

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60025/June 2, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13435

In the Matter of	:	
	:	
CHARLES F. LEWIS	:	ORDER MAKING FINDINGS AND
	:	IMPOSING REMEDIAL SANCTION
	:	BY DEFAULT
	:	

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) against Charles F. Lewis (Lewis or Respondent) on April 9, 2009, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleged that Respondent participated in a fraudulent offering of unregistered, non-exempt securities, and, as a result, he was enjoined from future violations of various provisions of the Securities Act of 1933 (Securities Act) and the Exchange Act by the U.S. District Court for the district of Colorado (district court).

The Division of Enforcement (Division) and the Office of the Secretary provided evidence that Respondent was served with the OIP in accordance with 17 C.F.R. § 201.141(a)(2)(i) on April 15, 2009. Respondent's Answer was due within twenty days after service of the OIP upon him. See 17 C.F.R. § 201.220(b); OIP at 2. By motion dated May 15, 2009, the Division moved for entry of default against Respondent pursuant to Rule 155(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.155(a).¹ No Answer has been received and no

¹ The Division's Motion for Default (Motion) included a Declaration of Timothy S. McCole (Decl.) with five attachments as follows: United States Post Office return receipt document demonstrating service of the OIP (Attach. 1); the district court's Order for Judgment by Default as to Lewis in SEC v. Capital Holdings, LLC, No. 1:03-cv-00923-REB-CBS (D. Colo. Dec. 19, 2008) (Attach. 2); the Commission's complaint in Capital Holdings (Attach. 3); the judgment in the parallel criminal case, United States v. Lewis, No. 04-cr-00103-REB-04 (D. Colo. May 5, 2008) (Attach. 4); and Judgment by Default as to Lewis entered in the district court in Capital Holdings (Dec. 28, 2008) (Attach. 5). I accept these attachments into evidence, 17 C.F.R. §

opposition to the Division's Motion has been filed. Respondent is therefore in default. See 17 C.F.R. §§ 201.155(a), .220(f).

FINDINGS OF FACT

Lewis, age 73, was a principal of Capital Holdings, LLC (Capital Holdings), a Montana company headquartered in Denver, Colorado. See OIP at 1. From at least September 2001 through May 2003, Lewis participated in a fraudulent offering of unregistered, non-exempt securities issued by Capital Holdings. Id. During the offering, Lewis was not registered with the Commission as a broker or dealer. Id.

Lewis worked directly with Norman E. Schmidt (Schmidt), who controlled Capital Holdings and two other entities that were involved in the fraudulent offering. See Decl., Attach. 3. Capital Holdings and the other two entities were solely in the business of issuing and selling interests in purported prime bank trading programs. See Decl., Attach. 3. Schmidt was not registered as a broker or dealer at any time during the offering. See Decl., Attach. 3.

The Commission's complaint in Capital Holdings alleged that, from at least September 2001 through May 2003, Lewis, Capital Holdings, and others, acting in concert with them, defrauded at least six hundred investors of approximately \$40 million by falsely promising that: (1) investor funds would be used as collateral to facilitate leveraged trading of financial instruments issued by major banks and governments and that investors would share in the trading profits; (2) investors would earn a fixed monthly return ranging from two to fifteen percent; (3) the safety of invested principal would be guaranteed; and (4) investors' funds would be fully insured. See Decl., Attach. 3. The Complaint alleged that, in reality, there was no trading program and that the defendants regularly misappropriated investor funds to pay undisclosed sales commissions, Ponzi payments, and personal expenses. Id.

On December 29, 2008, a judgment was entered against Lewis in Capital Holdings, permanently enjoining him from future violations of Securities Act Sections 5(a), 5(c), and 17(a), and Exchange Act Sections 10(b) and 15(a) and Rule 10b-5. See Decl., Attach. 5. The judgment was entered by default, since, as the district court judge noted, Lewis failed to answer or otherwise defend the action against him. See Decl., Attach. 2 and Attach. 5.

Additionally, a parallel criminal case, based upon the same conduct at issue in Capital Holdings, was brought against Lewis. See Decl. at 2. Lewis was convicted on ten criminal counts involving conspiracy, mail fraud, wire fraud, securities fraud, and money laundering, as well as aiding and abetting those offenses. See Decl., Attach. 2. Among the charges for which he was convicted, Lewis was found to have violated 18 U.S.C. §§ 1341 and 1343, which make it a crime to use the mails and interstate wire communications, respectively, to carry out a scheme to defraud, and Securities Act Sections 17(a) and 24. Id. As a result of the criminal convictions, Lewis is currently incarcerated at the United States Penitentiary in Leavenworth, Kansas.

