

INITIAL DECISION RELEASE NO. 455
ADMINISTRATIVE PROCEEDING
FILE NO. 3-14610

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

In the Matter of :
TERRY HARRIS : INITIAL DECISION
: March 19, 2012
:

APPEARANCES: Edward G. Sullivan for the Division of Enforcement, Securities and Exchange Commission

Terry Harris pro se

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

Background

The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP) on November 1, 2011, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that, following a jury trial, Terry Harris (Harris) was found guilty of six counts of fraud and two counts of registration violations in State of Alabama v. Terry Harris, CC 07-1624 (Ala. Cir. Ct. Feb. 4, 2011). Harris was ordered to make restitution of \$1,646,944, and is serving a twenty-five year prison sentence in the Limestone Correctional Facility in Harvest, Alabama.

Harris filed an Answer on January 4, 2012, with several attachments, in which he argued that the Commission has no jurisdiction to bring this proceeding because he was not associated, or seeking to become associated, with a registered investment adviser at the time of the

misconduct.¹ Answer at 2. Harris does not dispute that he was convicted in Alabama v. Harris as alleged in the OIP. OIP at 2; Answer at 2; Prehearing Tr. 2.

I held a prehearing conference on December 27, 2011, at which I: (1) explained that the Commission had jurisdiction to bring an administrative proceeding where a person acted as an investment adviser or an associated person even though the person was not a registered investment adviser or formally associated or seeking to become associated with an investment adviser at the time of the illegal conduct;² (2) determined that there were no material facts in dispute and gave the Division of Enforcement (Division) leave to file a motion for summary disposition; and (3) took official notice of Alabama v. Harris. Prehearing Tr. 18; 17 C.F.R. §§ 201.250(a), .323.

At the prehearing conference, Harris admitted that he was convicted of six counts of fraud and two counts of registration violations, and that he was serving a twenty-five year sentence under the supervision of the Alabama Department of Corrections. Prehearing Tr. 4-5. The Division stated that Harris was found guilty of selling unregistered securities (count one); failure to register as an investment adviser (count four); and securities fraud (counts six, seven, and nine through twelve). Prehearing Tr. 12.

On January 23, 2012, the Division filed a Motion and Memorandum of Law in Support of Summary Disposition (Division's Motion) and several exhibits. Exhibit A is a Declaration of Randy McNeill (McNeill Declaration); Exhibit A-1 is the press release issued by the Alabama Securities Commission on February 8, 2011; Exhibit A-2 is the press release issued by the Alabama Securities Commission on March 22, 2011; and Exhibit B is the judicial record in Alabama v. Harris.

My order at the prehearing conference and Orders issued December 28, 2011, and February 16, 2012, called for Harris to file a Brief in Opposition to the Division's Motion. See Prehearing Tr. 18-20; Order Following Prehearing Conference (Dec. 28, 2011), Order Postponing Dates for Filings (Feb. 16, 2012). However, on February 23, 2012, Harris filed a pleading titled, Respondent's Motion and Memorandum of Law in Support of Summary Disposition (Harris's Motion). Harris's Motion repeats the arguments advanced in his Answer,

¹ Exhibit A consists of materials relating to the State of Georgia and Wealth Builders International, Inc.; Exhibit B is a grand jury indictment for Harris filed May 4, 2007, in the State of Alabama, Jefferson County, Circuit Court of the Tenth Judicial Circuit; Exhibit C is a single sheet headed "Alabama Judicial Center Data Center Case Action Summary Continuation," dated February 10, 2011, stating that Counts 2, 3, 5, & 8 are dismissed; and Exhibit D is the same form that states the defendant is guilty of failure to register as an investment adviser and concludes "Sentencing and/or probation hearing is set on the 25th day of March 2011."

² Vladislav Steven Zubkis, Securities Exchange Act of 1934 (Exchange Act) Release No. 52876 (Dec. 2, 2005), 86 SEC Docket 2618, 2627 recon. denied, Exchange Act Release No. 53651 (Apr. 13, 2006), 87 SEC Docket 2584; Scott B. Hollenbeck, Exchange Act Release No. 58847 (Oct. 24, 2008), 94 SEC Docket 11080.

i.e., that the Commission should dismiss the proceeding for lack of personal jurisdiction. Exhibits A-D to Harris's Motion are the same as the exhibits to his Answer.

On March 8, 2012, the Division filed a "Reply to Harris's Response to its Motion for Summary Disposition, or in the Alternative, Division's Response to Harris's Motion for Summary Disposition" (Division's Reply). The Division disputes Harris's legal arguments and points out that Harris's Motion does not bear his signature. The Division maintains that Harris is subject to Advisers Act Section 203, that the allegations cover Wealth Builders International, Inc., (Wealth Builders) and other entities that Harris controlled, and that the McNeill Declaration and the certified copy of the criminal file establish conclusively that Harris operated a fraudulent scheme with conduct akin to that of an investment adviser. Division's Reply at 2-4.

I accept into evidence all the exhibits attached to the pleadings.

Motion for Summary Disposition

Rule 250(b) of the Commission's Rules of Practice provides that a motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. 17 C.F.R. § 201.250(b). I GRANT the Division's Motion because it meets both of these criteria. I DENY Harris's Motion because it does not satisfy the criteria for summary disposition. 17 C.F.R. § 201.250(b). In addition, Harris did not request, and was not granted, leave to file the motion. 17 C.F.R. § 201.250 (a).

