



UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of	)	
	)	
RICK EDWARD MYERS, d/b/a	)	
RICK EDWARD MYERS, CFP	)	INITIAL DECISION
CFP	)	
	)	
(801-30157)	)	
	)	

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APPEARANCES: Jeannette L. Lewis and Timothy L. Warren,  
of the Commission's Chicago Regional Office,  
for the Division of Enforcement.

Rick Edward Myers, pro se.

BEFORE: Warren E. Blair, Chief Administrative Law Judge.

These public proceedings were instituted by an order of the Commission dated November 21, 1989 issued pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") and Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether allegations made by the Division of Enforcement ("Division") against Rick Edward Myers ("Myers") d/b/a Rick Edward Myers, CFP ("registrant") were true and what, if any, remedial action would be appropriate in the public interest. On July 16, 1990 the Commission issued an amended order ("Order") setting forth the allegations and issues upon which the proceedings are now predicated.

In substance, the Division alleged that on May 11, 1990 Myers was convicted in a United States District Court of fourteen counts of mail fraud and that another United States District Court had permanently enjoined Myers on March 1, 1989 from future violations of the registration provisions of the Securities Act of 1933 ("Securities Act") and of the antifraud provisions of the Securities Act and of the Exchange Act. Additionally, the Division alleged that Myers was subject to a prohibitory order issued in April, 1987 by the State of Wisconsin and a permanent injunction entered on May 23, 1988 by the State Corporation Commission of Virginia against Continental Financial Services, Ltd. ("CFS"), of which Myers was president, enjoining CFS from selling securities in violation of Virginia laws and from employing unregistered agents. The Division further alleged that Myers willfully violated Section 207 of the Advisers Act by failing to promptly and properly

amend his Form ADV 1/ as required by Rule 204-1 promulgated pursuant to Section 204 of the Advisers Act.

Because a letter was received from Myers' former counsel to the effect that Myers would appear pro se at the hearing, a letter dated August 6, 1990 was sent to Myers advising him of his right to counsel and of his other rights if he chose to represent himself at the hearing. At the outset of the hearing held on August 14, 1990, Myers acknowledged receipt of the letter of August 6, 1990 and stated that he chose to proceed without counsel.

As part of the post-hearing procedures, successive filings of proposed findings, conclusions, and supporting briefs were specified. Timely filings were made by the parties.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon observation of respondent, the sole witness at the hearing.

#### RESPONDENT

Myers, a resident of Ada, Michigan, is the sole proprietor of registrant, which has been registered as an investment adviser pursuant to the Advisers Act since September, 1987. From June, 1987 to October, 1987 Myers was associated with Investacorp, Inc., a broker-dealer registered under the Exchange Act, and from November, 1987 to March, 1989 was associated with another registered broker-dealer, Mutual Service Corporation. Myers has been a certified financial planner ("CFP") since December, 1982.

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1/ Form ADV is a uniform application for registration as an investment advisor under the Advisers Act.

CRIMINAL CONVICTIONS

As alleged by the Division and admitted by respondent, Myers was found guilty on March 19, 1990 by a jury on fourteen counts of mail fraud 2/ in the United States District Court for the Western District of Michigan, 3/ and on May 11, 1990 a judgment of conviction on those fourteen counts was entered. Imposition of sentence was suspended and Myers was placed on probation for three years with conditions of probation which included 250 hours of community service and prohibitions against Myers' engaging in the offer or sale of securities and against his engaging in the securities business as an investment adviser or broker-dealer or associating with any broker, dealer, investment adviser, or municipal securities dealer. No appeal from the judgment of conviction was taken by Myers.

Underlying Myers' criminal conviction and the permanent injunction against him, as found below, was his involvement with William H. Bartlett ("Bartlett") in a fraudulent dairy leasing program from 1981 through 1984, in which Myers and Bartlett purported to sell dairy cows to investors who were told that under leasing agreements their cows were on property operated in Missouri by Cedar Gap Dairy. In fact, no cows were actually purchased, although Myers and Bartlett caused monthly checks to be sent to the Cedar Gap investors which checks were represented to be lease

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2/ 18 U.S.C. §§1341 and 2.

