

INITIAL DECISION NO. 69

ADMINISTRATIVE PROCEEDING
FILE NO. 3-8457

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of)
)

TIMOTHY MOBLEY)
)
_____)

INITIAL DECISION
JULY 14, 1995

APPEARANCES: William J. Gaynor and David S. Kempers for the Division of
Enforcement, Securities and Exchange Commission

Gregory J. Sherwin for Respondent Timothy Mobley

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

This administrative proceeding began when the Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (Order) on August 25, 1994, pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act). The Commission directed that a public hearing be held on the allegations of illegal conduct by Timothy Mobley (Mr. Mobley) advanced by the Commission's Division of Enforcement (Division). ^{1/}

Mr. Mobley's answer raised as an affirmative defense the proposition that the five-year federal statute of limitations at 28 U.S.C §2462 bars the Commission from taking any remedial action based on the allegations in the Order. An administrative law judge struck that defense on November 10, 1994, and the Commission affirmed the judge's ruling on January 23, 1995.

No civil penalty is sought to be imposed in this proceeding. We recently issued an order in Howard Rubin [Securities Exchange Rel. No. 35179 (December 30, 1994), 58 SEC Docket 1478], holding that Section 2462 does not apply to proceedings brought under Section 15(b) of the Securities Exchange Act that seek

^{1/} The Order alleges that:

(1) in the period September 1986 until June 1988, Mr. Mobley willfully violated and willfully aided and abetted violations of Section 17(a) of the Securities Act of 1933 (Securities Act), and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

(2) in the period September 1986 until June 1988, Mr. Mobley willfully aided and abetted violations of Sections 15(c) and 17(a) of the Exchange Act and Rules 15c1-2 and 17a-3(a)(9) thereunder; and

(2) on March 17, 1994, the United States District Court for the District of Nevada, after trial, found that Mr. Mobley violated and aided and abetted violations of all the laws and rules cited above, and enjoined Mr. Mobley from any future violations. The court found that Mr. Mobley had given false answers under oath to the Commission and had "shown an appalling lack of candor in his trial testimony." SEC v. Thomas Bell, et al., CV-S-92-1083 HDM-LRL (D. Nev. March 17, 1994).

only remedial sanctions. For the reasons stated in that order, we affirm Judge Kuhlmann's ruling.

At prehearing conferences on December 6, 1994 and February 7, 1995, Mr. Mobley's counsel evidenced an intent to waive the hearing and to appeal to the courts Mr. Mobley's claim that the action was barred by the statute of limitations. On February 24, 1995, I cancelled the hearing scheduled for that day in Los Angeles, CA, and granted a Division motion, which Mr. Mobley did not oppose, to waive the hearing, to receive documents into evidence, and to establish a briefing schedule.

Pursuant to an agreement of the parties, the record consists of twelve items: Order; Answer; specific motions, filings in opposition, and orders; Division's Pre-hearing Brief on the Issue of Collateral Estoppel; a certified copy of the Final Judgment of Permanent Injunction Against Timothy Mobley entered by the United States District Court for the District of Nevada (SEC v. Thomas Bell, et al., CV-S-92-1083 HDM-LRL (D. Nev. March 17, 1994)); a certified copy of the Notice Pursuant to Section 19(d) of the Exchange Act issued by the Board of Governors of the National Association of Securities Dealers (NASD) on September 21, 1994 (In the Matter of the Continued Association of Timothy Mobley as a Registered Representative with California Network Capital, Inc.); and the signed Waiver of Hearing by Timothy Mobley.

The parties filed consecutive briefs and proposed findings of fact and conclusions of law. I received the last brief on April 13, 1995. I have considered all proposed findings and conclusions and all contentions, and I accept those that are consistent with this decision. I have applied preponderance of the evidence as the applicable evidentiary standard.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The allegations set out in the Order are the same as those which the court decided in SEC v. Thomas Bell, et al., CV-S-92-1083 HDM-LRL (D. Nev. March 17, 1994). 2/ Division's Pre-hearing Brief on the Issue of Collateral Estoppel at 3. Mr. Mobley did not appeal the district court's Final Judgment of Permanent Injunction Against Timothy Mobley.

Mr. Mobley, a resident of San Diego, CA., became a licensed securities broker in early 1986 when he was about 22 years of age. From June 1986 until approximately July 1988, he worked as a registered representative with registered broker-dealers in Las Vegas, NV. From approximately October 1987 until February 1988, he also worked as an assistant trader. The Court found that as of March 17, 1994, Mr. Mobley was employed in the securities industry. 3/

Between June 1986 to approximately July 1988, Mr. Mobley directly and willfully violated and aided and abetted violations of Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by engaging knowingly or recklessly in fraudulent sales practices with respect to the offer and sale of securities. 4/ In the period June 1986 to January 1988, Mr. Mobley willfully aided and abetted the violations of his broker-dealer employer, Stoneridge Securities, Inc., of Sections 15(c) and 17(a) of the

2/ In his answer, Mr. Mobley admits "that the court entered a final judgment of permanent injunction, the terms of which speak for themselves."

3/ At a prehearing on February 7, 1995, Mr. Mobley's counsel stated that his client was not active in the securities industry. Tr. 4.

4/ The court found that Mr. Mobley's actions established these violations "beyond a shadow of a doubt." SEC v. Thomas Bell, et al., CV-S-92-1083 HDM-LRL, slip op. at 12 (D. Nev. March 17, 1994).

