INITIAL DECISION RELEASE NO. 447
ADMINISTRATIVE PROCEEDING
FILE NO. 3-14572

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	:	INITIAL DECISION
	:	January 4, 2012
ALFRED CLAY LUDLUM, III	:	

APPEARANCES: Dean M. Conway and Devon Leppink Staren for the Division of Enforcement, Securities and Exchange Commission

Alfred Clay Ludlum, III, pro se

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

Background

The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP) on September 29, 2011, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that Alfred Clay Ludlum, III (Ludlum) was enjoined from future violations of Sections 5 and 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, and from aiding and abetting violations of Sections 203, 204, and 207 of the Advisers Act in SEC v. Ludlum, No. 2:10-cv-07379-MSG (E.D. Pa. Sept. 21, 2011).

On October 31, 2011, Ludlum filed a one-page Answer to the OIP with two attachments: (1) a January 10, 2011, letter he submitted to the court in Ludlum; and (2) a whistleblower complaint that Ludlum represents he submitted to the Commission. In his Answer, Ludlum denied the allegations in the OIP; however, at a prehearing conference on October 31, 2011, Ludlum did not dispute that the court in Ludlum had entered a judgment, on his consent, that enjoined him from violating the antifraud provisions of the securities statutes.[1] Answer at 1; Tr. 7, 10. I determined at the prehearing conference that no issues of material fact exist and granted the Division of Enforcement (Division) leave to file a Motion for Summary Disposition (Motion). Tr. 11; See 17 C.F.R. § 201.250(a).

[1] The transcript of the prehearing conference will be cited as "Tr. __."

The Division filed its Motion and accompanying Memorandum of Law in Support (Memorandum) on November 17, 2011. The Memorandum includes the following eleven exhibits: (A) the Commission's Complaint in Ludlum, filed on December 20, 2010 (Complaint); (B) the Consent of Defendant Alfred Clay Ludlum, III in Ludlum, filed on September 14, 2011 (Consent); (C) the Judgment as to Defendant Alfred Clay Ludlum, III in Ludlum, filed on September 21, 2011 (Judgment); (D) a Form D filed by Printz Financial Group; (E) an Order in Ludlum filed on March 15, 2011); (F) a June 9, 2011, letter to Ludlum transmitting a CD containing the Commission's non-privileged investigative file; (G) portions of a transcript of the September 7, 2011, deposition of David P. Danks, portions of the transcript of the August 19, 2011, deposition of Candice Blue, and portions of a transcript of the July 27, 2011, deposition of Susan Leslie Meyer; (H) additional pages of the transcript of the August 19, 2011, deposition of Candice Blue; (I) Orders in Ludlum filed on August 3, and August 22, 2011; (J) an e-mail Ludlum sent on September 8, 2011; and (K) portions of a transcript of Ludlum's investigative testimony on August 12, 2009. I take official notice of Exhibits A-K.[2] See 17 C.F.R. § 201.323.

Ludlum filed an Opposition to the Division's Motion (Opposition) dated December 8, 2011. The Division filed its Reply in Support of Its Motion (Reply) on December 16, 2011.

Motion for Summary Disposition

A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the maker of the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250. The Division maintains that its Motion should be granted based upon the Judgment imposing permanent injunctions. Memorandum at 3; Reply at 1.

Ludlum generally denies most of the factual allegations in the Division's Motion. Opposition. However, pursuant to his Consent, Ludlum is not permitted to contest the factual allegations of the Complaint in any disciplinary proceeding before the Commission based on the entry of the injunction in Ludlum. Ex. B at 5. Ludlum's Consent also requires that he adhere to the Commission's policy "'not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings.' 17 C.F.R. § 202.5." Id.

I GRANT the Division's Motion. See 17 C.F.R. § 201.250. There is no dispute that Ludlum was enjoined from future violations of Sections 5 and 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, and from aiding and abetting violations of Sections 203, 204, and 207 of the Advisers Act in Ludlum. Ex. C at 1-5.

Sanctions in the Public Interest

Sections 203(e) and 203(f) of the Advisers Act state that the Commission shall order certain sanctions, if it is in the public interest, when a person is associated, seeking to become

[2] I will cite to these exhibits as "Ex. __ at __."

associated, or, at the time of the alleged misconduct, was associated or was seeking to become associated with an investment adviser, is enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. 15 U.S.C §§ 80b-3(e), (f).

