ADMINISTRATIVE PROCEEDING
FILE NO. 3-5102

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :

DUDLEY DIGGS MORGAN :

INITIAL DECISION

July 22, 1977
Washington, D.C.

Ralph Hunter Tracy
Administrative Law Judge

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DUDLEY DIGGS MORGAN : INITIAL DECISION

APPEARANCES: David P. Tennant and
David K. Ginn for the
Division of Enforcement

James C. Lang for Dudley Diggs
Morgan

BEFORE: Ralph Hunter Tracy, Administrative
Law Judge

THE PROCEEDING

This is a public proceeding instituted by Commission order (Order) dated September 29, 1976, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 (Exchange Act), to determine whether the above-named respondent, Dudley Diggs Morgan (Morgan) has been convicted of various charged violations of the Exchange Act, the Securities Act of 1933 (Securities Act) and the mail fraud statutes, as alleged by the Division of Enforcement (Division) and the remedial action, if any, that might be appropriate in the public interest.

The Order alleges that on August 27, 1976, after a jury trial in the United States District Court for the Southern District of New York, Morgan was convicted on 12 counts of mail fraud and 2 counts of engaging in fraudulent, deceptive and manipulative securities transactions.

The indictment under which Morgan's conviction was obtained charged that beginning in March 1972 and continuing through October 1972, Morgan willfully participated in a scheme to defraud in connection with the offer and sale of unregistered securities of Display Sciences Inc., (Display) by preparing and distributing to purchasers and prospective purchasers of Display common stock, information and sales literature containing false, fraudulent and misleading statements and representations and concealing and

omitting from disclosure material information concerning Display.

On October 8, 1976, Morgan was sentenced to 2 years on each of the 14 counts, to run concurrently, with 2 months to be served in prison or a treatment type institution and the balance of the sentence to be suspended and defendant placed on probation for 2 years. On April 18, 1977, Morgan's conviction was affirmed by the United States Court of Appeals for the Second Circuit.

This matter was scheduled for hearing but Morgan, through his counsel, waived a hearing and entered into a stipulation of facts with the Division which both parties agreed would constitute the record for the purposes of this proceeding. Attached to the stipulation of facts was a copy of the indictment under which Morgan's conviction was obtained. Upon request of counsel for the parties the stipulation was accepted and the evidentiary hearing cancelled. Proposed findings of fact, conclusions of law and supporting briefs were filed by both parties.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record.

FINDINGS OF FACT AND LAW

Respondent

From March 1972 through October 1972, the pertinent period set forth in the Order, Morgan was the manager of the Tulsa, Oklahoma, office of Van Alstyne Associates, Inc., a broker-dealer registered with the Commission. From January 1973 through September

1976, he was associated with Fitzgerald Cowan & Roberts, a Tulsa, Oklahoma, broker-dealer registered with the Commission.

Violations

This proceeding is brought under Section 15(b)(6) of the Exchange Act which provides in relevant part that "The Commission, by order, shall censure or place limitations on the activities or functions of any person associated ... with a broker or dealer, or suspend for a period not exceeding twelve months or bar any such person from being associated with a broker or dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person ... has been convicted of any felony or misdemeanor which the Commission finds involves the purchase or sale of any security ... arises out of the conduct of the business of a broker, dealer ... or involves the violation of Section 1341 (mail fraud) ... of title 18, United States Code."

Morgan's conviction on 12 counts of mail fraud (18 U.S.C. 1341), 1 count of securities fraud under Section 17(a) of the Securities Act and 1 count of securities fraud under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, brings him squarely within the provisions of Section 15(b)(6). Accordingly, the only purpose of this proceeding is to determine the sanctions deemed necessary in the public interest to be imposed on Morgan.

From March 20, 1972 , to October 25, 1972, Morgan and others engaged in a scheme to defraud purchasers and prospective purchasers of the common stock of Display Sciences, Inc. (Display), which was incorporated in New York in 1968 and went public in 1970. Display which was engaged in the design and manufacture of large-screen television projection equipment, was forced ino involuntary receivership on November 10, 1971, by a New Jersey state court for being unable to pay its debts.

In order for Display to raise funds with which to arrange a settlement with its creditors and be discharged from the New Jersey receivership, certain of its officers and directors, also defendants in the criminal case, devised a scheme to offer and sell Display common stock to the investing public without a registration statement being in effect with respect to such shares.

On March 20, 1972, the other defendants met with Morgan and discussed the need to sell Display stock to raise the needed funds.

The indictment states that from on or about April 21, 1972, up to and including October 25, 1972, Morgan and his co-defendants willfully and knowingly, in the offer and sale of Display common stock by means of interstate commerce and use of the mails, directly and indirectly employed devices, schemes and artifices to defraud; obtained money and property by means of untrue statements of material facts and by omitting to state material facts necessary in order to make the statements made, in light of the circumstances under

which they were made, not misleading; and engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon purchasers and would-be purchasers of Display common stock.

During this period Morgan, in cooperation with the other defendants, prepared and distributed prospectuses, sales literature and other information which contained false, fraudulent and misleading statements, as follows:

1. On April 21, 1972, it was stated that a final contract for the sale of an off-track betting machine to the State of Connecticut should be approved within the next two weeks.

2. On June 5, 1972, it was stated a publicity release should be received this month with the simultaneous signing of the off-track betting contract with the State of Connecticut.