Exchange Act, and Rules 15c1-2 and 17a-3(a)(9) thereunder. Mr. Mobley exhibited a high degree of scienter in that he knew or was reckless in not knowing that two of the initial public offerings in which he participated were schemes to defraud the public; that he did not disclose to his clients that the broker-dealer would not permit sales of the securities unless there was a buy order of comparable size ("no net sale policy"); that his commissions were as high as 70 percent of the customer's investment; that on the buy back following the IPO the broker-dealer had stripped the warrants from the original units of common stock and stock purchase warrants; and that he gave false testimony to the Commission. SEC v. Thomas Bell, et al., CV-S-92-1083 HDM-LRL, slip op. at 8-9, 16 (D. Nev. March 17, 1994).

Mr. Mobley gave false testimony to the Commission while under oath in 1988. In 1993, Mr. Mobley filed a sworn declaration containing false information in connection with the allegations that were the basis of the court action and this administrative proceeding. In 1994, Mr. Mobley "displayed an appalling lack of candor in connection with his testimony in the civil action in United States District Court for the District of Nevada." SEC v. Thomas Bell, et al., CV-S-92-1083 HDM-LRL, slip op. at 9-10, 16 (D. Nev. March 17, 1994).

In the civil action, Judge Mary Johnson Lowe, after trial, permanently restrained and enjoined Mr. Mobley from violating of Section 17(a) of the Securities Act, Sections 10(b) of the Exchange Act and Rule 10b-5 thereunder; from aiding and abetting violations of Section 15(c) of the Exchange Act and Rule 15c1-2 thereunder; and from causing any registered broker or dealer from violating Section 17(a) of the Exchange Act and Rule 17a-3(a)(9) thereunder.

Mr. Mobley comes within the definition of someone who is subject to a statutory disqualification from association with a broker-dealer because he willfully violated and willfully aided and abetted violations of the securities statutes, and because he is the subject of a permanent injunction in connection with the purchase or sale of securities. Exchange Act, Section 3(a)(39)(F). The NASD may, and in some cases shall, bar a person who is subject to a statutory disqualification from being associated with a member. Exchange Act, Section 15A(g)(2). On September 21, 1994, the NASD denied Mr. Mobley's application to continue his employment as a registered representative associated with a broker-dealer. The NASD's decision was based on the seriousness of Mr. Mobley's violations, his false testimony to the Commission, and the fact that he opened a personal securities account at his employer in the name of another person in which he executed his own securities transactions.

I reject Mr. Mobley's argument that the decision in Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., U.S. , 114 S.Ct 1439 (1994) made his aiding and abetting violations irrelevant because the court found there was no aiding and abetting liability under the Exchange Act. Central Bank was issued after the issuance of the permanent injunction against Mr. Mobley, and, according to this record, the permanent injunction against Mr. Mobley has not been modified.

I reject Mr. Mobley's counsel's proposed finding that there is no evidence of any wrongdoing by Mr. Mobley while he was employed by two broker-dealers following these violations. The district court found that Mr. Mobley's declaration that he had no complaints against him while he was employed by one of these broker-dealers was untrue. SEC v.

Thomas Bell, et al., CV-S-92-1083 HDM-LRL, slip op. at 10 (D. Nev. March 17, 1994).

PUBLIC INTEREST

Since Mr. Mobley willfully violated the securities laws and was permanently enjoined for conduct which occurred while he was associated with a broker or dealer, I am required to decide whether it is the public interest to sanction Mr. Mobley as provided for in Sections 15(b) and 19(h) of the Exchange Act.

Mr. Mobley chose not to introduce any evidence on his behalf.

Mr. Mobley merits the severest sanction when his actions are measured against the criteria specified in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), aff'd, 450 U.S. 91 (1981):

the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of defendant's assurances against future violations, defendant's recognition of the wrongful nature of his conduct, and the likelihood that defendant's occupation will present opportunities for future violations.

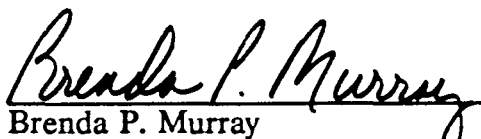
The judge in the civil action, who observed Mr. Mobley's demeanor and assessed his candor, found that he "has not sincerely recognized the wrongful nature of his conduct and has not given sincere assurance that it will not occur again," and that "in view of the severity of the fraud and the extensive participation by Mobley, . . . there is a reasonable likelihood of future violations of the federal securities laws." SEC v. Thomas Bell, et al., CV-S-92-1083 HDM-LRL, slip op. at 17 (D. Nev. March 17, 1994).

The unrefuted evidence makes it abundantly clear that Mr. Mobley's participation in the securities industry puts the public interest and investors at significant risk.

ORDER

Based on the findings and conclusions set forth above, I ORDER that Timothy Mobley is barred from association with any broker or dealer and from association with any member of a national securities exchange or registered securities association.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice (17 C.F.R. 201.17(f)). Pursuant to that rule, this initial decision shall become the final decision of the Commission as to each party who has not filed a petition for review pursuant to Rule 17(b) within 15 days after service of the initial decision upon him, unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to a party. If a party timely files a petition for review, or the Commission acts to review as to a party, the initial decision shall not become final as to that party.


Brenda P. Murray
Chief Administrative Law Judge

Washington, D.C.
July 14, 1995