

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 52161 / July 29, 2005

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 2410 / July 29, 2005

Admin. Proc. File No. 3-8802

In the Matter of

JESSE M. TOWNSLEY, JR.

ORDER DENYING IN PART PETITION TO VACATE ADMINISTRATIVE BAR ORDER

Jesse M. Townsley, Jr., the former president of Townsley Associates & Co., Inc., a former registered broker-dealer and investment adviser, has petitioned to vacate a Commission order imposing on Townsley a bar from association with a broker, dealer, investment company, investment adviser, or municipal securities dealer. 1/ The Division opposes Townsley's request. For the reasons set forth below, we deny Townsley's petition.

In 1994, the Commission filed a civil injunctive action against Townsley. 2/ The complaint alleged that, from 1989 through 1993, Townsley and Townsley Associates participated in the distribution of unregistered securities consisting of interests in The Twenty Plus Investment Club ("Club"). The complaint further alleged that Townsley and Townsley Associates knowingly or recklessly made materially false and misleading statements and omissions in connection with the offer, purchase, and sale of interests in the Club, including statements and omissions concerning payments received by Townsley in connection with the Club's activities. On September 6, 1995, with Townsley's consent, the United States District Court for the Western District of New York permanently enjoined Townsley and Townsley

1/ Jesse M. Townsley, Jr., and Townsley Associates & Co., Inc., Securities Exchange Act Rel. No. 36201 (Sept. 7, 1995), 60 SEC Docket 485.

2/ SEC v. The Twenty Plus Inv. Club, Litigation Rel. No. 13983 (Feb. 28, 1994), 56 SEC Docket 562.

Associates 3/ from violating Sections 5 and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b-5. 4/

On the basis of the injunction, we instituted administrative proceedings. Townsley submitted an offer of settlement of the proceedings, without admitting or denying the allegations, consenting to the entry of our order. We barred Townsley from association with any broker, dealer, investment company, investment adviser, or municipal securities dealer. 5/

Townsley now requests that the Commission vacate the 1995 bar order. Townsley asserts that the bar order has prevented him from becoming registered as a commodity trading advisor with the National Futures Association, a position he needs "due to a severe financial hardship." Townsley acknowledges that he consented to the bar when imposed by the Commission in 1995. He asserts that, at that time, he had no intention of re-entering the securities industry. He was pro se and did not have the legal knowledge or the finances to "prevent the settlement from happening, nor to file any litigation to overturn the settlement after it happened."

As an initial matter, we reject Townsley's attempt to dispute the allegations that led to the injunction. We have long held that a consent injunction cannot be attacked in an administrative proceeding. 6/ Although the District Court made no findings in connection with the injunction it imposed, allegations in the Division's complaint are given "considerable weight" in assessing whether a bar or other administrative sanction may be in the public interest. 7/ The injunction against Townsley served as a proper basis for the 1995 bar imposed by the Commission.

In support of his petition to vacate the 1995 bar order, Townsley now challenges the validity of the allegations in the civil injunctive proceeding. He claims that the Division failed to prove that the Club was a limited partnership and thus that the interests in the Club were

3/ SEC v. The Twenty Plus Investment Club, Townsley & Associates, Inc., and Jesse M. Townsley, Jr., 94 CV 6090T (W.D.N.Y. Sept. 6, 1995).

4/ 15 U.S.C. §§ 77e and 77q(a); 15 U.S.C. § 78j(b); and 17 C.F.R. § 240.10b-5.

5/ Jesse M. Townsley, Jr., 60 SEC Docket at 486. We also revoked the registration of Townsley Associates as an investment adviser. Townsley Associates previously had withdrawn its registration as a broker-dealer.

6/ Martin R. Kaiden, 54 S.E.C. 194, 208 (1999). See also Demitrios Julius Shiva, 52 S.E.C. 1247 (1997). Commission Rule 202.5(e), 17 C.F.R. § 202.5(e), prohibits a respondent from consenting to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for the proceedings.