Findings of Fact and Conclusions of Law

The findings and conclusions herein are based on the entire record. I applied preponderance of the evidence as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 102 (1981). I have considered and rejected all arguments and proposed findings and conclusions that are inconsistent with this Initial Decision.

Harris is a fifty-three year old former resident of Birmingham, Alabama, who founded Wealth Builders, and was CEO of Network 2000, both headquartered in Birmingham, Alabama. McNeill Declaration, Ex. A-1. In June 2003, the Alabama Securities Commission acted to shut down Wealth Builders and froze \$2.5 million that remained of the approximately \$4.7 million that Harris raised from approximately 1,767 investors from May 2002 through March 2003. Division's Motion at 4; McNeill Declaration at 2, Ex. A-1.

In May 2007, a grand jury returned a twelve count indictment naming Harris as the defendant who committed violations of the Alabama Securities Act. Division's Motion, Exhibit B. According to a statement by the Alabama Securities Commission:

[N]either Harris nor his companies were registered to conduct securities business in Alabama as required by law. [The Alabama Securities Commission's] investigation revealed that Harris and [Wealth Builders] engaged in offering investment advice to others related to the value of, purchasing and selling

securities. The [Alabama Securities Commission] investigation also determined that Harris provided false financial statements of profits to investors and did not use investor funds as represented, resulting in substantial losses that were hidden from investors. Further, the investigation revealed that Harris' claims of his educational background and trading expertise were fabricated.

McNeill Declaration, Exhibit A-1.

On February 4, 2011, in Alabama v. Harris, Harris was found guilty on the following eight counts:

1. Sale of unregistered securities.
2. Acting as an investment advisor without being registered.
3. Fraud in the sale of securities for providing false investment profits (he created fictitious returns).
4. Fraud as an investment advisor for providing false investment profits.
5. Fraud in the sale of securities for claiming that he had a degree in accounting.
6. Fraud as an investment advisor for claiming that he had a degree in accounting.
7. Fraud in the sale of securities for operating a Ponzi scheme.
8. Fraud as an investment advisor for operating a Ponzi scheme.

Division's Motion at 9; McNeill Declaration, Ex. A-1. Following the jury verdict, on March 21, 2011, Circuit Judge Laura Petro sentenced Harris to twenty-five years in prison for violating provisions of the Alabama Securities Act and ordered him to pay \$1,646,944.08 in restitution to victims. McNeill Declaration, Exhibit A-2.

Section 203(f) of the Advisers Act requires the Commission to impose certain sanctions on persons associated with investment advisers where the person has been convicted within the prior ten years of any felony involving the purchase or sale of any security or the conduct of an investment adviser, and it is in the public interest to do so. Harris is subject to Advisers Act Section 203(f) because at the time of the illegal conduct, he was acting as a person associated with an unregistered investment adviser, Wealth Builders.³ See Alabama v. Harris; Vladislav Steven Zubkis, Securities Exchange Act of 1934 (Exchange Act) Release No. 52876 (Dec. 2, 2005), 86 SEC Docket 2618, 2627 recon. denied, Exchange Act Release No. 53651 (Apr. 13, 2006), 87 SEC Docket 2584; Scott B. Hollenbeck, Exchange Act Release No. 58847 (Oct. 24, 2008), 94 SEC Docket 11080.

³ Advisers Act Sections 202(a)(11), (17) define an investment adviser as "any person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities" and an associated person as any officer or controlling person of an investment adviser. The evidence is that Harris was also acting as an unregistered investment adviser. Motion at 3 n.1, 4; McNeill Declaration, A-1 at 1.

The Commission considers a wide variety of factors when determining the public interest, including whether respondent's conduct was egregious or recurrent, and the respondent's scienter, assurances against future violations, recognition of the wrongdoing nature of his conduct, and likelihood of future violations. Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see also Joseph J. Barbato, 53 S.E.C. 1259, 1282 n.31 (1999); Donald T. Sheldon, 51 S.E.C. 59, 86 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995). Deterrence is also a factor to be considered. See Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963).

Raising at least \$4.7 million from approximately 1,767 investors by fraudulent means over at least a ten-month period was egregious and recurrent. McNeill Declaration, Exhibit A-1 at 2. Harris misled investors as to the rates of return they could expect, he misled them as to the source of their returns because he failed to disclose that he was operating a Ponzi scheme, and he lied to investors about his education and experience. McNeill Declaration at 2. The fact that the jury reached a unanimous guilty verdict after only forty minutes following a five-day trial, the length of Harris's sentence, and the amount of disgorgement ordered, establish beyond any doubt that Harris's conduct supports a strong regulatory response to deter him and others.

Harris has shown no remorse. There is no evidence that he has made any of the restitution ordered or that he acknowledges any illegal acts. All the evidence shows that it is necessary and appropriate for the protection of investors to limit Harris's participation in the securities industry to the maximum extent possible. Accordingly, I will bar Harris from association with any investment adviser, broker, dealer, municipal securities dealer, and transfer agent.⁴

Order

I ORDER, pursuant to Section 203(f) of the Investment Advisers Act of 1940, that Terry Harris is 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

⁴ I believe that the collateral bars from association with municipal advisors and nationally recognized statistical rating organizations, added to Section 203(f) of the Advisers Act by the Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law on July 21, 2010, attach new legal consequences to conduct that occurred in 2002 and 2003 and are thus impermissibly retroactive. See 15 U.S.C. § 80b-3(f) (2010).

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.

Brenda P. Murray
Chief Administrative Law Judge