3/ United States v. Rick E. Myers, G89-103-02 Cr. (W.D. Mich. March 19, 1990).

payments derived from milk production.

PERMANENT INJUNCTION

As a result of a complaint filed by the Commission, a permanent injunction was entered against Myers on March 1, 1989 by the United States District Court for the Northern District of Illinois enjoining him from violations of the registration provisions of the Securities Act and of the antifraud provisions of the Securities Act and Exchange Act. 4/ The Court also ordered a disgorgement of \$9,400,000, but waived payment of disgorgement based upon the inability of the defendants to pay. The permanent injunction remains in effect.

FAILURE TO AMEND FORM ADV

Under Rule 204-1(b), 5/ promulgated by the Commission pursuant to Section 204 of the Advisers Act, a registered investment adviser is required to promptly file an amendment on Form ADV correcting any information contained in the adviser's "application for registration or in any amendment thereto which becomes inaccurate." The Division alleged and the record reflects that on several occasions Myers failed to promptly file amendments to his Form ADV which were required by Rule 204-1(b).

Upon the return of the twenty-count indictment against him on July 27, 1989 which preceded his trial and convictions on charges

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4/ S.E.C. v. William H. Bartlett, et al., Civil Action No. 89C1648 (N.D. Ill. March 1, 1989).

5/ 17 CFR 275.204-1(b).

of mail fraud, Myers was required but failed to promptly amend his Form ADV to disclose the existence of that indictment. Although Myers eventually filed an amendment to his Form ADV dated December 12, 1989 on December 18, 1989 purporting to disclose the indictment, the disclosure made no reference to an indictment nor did it include the required description of the action. The response instead referred merely to a "proceeding" to which Myers had become subject since July 27, 1987.

Myers contends that his disclosure was not misleading and that he had answered the questions "truthfully and as fully" as he thought was required. It is concluded otherwise. The instructions found at the end of Item 11 of Form ADV specifying details concerning a proceeding involving an applicant are clear and unequivocal and require the title and date of the action, the court taking the action, and a description of the action. That Myers read and understood those instructions and deliberately chose to ignore them in order to avoid disclosure of his criminal indictment is irrefutable in light of the kind of disclosure he saw fit to make in his amendment relating to the injunction entered against him on March 1, 1989. In that instance he recognized his obligation under the Form ADV instructions to disclose details concerning the injunctive action and revealed that the United States District Court for the Northern District of Illinois had entered an order "prohibiting the sale of unregistered securities," but he chose to stop short of admitting he was also prohibited from using fraudulent means to sell securities.

It is concluded that Myers wilfully violated Section 207 of the Advisers Act by failing to amend his Form ADV to properly disclose the entry on July 27, 1989 of the twenty-count criminal indictment against him. Myers further willfully violated Section 207 by failing to promptly file his amendment concerning the indictment. An amendment filed almost five months after an event triggering the requirement to amend cannot be viewed as prompt absent unusual circumstances not present in this record. Myers' inquiries of the staff concerning proper procedures do not excuse his failure to amend nor establish that the offense is not "willful" within the meaning of Section 207 of the Advisers Act. The term "willfully" as used in that section does not mean that the person charged with a duty must be aware that he is violating one of the Commission's rules or a provision of the Act, 6/ nor is the term "willfully" synonymous with the word "willingly" as Myers seems to assume. 7/ Rather, "willfulness" of Myers' violations of Section 207 of the Advisers Act is established by his failure to perform acts or inadequately performing acts that he knew to be required under the Advisers Act and Rules thereunder.

Upon the institution of these proceedings on November 21, 1989, Myers was required under the provisions of Section 207 to file an amendment to his Form ADV to disclose that he had become subject to a Commission administrative proceeding and to give the

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6/ Arthur Lipper & Co. v. S.E.C., 544 F.2d 171, 180 (CA 2, 1976); Tager v. S.E.C., 344 F.2d 5, 8 (CA 2, 1965).

