action No. 87-12012-Civ-Hoeveler (S.D. Fla. March 31, 1987).

4/ United States of America v. Charles Phillip Elliott, 89-14-CR-Ft.M-10 (M.D. Fla. March 19, 1990).

On June 29, 1990, respondent was sentenced to fifteen years imprisonment. Elliott is presently free on bond pending the appeal of his criminal convictions.

PUBLIC INTEREST

Having determined that Elliott had been found guilty on March 19, 1990 of felonies which included violations of the anti-fraud provisions of the Securities Act and Advisers Act and mail fraud and had been permanently enjoined from engaging in certain conduct and practices in connection with the offer and sale of securities, it is necessary to consider the remedial action appropriate in the public interest.

Underlying the felony convictions and the permanent injunction was what the Court in passing sentence upon Elliott referred to as "a knowing massive fraud" with respect to which the Court stated ". . . it is difficult to understand how a person with Mr. Elliott's background and experience and business acumen not [sic] to realize that he was involved in a typical Ponzi scheme in which you take investments to pay back -- new capital and new principal and new investments to pay back interest on the old outstanding loans or securities or investments; and, sooner or later, that had to fall like all other similar schemes." 5/ As the record establishes, the Court was speaking of Elliott's participation for more than six years in a fraudulent scheme that resulted in Elliott, doing business as Elliott Enterprises, owing as of

5/ Division Exhibit 5, at 12.

January, 1987 approximately \$60 million dollars to 940 members of the investing public. The record further discloses that Elliott accomplished his fraudulent purposes by making false representations regarding the safety of the investment being offered and false claims of his schemes and Elliott Enterprises' uninterrupted business success. Substantial portions of the proceeds from the execution of his schemes were used by Elliott to support a luxurious lifestyle and for other personal benefits and he continued in that fashion until the Commission began its investigation in 1986 leading to the permanent injunction against him and the appointment of a receiver in April, 1987.

Pointing to the magnitude and gravity of the fraud, Elliott's criminal convictions, the permanent injunction against him, and his lack of contrition, the Division recommends that it is in the public interest to bar Elliott from association with any broker or dealer.

In his response to the Division's proposals, Elliott emphatically asserts, "Undeniably, it is the Division who caused the losses to the various lenders -- not Elliott." 6/ He bases that position upon his belief that the Division "moved improvidently, wreaklessly [sic] and foolishly to seek the drastic relief for liquidation of my companies with the subsequent disastrous consequences which have followed." 7/ Elliott ends his

6/ Elliott's Response to the Proposed Findings of Fact and Conclusions of Law, September 5, 1990, at 4.

7/ Id.

proposed conclusions of law with the proposal that, "It is in the public interest that the respondent be fully restored as a licensed principal and registered investment advisor." 8/ In an attempt to support that conclusion, he states that, "The only right just thing, and in the public interest, is that those who have been wrongfully accused be restored to their former status with all the rights, privileges and benefits pertaining thereto, including any economic remedy available under due process." 9/

Addressing the Division's reference to his lack of contrition, Elliott argues vehemently in his brief that remorse is reserved for the guilty and queries, "if one is innocent, should he change colors in order to accomodate [sic] a vindictive bureaucracy and in order to curry their favor for lesser sanctions?" 10/ His argument in that regard is in keeping with the position he takes at various points in his proposals and briefs that he was convicted of crimes he did not commit. 11/ Elliott does express sorrow over the financial plight of the defrauded investors, many of whom are elderly or aged and some of whom entrusted him with their life savings but he does so without accepting responsibility for causing those losses.

Upon careful consideration of the record and the arguments

8/ Supra, at 21.

9/ Id.

10/ Supra, at 23.

11/ See, e.g., Supra at 2, 7, 9, 20, and 24.

and contentions of the parties, 12/ it is concluded that in the public interest, Elliott should be barred from association with any broker or dealer.

The argument by Elliott that remorse cannot be expected to be displayed by innocent people is a valid one, but by the same token, steadfast refusal to accept guilt clearly evidences the fact that rehabilitation cannot be expected in a person convicted of crimes as is the case with Elliott. It is obvious from the record that Elliott has no comprehension of the nature or extent of his misconduct labeled by the sentencing judge as a "typical Ponzi scheme" and "a massive fraud." 13/ It is equally obvious from the

12/ On September 21, 1990 Elliott filed a motion to compel the Division to produce "a Two volume Comprehensive Financial Report as part of [Elliott's] Response to the Division's Findings of Fact & Conclusions of Law" Earlier, on September 17, the Division had declined a request by Elliott that it submit the Financial Report which apparently had been prepared by the accountants for the receiver at some date subsequent to the preparation of his "Initial Report" but which was not offered by the Division at the time the "Initial Report" was received in evidence as Division's Exhibit 7. The Division based its refusal to submit the Financial Report on the ground that the report was not part of the record. Elliott claims that he had not received a copy of the report until after the conclusion of the hearing and therefore could not have offered the report for admission in evidence. He contends that the inclusion of the report "is essential to the issues of the case and its inadmissibility would result in a great injustice to the respondent because it would preclude the very foundation upon which the response itself is made." It appears from the record, however, that the "Comprehensive Financial Report" would at best do no more than supplement the already sufficient evidence of the financial status of Elliott and his enterprises during the period in which the violations leading to Elliott's being enjoined and convicted were committed. Inasmuch as inclusion of the report would not affect the findings and conclusions herein, Elliott's motion is denied.

13/ Division Exhibit 5, at 12.

record that were Elliott allowed to remain in the securities business he would have no compunction about resuming the fraudulent practices the Commission was instrumental in stopping in 1987. Elliott cannot be expected to appreciate, much less live up to, the high standards of conduct expected of those engaged in the securities business and can only be regarded as a threat to the investing public. In order to protect the public interest nothing less than a bar from association with any broker or dealer can suffice. 14/

O R D E R

IT IS ORDERED that Charles Phillip Elliott 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 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

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

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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