3. Display had only 325,000 shares of common stock outstanding on May 15, 1972.

None of the above statements was true, as respondent well knew.

During the course of the said scheme and artifice to defraud Morgan and the other defendants concealed and omitted from disclosure to purchasers and prospective purchasers of Display common stock the following material information:

1. That Display had been ordered into receivership on November 10, 1971, by a New Jersey State court on the ground that it was unable to pay its debts.

2. That Display continued in receivership for a portion of the period during which respondent offered and sold Display common stock.

3. That a substantial portion of the money received from the sale of Display common stock pursuant to the scheme to defraud was to be used to finance a settlement agreement with Display's creditors.

4. That respondent Morgan had promised to give his salesmen Display common stock as an incentive to their selling said stock to their customers.

In furtherance of the aforesaid scheme to defraud Morgan caused confirmations of purchases to be delivered through the mails, from the offices of Van Alstyne Associates, Inc., 4 Albany Street, New York, New York, to purchasers of Display common stock.

At the time Morgan filed his brief in this proceeding he had a petition for a rehearing in banc pending before the Second Circuit. On June 29, 1977, subsequent to the filing of that brief, the Court of Appeals for the Second Circuit denied respondent's petition. Respondent has now moved that the Court of Appeals stay its mandate pending the filing of a petition to the United States Supreme Court for a writ of certiorari.

Morgan argues that until he has exhausted his appeal or waived further appeal he has not been convicted within the meaning of Section 15(b)(6) of the Exchange Act. In support of this argument he cites several alien deportation cases.

Morgan's interpretation of the term "convicted" is inconsistent with prior Commission decisions and with the underlying purpose of the Exchange Act upon which these decisions are based. In the case of In the Matter of Paul M. Kaufman, 44 S.E.C. 374 (1970), the Commission dealt with a similar contention. Kaufman, a lawyer,

had been convicted of felony violations of the federal securities laws and a proceeding pursuant to Rule 2(e) of the Commission's Rules of Practice was instituted to determine whether Kaufman should be barred from appearing or practicing before the Commission. Kaufman argued that since his criminal conviction was on appeal it did not possess the finality necessary to support a bar. The Commission rejected this contention, stating:

> Respondent contends that his convictions cannot be considered evidence of lack of character or integrity within the meaning of Rule 2(e) because, pending disposition of his appeal, the convictions are not "final." We agree with the hearing examiner, however, that conviction of a felony, standing alone, establishes that respondent does not possess the requisite character or integrity to appear and practice before us, notwithstanding that it is the subject of a pending appeal.

The Commission went on to say:

> Once the judgment of conviction was entered, respondent was no longer entitled to the presumption of innocence, and he stands convicted until such time as the conviction is reversed or set aside.
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> * * *
>
> Should all the convictions be reversed or otherwise vacated or set aside, we shall, upon an appropriate application, immediately enter an order reinstating respondent's privilege to practice before us.

Kaufman is in accord with other Commission decisions which hold that a preliminary injunction subject to a pending appeal is sufficient to support the revocation of a broker-dealer registration and to bar a person from being associated with any broker or dealer. See, e.g. In the Matter of C.R. Richmond & Co., et al., 9 S.E.C. Docket 846 (1976); In the Matter of Samuel H. Sloan, 6 S.E.C. Docket 772 (1975), affirmed sub nom. Sloan v. Securities and Exchange

Commission, 547 F. 2d 152 (2d Cir. 1976), petition for certiorari filed.

Respondent offers no other arguments,or mitigating circumstances. The Second Circuit, in affirming his conviction, stated:

> Appellant's defense, based on asserted lack of knowledge and good faith, was rejected by the jury; and appellant does not seriously contend that the facts were insufficient to warrant this determination. His appeal is based instead upon several evidentiary rulings which he contends were prejudicially erroneous.

PUBLIC INTEREST

Under Section 15(b)(6) of the Exchange Act, Morgan's conviction provides a basis upon which a bar may be predicated, if it is found that such action is appropriate in the public interest. 1/

Morgan was found to have violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, the so-called anti-fraud provisions, and such conduct has been found to be a basis for revoking a broker's registration. See In the Matter of J.S. Lockaby, supra, and In the Matter of Alexander Smith, supra. In addition, the Commission has found an issuer's failure to disclose that it faced possible bankruptcy,2/ and misrepresentations as to contracts,3/ situations which parallel Display's failure to disclose the receivership and its claim of a

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1/ In the Matter of J.S. Lockaby & Company, 29 S.E.C. 271,272 (1949); In the Matter of Alexander Smith, 22 S.E.C. 13,20 (1946).

2/ In the Matter of Richard N. Cea, 44 S.E.C. 8 (1969).

3 / In the Matter of Hayden Lynch & Co., Inc., 43 S.E.C. 25 (1966).

contract with the State of Connecticut, grounds for a bar.

In view of Morgan's conviction, the nature of the violations and the lack of any genuinely mitigating factors, it is concluded that the public interest requires that he be barred from being associated with any broker or dealer.

Accordingly, IT IS ORDERED that Dudley Diggs Morgan is barred from association with any broker or dealer.

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

Pursuant to Rule 17(f), 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. 4/

Ralph Hunter Tracy
Administrative Law Judge

Washington, D.C.

4/ All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them are in accordance with the views herein they are accepted, and to the extent they are inconsistent therewith they are rejected.