7/ Respondent's Counter Statement and Proposed Findings of Fact and Conclusions of Law, October 27, 1990, at 5.



details required. By failing to promptly file such amendment, Myers willfully violated Section 207 of the Advisers Act and Rule 204-1 under that Act. Myers' claim that he was not "aware that an amendment to Form ADV was required regarding this action which would essentially be informing the SEC of their own action," 8/ is simply not credible in view of his admission that he "had been informed that the purpose of the ADV was to inform prospective clients of material facts and keep the SEC informed." 9/

Myers committed further willful violations of Section 207 of the Advisers Act by failing to properly and completely disclose by amendment to his Form ADV information regarding the guilty verdict returned against him by a jury on March 19, 1990 on fourteen counts of mail fraud and by failing to file an amendment disclosing the judgment of conviction entered against him on May 11, 1990 by the United States District Court for the Western District of Michigan.

Myers' contention that the disclosure he made in the April 9, 1990 amendment to his Form ADV complied with the Commission requirements concerning the guilty verdict returned against him on March 19, 1990 is without merit. His disclosure, viz, that "In March 1990, the applicant was found to have made false statements in 1984 by use of the U.S. Mails. U.S. District Court of Western Michigan," falls far short of providing the details demanded by the instructions for completing Schedule E when an applicant is the subject of a court action. The disclosure filed by Myers was

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8/ Id. at 7.

9/ Id. at 6.

obviously designed to conceal his felony convictions for mail fraud and to present the appearance that the false statements were not involved in a criminal matter. Further, Myers' position that the judgment of conviction and imposition of sentence on May 11, 1990 needed no disclosure by an amendment because the earlier April 9, 1990 amendment covered that aspect of the criminal action is patently unacceptable. His failure to disclose further details of the results of the criminal action against him provides additional evidence of a premeditated decision to keep information about the criminal action out of the Commission's public records in order to impede or prevent access to that information by prospective clients of his advisory services.

PUBLIC INTEREST

Having found that Myers willfully violated Section 207 of the Advisers Act, that he had been permanently enjoined on March 1, 1989 by a United States District Court from engaging in certain practices in connection with the offer and sale of securities, and that he had been convicted on May 11, 1990 for mail fraud (18 U.S.C. §1341), it is necessary to consider the remedial action appropriate in the public interest.

The Division argues that the public interest requires that the registration of Myers as an investment adviser be revoked and that he be barred from association with any broker, dealer, or investment adviser. In support of its position the Division points to the egregiousness of Myers' misconduct as demonstrated by his felony conviction on fourteen counts of mail fraud, the permanent

injunction against future violations of the registration and antifraud provisions of the federal securities laws which was accompanied by an order for disgorgement of \$9.4 million, and two state injunctions, one entered against Myers and the other against his company, CFS. 10/ The Division also notes Myers' failure to recognize the wrongful nature of his misconduct and the repeated failures to comply with the reporting requirements of the Advisers Act.

Myers disagrees with the sanction proposed by the Division and states that "it would be in the public interest to impose a three year barr ("sic") upon me to coincide with the terms of my probation with the right to reapply at the end of that period." 11/ He argues that he became involved in the dairy leasing program when he was 22 years old, had become involved in the program at the behest of Bartlett for whom he had worked in Bartlett's insurance

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10/ Myers stipulated and agreed that (1) on April 29, 1987, an Order of Prohibition and Revocation was entered against, but not served upon, Myers in In the Matter of Continental Financial Services, Ltd., R.E. Myers, and Stephen Jones, File No. X-87065(E) before the Commissioner of Securities, State of Wisconsin which prohibited Myers and Continental Financial Services, Ltd. (CFS) from making or causing to be made to any person or entity in Wisconsin any further offers or sales of securities unless and until such securities were registered under Ch. 551 Wis. Stats., or successor statute; and (2) that on May 23, 1988, a Final Order and Judgment was entered against, but not served upon, CFS, of which Myers was president, in Commonwealth of Virginia, ex rel. State Corporation Commission v. Continental Financial Services, Ltd., Case No. SEC 880009, enjoining CFS from directly or indirectly selling any security issued by CFS, or any other security, in violation of Virginia Code §13.1-507, and from employing unregistered agents in violation of Virginia Code §13.1-504. Div. Ex. 1, at 4-5.