7/ Charles Phillip Elliott, 50 S.E.C. 1273, 1277 (1992), aff'd, 36 F.3d 86 (11th Cir. 1994) (per curiam).

securities. Townsley also asserts that he had no intention of harming investors. He blames any investor losses on the bad publicity resulting from the injunctive action, which he asserts "destroyed" the Club, and the liquidation of Club assets required as part of the settlement of the civil proceedings.

We have stated that administrative bars should "remain in place in the usual case and be removed only in compelling circumstances." ^{8/} This exercise of caution before modifying or lifting administrative bars "ensures that the Commission, in furtherance of the public interest and investor protection, retains its continuing control over such barred individuals' activities." ^{9/} Consideration of a range of factors guides the public interest and investor protection inquiry. ^{10/} Such factors include: the nature of the misconduct at issue in the underlying matter; the time that has passed since issuance of the administrative bar; the compliance record of the petitioner since issuance of the administrative bar; the age and securities industry experience of the petitioner, and the extent to which the Commission has granted prior relief from the administrative bar; whether the petitioner has identified verifiable, unanticipated consequences of the bar; the position and persuasiveness of the Division of Enforcement's response to the petition for relief; and whether there exists any other circumstance that would cause the requested relief from the administrative bar to be inconsistent with the public interest or the protection of investors.

Consistent with this approach, we have determined that there are no compelling circumstances here that would warrant vacating the 1995 bar order. The nature of the misconduct at issue, fraud in the sale of unregistered securities, involved serious violations of the securities laws. Less than ten years have passed since the misconduct at issue and the imposition of the bar. ^{11/} We generally first grant incremental relief in our cases vacating bars. ^{12/} However, Townsley has not been employed or sought permission to associate with an entity regulated by the Commission since the imposition of the 1995 bar. Townsley's inability to become registered as a commodities trading advisor was a consequence of the bar that he should have anticipated.

^{8/} Edward I. Frankel, Securities Exchange Act Rel. No. 49002 (Dec. 29, 2003), 81 SEC Docket 3778, 3785; Stephen S. Wien, Exchange Act Rel. No. 49000 (Dec. 29, 2003), 81 SEC Docket 3758, 3765-66; Ciro Cozzolino, Exchange Act Rel. No. 49001 (Dec. 29, 2003), 81 SEC Docket 3769, 3775.

^{9/} Edward I. Frankel, 81 SEC Docket at 3785; Stephen S. Wien, 81 SEC Docket at 3766; Ciro Cozzolino, 81 SEC Docket at 3775.

^{10/} Edward I. Frankel, 81 SEC Docket at 3784-85; Stephen S. Wien, 81 SEC Docket at 3765; Ciro Cozzolino, 81 SEC Docket at 3775.

^{11/} See Edward I. Frankel, 81 SEC Docket at 3786; Ciro Cozzolino, 81 SEC Docket at 3776.

^{12/} Salim B. Lewis, Exchange Act Rel. No. 51817 (June 10, 2005), ___ SEC Docket ___.

In 1982, prior to our action, the Commodity Exchange Act provided that Commission sanctions were statutory disqualifications for purposes of registration under the Commodity Exchange Act. 13/

For the reasons stated above, we find that the public interest and investor protection will not be served if Townsley is permitted to function in the securities industry without the safeguards provided by the 1995 bar order. Accordingly, we decline to vacate the bar against association with a broker, dealer, or investment adviser. We have determined, however, that it is appropriate to modify the bar against Townsley by vacating the portion of the bar order prohibiting Townsley from association with an investment company or a municipal securities dealer. 14/

Thus, IT IS ORDERED that the 1995 order be, and it hereby is, vacated insofar as it bars Jesse M. Townsley, Jr. from association with any investment company or municipal securities dealer.

By the Commission.

Jonathan G. Katz
Secretary

13/ See Futures Trading Act of 1982, Pub. L. No. 97-444 (codified as amended at 7 U.S.C. § 12a(2)(C)).

14/ Compare Peter F. Comas, Exchange Act Rel. No. 49894 (June 18, 2004), 83 SEC Docket 251.