The Commission has held that when an injunction is entered by consent, it "will rely on the factual allegations of the injunctive complaint in determining the appropriate remedial action in the public interest, taking into account what those allegations reflect about the seriousness of the underlying misconduct and the relative culpability of the respondent." Marshall E. Melton, Advisers Act Release No. 2151 (July 25, 2003), 56 S.E.C. 695, 711. The Commission has also held that "[t]he allegations in an injunctive complaint in an action settled by consent are entitled, in a subsequent proceeding before [the Commission], to considerable weight for purposes of assessing the public interest." David M. Haber, Exchange Act Release No. 35564 (Apr. 5, 1995), 52 S.E.C. 201, 202, citing Charles Phillip Elliott, Exchange Act Release No. 31202 (Sept. 17, 1992), 50 S.E.C. 1273, 1277, aff'd 36 F.3d 86 (11th Cir. 1994). The Complaint alleged as follows:

Ludlum is the founder, president, and sole control person of Printz Capital Management, LLC (Printz Capital), Printz Financial Group, Inc. (Printz Financial), and PCM Global Holdings, LLC (PCM Global) (collectively, Printz Entities). Ex. A at 4. Printz Capital is a Delaware limited liability company formed in May 2006 and was registered with the Commission as an investment adviser since September 2006.[3] Id. Prior to starting Printz Capital, Ludlum worked from 1991 to 2006 as a registered representative at three broker-dealers and held Series 7 and Series 24 securities licenses. Id.

Printz Capital provided non-discretionary investment advice relating to securities and insurance products, primarily to individual advisory clients. Id. at 5. Until August 2009, Printz Capital's client assets were held at Pershing Advisor Solutions LLC (Pershing), a registered broker-dealer. Id. Pursuant to its agreement with Pershing, Printz Capital was authorized to execute trades for advisory clients and deduct fees directly from client accounts, which were then transferred to a Pershing account in Printz Capital's name. Id. These deductions were reflected as "Management Fees" on account statements sent by Pershing to Printz Capital's clients. Id. Ludlum was the sole individual responsible for providing investment advice to Printz Capital's clients and for directing and controlling the process of collecting advisory fees from those clients. Id. at 6.

From June 2006 to July 2008, Ludlum conducted an offering of up to $500,000 in Printz Capital membership interests, and he sold Printz Capital promissory notes. Id. at 7. In the course of this offering, Ludlum raised approximately $315,000 from twenty investors, at least seventeen of whom were Printz Capital advisory clients, and at least five of whom were not accredited investors within the meaning of Rule 501(a) of Regulation D. Id. From March 2007 through July 2007, Ludlum conducted an offering of up to $800,000 in PCM Global promissory notes. Id. Pursuant to this offering, Ludlum raised approximately $150,000 from four investors, one of whom was a Printz Capital advisory client. Id. From July 2008 through June 2009,

[3] Printz Capital's investment adviser registration was revoked on June 27, 2011. Advisers Act Release No. 3223.

Ludlum conducted an offering of up to $4 million in Printz Financial common and preferred stock, and he sold Printz Financial promissory notes. Id. In the course of this offering, Ludlum raised approximately $235,000 from fourteen investors who were Printz Capital advisory clients, and at least five of whom were not accredited investors. Id.

The Printz Entities' promissory notes, membership interests, and common and preferred stock constituted securities within the meaning of Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act. Id. However, these securities offerings were not registered with the Commission or in any state, and no exemption from registration was applicable to them. Id. at 8. A Form D notice was not filed in connection with the Printz Financial stock sales, although the offering documents stated that the offering was being made in reliance on Regulation D. Id.

Ludlum knowingly, or recklessly, misrepresented to investors in Printz Capital and Printz Financial, including Printz Capital advisory clients, that their funds would be used as working capital to support and build the businesses of those two companies when, in fact, he used those funds primarily to cover his own personal expenses and to repay other investors. Id. at 8. Similarly, Ludlum knowingly, or recklessly, misrepresented to PCM Global investors, including at least one Printz Capital advisory client, that their funds would be used for a Costa Rican real estate investment. Id. Instead, Ludlum immediately transferred the investments into a Printz Capital account and spent the money primarily on himself or to repay other investors. Id.