11/ Respondent's Counter Statement, supra note 6, at 13.

agency, and had "respected Mr. Bartlett immensely and had come to know him as a man with high ethical standards and integrity." 12/ Myers claims he signed the consent and stipulation leading to the entry of the permanent injunction because he did not have resources to hire counsel and had no intention of selling a cow or an unregistered program again. He also asserts that "the reason why I was subject of an Injunctive Action and was convicted of a felony charge was because of a unique relationship with a man in whom I mistakenly placed my trust." 13/ Myers, however, refuses to acknowledge that he knowingly mailed false information or knowingly participated in the sale of unregistered securities, stating that he "cannot acknowledge something that is simply not true." 14/ Myers also pleads that in his financial planning practice over a period of several years he had no problems or complaints and that letters from his clients he placed in the record show that his clients felt he was a trustworthy fiduciary even after his prosecution. In connection with the remedial sanction, Myers refers to the fact that he has been out of the securities business for over a year and a half and that with respect to the Division's reference to the egregiousness of his conduct, the sentencing judge had made several observations indicating that Bartlett had an unusually strong influence upon Myers.

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12/ Respondent's Brief in Support of his Proposed Findings of Fact and Conclusions of Law, October 26, 1990, at 3-4.

13/ Id., at 8.

14/ Id., at 10.

Upon careful consideration of the record and the arguments and contentions of the parties, it is concluded that in the public interest Myers should be barred from association with any broker-dealer or investment adviser and that his registration as an investment adviser should be revoked.

Myers relies too heavily upon the sentencing judge's remarks for support of his position that a bar with a right to reapply after a specified period of time would be an appropriate sanction. Myers offers the judge's remarks out of context of the sentencing hearing in which Myers' conduct was being considered from the standpoint of the sentence to be imposed for the fraud committed. But by determining that a three-year probationary period, with the conditions that Myers not engage in the securities or advisory business nor associate with any broker-dealer, investment company, investment adviser, or municipal securities dealer was appropriate punishment for Myers' crimes, the Court was not deciding that Myers was a person to be trusted thereafter.

Nor are the views of the psychiatrist called by Myers at his sentencing hearing nor those of individuals who responded to Myers' requests for character references persuasive with respect to the future likelihood of Myers being able to recognize and adhere to the high standards of conduct expected and required of those engaged in the securities or investment advisory business. By testifying that "[w]ithin the bounds of trust relationships, Rick is extremely gullible," 15/ the psychiatrist pinpoints one of the

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15/ Joint Exhibit 1A, at 15.

problems that Myers might have in avoiding a repetition of his criminal conduct. Another flaw in Myers is highlighted by the statement of one of the character references Myers offered who stated that he believed Myers was naive. That characteristic, which is variously alluded to by others Myers relied upon to project his image, is again one which raises doubts regarding whether Myers has, as he claims, learned his lesson.

Either the criminal conviction or the permanent injunction is basis enough to impose remedial action found necessary. 16/ But stern action is especially demanded here in view of the nature and extent of the mail fraud which caused investors, mostly elderly, to lose the \$200,000 entrusted to Myers and Bartlett. Myers' failures to file the required Form ADV amendments are further aggravating violations which under the circumstances are inexcusable. It is clearly evident from a review of the Form ADV amendments filed and his failures to file required amendments that Myers sedulously avoided disclosure of the proceedings and the adjudications of his fraudulent conduct. Thus, in his amendment dated March 7, 1989 Myers disclosed the injunction entered against him by the United States District Court on March 1, 1989 and he continued to make that disclosure in his December 12, 1989 and April 9, 1990 amendments, but in each of those filings he identified the injunction simply as one prohibiting the sale of unregistered securities, making no reference to the inclusion in the injunction of a prohibition against violations of the antifraud

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16/ Bruce Paul, 32 SEC DKT 936 (February 26, 1985).