201.111(c), and take official notice of the court documents filed in the civil and criminal cases against Lewis, 17 C.F.R. § 201.323.

CONCLUSIONS OF LAW

Under Exchange Act Section 15(b)(6)(A)(iii), which incorporates Exchange Act Section 15(b)(4)(C), the Commission may impose a remedial sanction on a person associated with a broker or dealer, consistent with the public interest, if the person has been enjoined from engaging in conduct in connection with the purchase or sale of any security. See 15 C.F.R. §§ 78o(b)(4)(C) and 78o(b)(6)(A)(iii). Furthermore, Exchange Act Section 15(b)(6)(A)(ii), incorporating Exchange Act Section 15(b)(4)(B), similarly allows for the imposition of a remedial sanction on an associated person if the person was convicted of any felony (i) involving the purchase or sale of any security, (ii) arising out of the conduct of the business of a broker or dealer, (iii) involving the misappropriation of funds, among other crimes, or (iv) involving the violation of 18 U.S.C. §§ 1341 or 1343, among other specifically named sections.

As noted in more detail above, Lewis was enjoined for violating the antifraud provisions of the federal securities laws. He was also convicted of felonies involving the sales of securities and conducting business as an unregistered broker or dealer. He misappropriated investor funds and violated 18 U.S.C. §§ 1341 and 1343.

Lewis was a broker, although unregistered, within the meaning of the Exchange Act at the time of his underlying misconduct. Following Section 3(a)(4)(A) of the Exchange Act, Lewis was a “person engaged in the business of effecting transactions in securities for the account of others,” 15 U.S.C. § 78c(a)(4)(A). Additionally, Lewis worked with Schmidt, also an unregistered broker. As a broker himself and through his work with Schmidt, Lewis was also a “person associated with a broker” with the meaning of Section 3(a)(18) of the Exchange Act, 15 U.S.C. § 78c(a)(18). The fact that Lewis was not associated with a registered broker or dealer during the time of his wrongdoing does not insulate him from a bar. See Vladislav Steven Zubkis, 86 SEC Docket 2618 (Dec. 2, 2005), recon. denied, 87 SEC Docket 2584 (Apr. 13, 2006).

Therefore, the record establishes the statutory basis for imposing a remedial sanction against Lewis.

The Public Interest

To determine whether sanctions under Section 15(b) of the Exchange Act are in the public interest, the Commission considers six factors: (1) the egregiousness of the respondent’s actions; (2) whether the violations were isolated or recurrent; (3) the degree of scienter; (4) the sincerity of the respondent’s assurances against future violations; (5) the respondent’s recognition of the wrongful nature of his or her conduct; and (6) the likelihood that the respondent’s occupation will present opportunities for future violations. No one factor is controlling. See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff’d on other grounds, 450 U.S. 91 (1981). Remedial sanctions are not intended to punish a respondent, but to protect the public from future harm. See Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

Lewis was part of a large conspiracy that lasted for almost two years and defrauded hundreds of investors of millions of dollars. Lewis was found, in prior criminal and civil cases,

to have acted willfully in violating many provisions of the federal securities laws, most importantly the antifraud provisions. Not only has Lewis failed to provide assurances against future violations or to recognize the wrongful nature of his conduct, he also has failed to answer this proceeding or the Commission's complaint in district court.

The Commission has noted that "the fact that a person has been enjoined from violating the antifraud provisions 'has especially serious implications for the public interest.'" Michael T. Studer, 57 S.E.C. 890, 898 (2004) (quoting Marshall E. Melton, 56 S.E.C. 695, 713 (2003)). "Conduct that violates the antifraud provisions of the federal securities laws is . . . subject to the severest of sanctions under the securities laws." Jose P. Zollino, 89 SEC Docket 2598, 2608 (Jan. 16, 2007); Melton, 56 S.E.C. at 713. The existence of such an injunction can indicate the appropriateness of a bar from participation in the securities industry. See Michael Batterman, 57 S.E.C. 1031, 1043 (2004); Melton, 56 S.E.C. at 709-710.

In view of the foregoing, and consistent with the public interest and for the protection of investors, Lewis should be barred from association with any broker or dealer.

ORDER

IT IS ORDERED THAT, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Charles F. Lewis is barred from association with any broker or dealer.

Robert G. Mahony
Administrative Law Judge