SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 2681 / December 4, 2007

Admin. Proc. File No. 3-8424

In the Matter of

CHARLES E. GAECKE

ORDER DENYING IN PART PETITION TO VACATE ADMINISTRATIVE BAR ORDER

Charles E. Gaecke, the former president of Crescent Capital, Inc., a former registered investment adviser, seeks to vacate a July 20, 1994 Commission bar order ("Bar Order") entered with his consent. The Division of Enforcement has opposed the grant of relief. For the reasons set forth below, we have determined to deny Gaecke's petition.

On July 20, 1994, we issued an order instituting and settling administrative proceedings against Gaecke. 1/ Without admitting or denying the matters set forth in the order, Gaecke consented to findings that he willfully aided and abetted Crescent Capital's diversion of $123,000 from a client's brokerage account; aided and abetted the firm's failure to provide clients with quarterly statements as to funds held in custody, to have client funds verified by an annual surprise audit, and to file annual audited balance sheets with the Commission; and filed Forms ADV that falsely stated that Crescent Capital did not have custody of client funds and omitted requisite audited balance sheets. Based on this conduct, we barred Gaecke from association with any broker, dealer, municipal securities dealer, investment company, or investment adviser. 2/

Since the entry of the Bar Order, Gaecke has published an investment newsletter, apparently in reliance on the publisher's exclusion from the definition of investment adviser in the Investment Advisers Act of 1940, as interpreted by the United States Supreme Court in

1/ Charles E. Gaecke, Investment Advisers Act Rel. No. 1426 (July 20, 1994), 57 SEC Docket 567.

2/ In addition to the bar, we ordered Gaecke to cease and desist from violations of Sections 206(1), 206(2), 206(4), and 207 of the Investment Advisers Act of 1940 and Rule 206(4)-2 thereunder, and to disgorge $123,000, plus interest, with the disgorgement and interest waived based upon Gaecke's demonstrated inability to pay.

Lowe v. SEC. 3/ In Lowe, the Supreme Court held that the activities of Lowe and three corporations in publishing an investment newsletter fell within the Advisers Act's exclusion from the definition of "investment adviser" for "the publisher of any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation." 4/ The Supreme Court concluded that Lowe's publication of the newsletter did not cause him to be either an "investment adviser" or a person associated with an investment adviser.

From Gaecke's submission, it appears that Gaecke has become involved in a dispute with a competitor and two former employees who have started a firm that provides a newsletter similar to Gaecke's newsletter. According to Gaecke, the competitor has approached his clients and represented that Gaecke's newsletter is "illegal" because of the bar imposed on Gaecke. Gaecke asks that we "lift, rescind or modify" the Bar Order so that he can reassure clients of the legality of the newsletter under Lowe.

We have stated that administrative bars should "remain in place in the usual case and be removed only in compelling circumstances." 5/ 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." 6/ In evaluating requests to lift or modify administrative bars, we consider whether such an action would be "consistent with the public interest and investor protection under all the facts and circumstances." 7/ Consideration of a range of factors guides the public interest and investor protection inquiry. 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

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3/ 472 U.S. 181 (1985).

4/ Id. at 204.

5/ Jesse M. Townsley, Securities Exchange Act Rel. No. 52161 (July 29, 2005), 85 SEC Docket 4341, 4343; Salim B. Lewis, Exchange Act Rel. No. 51817 (June 10, 2005), 85 SEC Docket 2472, 2481 (reiterating the Commission's position that bars will only be vacated "in compelling circumstances" and that they "will remain in place in the usual case").

6/ Townsley, 85 SEC Docket at 4343. As we noted in Edward I. Frankel, Exchange Act Rel. No. 49002 (Dec. 29, 2003), 81 SEC Docket 3778, 3785 n.20, "significant Commission interests would be impaired if a modification standard is adopted that too readily lifts consent orders against violators -- by settling with the Commission, violators receive significant benefits and the Commission, in turn, advances investors' interests through an order that permits continuing control over respondents."

7/ Lewis, 85 SEC Docket at 2482.

experience of the petitioner, and the extent to which we have 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. 8/

We have determined that there are no compelling circumstances here that warrant vacating the Bar Order. The nature of the misconduct at issue, particularly the misappropriation of advisory client funds, involved serious violations of the federal securities laws. Only thirteen years have passed since imposition of the bar. 9/ We generally first grant incremental relief in our cases vacating bars. 10/ However, Gaecke has not been employed or sought permission to associate with an entity regulated by the Commission since issuance of the bar. Gaecke is sixty years old and has been in the investment advisory business for thirty-five years. He has been publishing his investment newsletter for at least the past ten years. Gaecke has not identified any verifiable, unanticipated consequences of the bar. To the extent that he complains that current or future clients might refuse to do business with him because of the bar, we have stated that reputational harm is a foreseeable consequence of the imposition of sanctions 11/ and is not grounds in itself for vacating the bar. 12/

The principal reason for Gaecke's petition appears to be his desire to obtain a ruling from the Commission confirming the legality of his newsletter under Lowe. However, we do not

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8/ Townsley, 85 SEC Docket at 4343; Lewis, 85 SEC Docket at 2481.