provisions of the Securities Act and of the Exchange Act and Rule 10(b)-5 thereunder. As noted earlier, the December 12, 1989 amendment was also deficient in its omission of details concerning Myers' indictment for mail fraud and of disclosure of the institution of these Commission proceedings in which the Division initially alleged, inter alia, the mail fraud indictment, the entry of the permanent injunction, and violations of the antifraud provisions of the securities laws. Myers also continued to suppress information about his fraudulent conduct in his last Form ADV amendment dated April 9, 1990 which was devoid of any reference to these proceedings and avoided reference to the mail fraud convictions by use of a vague deceptive and misleading allusion to his having been "found to have made false statements in 1984 by use of the U.S. Mails. U.S. District Court of Western Michigan." 17/ Myers' persistence in his secretiveness regarding his fraudulent conduct is further evidenced by his admitted continued failure as of August 14, 1990 to file corrective Form ADV amendments.

While Myers' violations of Section 207 of the Advisers Act are not offenses of the magnitude of the fraud he committed, they are not to be viewed lightly. Even were Myers found not to have intentionally avoided disclosure of the results of his fraudulent conduct, remedial action would be required. As the Commission has emphasized in a number of its decisions, the application for registration plays a basic and vital part in the administration of the securities laws, and the provisions requiring the application

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17/ Division Exhibit 9C, at Schedule E.

to be complete and accurate are designed to make significant facts regarding the background of a registrant available to the public by an inspection of the registrant's application. 18/ That members of the Commission's staff may have been cognizant of information that Myers was required but failed to include in amendments in his Form ADV is irrelevant on the issues of a violation of Section 207 of the Advisers Act and on the willfulness of such violation.

Myers properly calls into consideration the fact that the record does not have evidence that he violated a fiduciary duty or engaged in any misconduct since becoming a registered representative or registered investment adviser with the exception of the failure to amend the Form ADV. But assuming that his conduct has been exemplary since his activities in the dairy cow leasing program cannot overcome doubts regarding his character that flow from the convictions on multiple counts of mail fraud, a crime involving serious moral turpitude, and his refusal to publicly acknowledge his participation in fraudulent conduct.

Having examined and reviewed the extenuating and mitigating factors, including Myers' age at the time of the commission of his crimes, his stated reliance upon and trust in Bartlett, the comments of the sentencing judge, and the time that Myers has and will be kept out of the securities and investment advisory

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18/ See, e.g., Jesse Rosenblum, 30 SEC DKT 857, 859 (May 17, 1984); Justin Federman Stone, 41 S.E.C. 717, 722 (1963); Morris J. Reiter, 41 S.E.C. 137, 142 (1962); Wendell Maro Weston, 30 S.E.C. 296, 311-12 (1949).



business, it is concluded that there is insufficient assurance of rehabilitation of Myers by the time his probationary period ends to encourage him to reapply for re-entry into those fields. A strong showing that Myers can be trusted and will not pose an unacceptable risk to the investing public is required before any particular period of time can be specified as an indicator of acceptable rehabilitation. That showing cannot be made through Myers' self-serving assertions, the responses given to him by his solicited character references, and good behavior during a period of supervised probation, but by ethically acceptable conduct over a period in which his activities are freed of constraints imposed by a court. 19/ For the present, nothing less than the revocation of registration and bar from association with any broker or dealer or investment adviser can suffice to protect the public interest and the investing public. 20/

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19/ "A determination that future securities activities by [a salesman] would be consistent with the public interest should be made on the basis of a showing of the nature of the proposed activity and the conduct of the salesman in question prior to and subsequent to the misconduct here found." Ross Securities, Inc., 41 S.E.C. 509, 517, n. 10 (1963). See also, Vanasco v. SEC, 395 F.2d 349, 353 (2d Cir. 1968).

20/ All proposed findings and conclusions submitted by the parties have been considered, as have their contentions. To the extent such proposals and contentions are consistent with this initial decision, they are accepted.

ORDER

IT IS ORDERED that the registration of Rick Edward Myers, d/b/a Rick Edward Myers, CFP, as an investment adviser is revoked; and

FURTHER ORDERED that Rick Edward Myers is barred from association with any broker-dealer or investment adviser.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Rules of Practice.

Pursuant to Rule 17(f) of the Rules of Practice, this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.

  
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Warren E. Blair  
Chief Administrative Law Judge

Washington, D.C.  
December 13, 1990