The total amount of the Printz Entities offerings was at least $5.3 million. Id. at 7. Between May 2006 and August 2009, Ludlum funneled approximately $852,000 that he fraudulently obtained from investors and Printz Capital advisory clients, which was comingled with approximately $100,000 in revenues earned from Printz Capital's advisory business and funds transferred from Ludlum's personal bank accounts. Id. at 10. During this time, Ludlum directly withdrew more than $445,000 from these three business accounts in the form of wire transfers to his personal bank and securities accounts, cash withdrawals, and checks written to himself and his family trusts. Id. Ludlum also transferred approximately $40,000 to himself through at least five other business and personal banking and securities accounts under his sole control. Id. For example, Ludlum received a $50,000 wire transfer into a PCM Global bank account from an investor who was told her funds would be used for an investment in Costa Rican real estate. Id. However, five days after the funds were received, Ludlum transferred the $50,000 to Printz Capital's primary account, and three days later he transferred the entire amount directly into his personal bank account. Id. at 10-11. Similarly, one day after receiving $10,000 from an advisory client who was led to believe that he was investing in Printz Financial, Ludlum wrote $10,000 worth of checks to himself and his family trust. Id. at 11.

In addition to these direct withdrawals, Ludlum also spent approximately $251,000 from the three business accounts to support a lavish lifestyle for himself and his friends, including: approximately $44,000 in rent for his luxury riverside condominium; almost $56,000 on bars and restaurants, including approximately $6,600 spent at a Philadelphia "gentleman's club;" over $23,000 on various shopping expenses; approximately $25,000 on various entertainment expenses; over $8,000 on groceries; approximately $32,000 on hotels and travel expenses; over $26,000 on car-related expenses; and over $37,000 on insurance, medical, and dental bills for

him and his children. Id. Between May 2006 and August 2009, Ludlum also paid approximately $105,000 out of the three business accounts and another approximately $50,000 out of three other Printz Entity business accounts to existing investors without disclosing that he was using investor funds to repay existing investors. Id. at 9-10. As of July 2009, Ludlum had a combined total of less than $2,500 in the approximately seventeen banking and securities accounts under his control. Id. at 12.

In 2007, Ludlum convinced a Printz Capital advisory client to provide him with two short-term, no-interest business loans totaling approximately $80,000. Id. This client had already purchased a $10,000 promissory note in October 2006, which, along with the $80,000 loan, represented more than half of her total liquid assets of less than $140,000. Id. In soliciting the loans, Ludlum misrepresented to his client that he intended to use the money to fund investments in a Miami real estate deal and a bra company called Candy Straps LLC. Id. In addition, Ludlum told this client that, at least with respect to the first loan of $43,500, she could also receive a "bonus" of $10,000 or 30% of her investment if one or both of the business deals were successful. Id. In fact, however, the vast majority of the loan proceeds was not spent in furtherance of any Miami real estate deal or the Candy Straps LLC business. Id. Instead, these funds were deposited into Printz Capital's primary operating account where they were comingled with other investor funds and used by Ludlum to enrich himself and pay his personal expenses. Id.

In addition, Ludlum stole approximately $72,000 from the accounts of three Printz Capital advisory clients and transferred those funds to accounts controlled by him without the clients' authorization. Id. As with the authorized Printz Entity investments, these deductions were reflected as "Management Fees" on the Pershing account statements sent to the three clients. Id. at 12-13. As with the authorized Printz Entity investments and the fraudulently obtained loan proceeds, Ludlum used the stolen client funds primarily to enrich himself and support his lifestyle. Id. at 13. For example, in December 2008, Ludlum made a $25,000 unauthorized "Management Fee" deduction from one of his advisory client's accounts, and on the same day, Ludlum transferred the funds to a Printz Capital bank account, funneled the funds through a Printz Financial bank account, and transferred the $25,000 to his own personal bank account. Id.