9/ See, e.g., Lewis, 85 SEC Docket at 2482 (noting that "[t]he fourteen-year period since the bar order is not unduly lengthy"); Frankel, 81 SEC Docket at 3786 (denying petition to vacate bar after thirty-one years).

10/ Townsley, 85 SEC Docket at 4343; Lewis, 85 SEC Docket at 2483.

11/ See, e.g., Donald H. Parsons, Exchange Act Rel. No. 32948 (Sept. 23, 1993), 55 SEC Docket 112, 113 (stating that the use of a bar order to attack or impugn respondent's reputation was a "foreseeable consequence" at the time the order was entered).

12/ See Gerard A. Miller, Administrative Proceeding File No. 3-6569 (Sept. 21, 1992), at 9 (stating that "reputational harm is not sufficient in itself to justify vacating an order because such 'harm' is a natural and intended consequence of the imposition of sanctions"), petition denied, Miller v. SEC, 998 F.2d 62, 64 (2d Cir.) (observing that "it is not enough to merely allege 'continuing embarrassment . . . in business relationships' as the basis for dissolving or modifying a decree") (citation omitted), cert. denied, 510 U.S. 1024 (1993) .

believe that this entitles Gaecke to any relief. In Anthony J. Benincasa, 13/ the respondent there filed a motion seeking clarification of a bar order that prohibited him from, inter alia, associating with an investment company. The respondent argued that it was unclear whether the bar order applied to his association with companies excluded from the definition of "investment company" in the Investment Company Act of 1940. In denying the motion to clarify, we stated:

> The Commission issued the Order pursuant to its authority under the Company Act, and therefore the definition of "investment company" in the Company Act applies when that term is used in the Order. Accordingly, the bar from association with an investment company does not extend to entities that are excluded from the definition of "investment company" in the Company Act. We agree with the Division [of Enforcement] that there is no reason to clarify the Commission's Order with respect to the bar prohibiting [the respondent] from associating with an investment company. 14/

In this case, we issued the Bar Order pursuant to our authority under the Advisers Act, and the definition of "investment adviser" in the Advisers Act applies when that term is used in the Bar Order. Accordingly, as in Benincasa, the bar from association with an investment adviser does not extend to activities excluded from the definition of "investment adviser" in the Advisers Act. 15/ We do not express any opinion with regard to whether Gaecke's activities are subject to the exclusion.

Gaecke states that he may seek to associate with unidentified "investment advisors and broker-dealers" at some point in the future. This statement does not constitute a sufficient basis to modify his bar. If Gaecke subsequently wishes to request modification of his bar in order to associate with an investment adviser, we would expect his application to the Commission to identify the adviser and to provide information about the proposed association, including, among other things, the terms and conditions of his employment, the supervision to which he would be subject, and the qualifications, experience, and disciplinary record of the proposed supervisor. If he wishes to associate with a registered entity that is not a member of a self-regulatory organization, he must apply to us for consent to associate in accordance with the procedures set out in our Rule of Practice 193. 16/ This application "must show that the proposed association

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13/ 54 S.E.C. 1222 (2001).

14/ Id. at 1223.

15/ Id.

16/ 17 C.F.R. § 201.193

would be consistent with the public interest." 17/ If Gaecke wishes to seek to associate with a broker-dealer notwithstanding his bar, he must apply to the appropriate self-regulatory organization for that broker-dealer. In any event, while the bar remains in place, we have the flexibility to consider any proposed associations and to evaluate the nature and extent of the supervision to be exercised over Gaecke. Given the serious nature of Gaecke's past misconduct, we believe that the public interest and the protection of investors require continuation of this control.

For the reasons stated above, we find that the public interest and investor protection will not be served if Gaecke is permitted to function in the securities industry without the safeguards provided by the Bar Order. Accordingly, we decline to vacate the bar against Gaecke from association with any investment adviser. We have determined, however, that it is appropriate to modify the bar by vacating the portion of the order prohibiting Gaecke from association with a broker, dealer, investment company, or municipal securities dealer. 18/

Accordingly, IT IS ORDERED that the petition of Charles E. Gaecke to vacate the bar order entered against him on July 20, 1994, as it applies to the bar from association with any investment adviser be, and it hereby is, DENIED; and it is further

ORDERED that the 1994 order be, and it hereby is, VACATED insofar as it bars Gaecke from association with any broker, dealer, investment company, or municipal securities dealer.

By the Commission.

Nancy M. Morris
Secretary

17/ Id. (Preliminary Note).

18/ See Townsley, 85 SEC Docket at 4344; Lewis, 85 SEC Docket at 2484; Peter F. Comas, Exchange Act Rel. No. 49894 (June 18, 2004), 83 SEC Docket 251, 253.