The Commission considers the following Steadman factors in making public interest considerations with respect to sanctions:

> [T]he egregiousness of the [respondent's] actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the [respondent's] assurances against future violations, the [respondent's] recognition of the wrongful nature of his conduct, and the likelihood that the [respondent's] occupation will present opportunities to commit future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

The Commission has stated that antifraud violations merit the severest of sanctions when considering the public interest factors. Melton, 56 S.E.C. at 713. Ludlum entered a consent in a

proceeding that alleged he acted fraudulently as a fiduciary in dealings with some of his most trusting and financially unsophisticated clients. Ex. A at 1-2. The uncontestable allegations in the Complaint demonstrate that Ludlum's actions were egregious and recurrent in that over a period of approximately three years, Ludlum defrauded investors out of approximately $852,000, of which approximately $700,000 was raised through unregistered offerings of equity and debt securities, from at least twenty-seven investors located in at least eleven states, at least twenty-one of whom were advisory clients of Printz Capital. Ex. A at 6, 10. It is also an uncontestable allegation that Ludlum derived substantial financial benefit from this fraudulent scheme in that Ludlum used most of the funds to, among other things, support his lavish lifestyle and pay his personal expenses. Ex. A at 10-13. The district court in Ludlum has yet to determine the disgorgement amount, with prejudgment interest, and civil penalties to impose on Ludlum, pursuant to Section 20(d) of the Securities Act, Section 21(d)(3) of the Exchange Act, and Sections 209(e) and 209(f) of the Advisers Act. Ex. C at 5-6.

The likelihood of future violations if Ludlum is allowed to participate in the securities industry is enormous. As late as September 8, 2001, Ludlum viewed his Consent in Ludlum in which he neither admitted or denied the allegations as a victory, and informed people that the government would end up paying him money as a whistleblower. Ex. J. It appears from the irrelevant arguments he raised at the prehearing conference and in his Opposition that Ludlum's objective is simply to delay as long as possible a final resolution of this proceeding. Tr. 5-11; Opposition. Ludlum has not provided any meaningful assurances against future violations or indication that he recognizes the wrongful nature of his conduct.

The overwhelming evidence is that the public interest requires that Ludlum be barred from participating in the securities industry in the broadest possible way. The Division argues that a permanent associational bar pursuant to Section 203(f) of the Advisers Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), is in the public interest. Memorandum at 10-11, 15. Ludlum takes no position on sanctions.

Dodd-Frank amended Section 203(f) of the Advisers Act to authorize the Commission to bar a person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (NRSRO) (collateral bar). See 15 U.S.C § 80b-3(f) (2010). Prior to Dodd-Frank, which was signed into law on July 21, 2010, Section 203(f) empowered the Commission to bar a person from being associated with an investment adviser. See 15 U.S.C § 80b-3(f) (2006). The issue here is the application of the collateral bar based on Ludlum's conduct, which occurred prior to Dodd-Frank. The Commission has not yet ruled on this issue.[4]

The leading case on retroactivity is Landgraf v. USI Film Products, 511 U.S. 244, 269-70 (1994), where the Court stated that a statute is impermissibly retroactive when it "attaches new legal consequences to events completed before [the statute's] enactment." Pre-Dodd-Frank,

[4] Petitions for Review in John W. Lawton, Initial Decision Release No. 419 (Apr. 29, 2011) and Evelyn Litwok, Initial Decision Release No. 426 (Aug. 4, 2011) are pending before the Commission.

Ludlum's alleged misconduct subjected him to an associational bar from the investment adviser industry pursuant to Section 203(f) of the Advisers Act, and, in addition, he would have been subjected to bars from association with a broker, dealer, municipal securities dealer, or transfer agent. See 15 U.S.C. § 78o(b)(6) (2006) (persons associated with a broker or dealer); 15 U.S.C. § 78o-4(c)(4) (2002) (persons associated with a municipal securities dealer); 15 U.S.C. § 78q-1(c)(4)(C) (2002) (persons associated with a transfer agent). Thus, these collateral bars now specifically authorized by Dodd-Frank do not attach new legal consequences to Ludlum's pre-Dodd-Frank conduct. However, bars from association with municipal advisors and NRSROs in Section 203(f) of the Advisers Act did not exist at the time of Ludlum's conduct, and they attach new legal consequences to his conduct and are thus impermissibly retroactive. See 15 U.S.C § 80b-3(f) (2010). For this reason, even though Ludlum's participation in the securities industry should be prohibited to the maximum extent possible, these associational bars cannot be applied to him.

Order

I ORDER, pursuant to Section 203(f) of the Investment Advisers Act of 1940, that Alfred Clay Ludlum, III be barred from association with an investment adviser, broker, dealer, municipal securities dealer, or transfer agent. See 15 U.S.C § 80b-3(f).

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice. 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice. 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occurs, the Initial Decision shall not become final as to that party.

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Brenda P. Murray
Chief Administrative Law Judge