

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 67491 / July 24, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3437 / July 24, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14960

In the Matter of

Andrew J. Franz,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934 AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940
AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Andrew J. Franz (“Franz” or “Respondent”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Franz was a paid employee and associated person of Ruby Corporation (“Ruby”), a registered investment adviser, from approximately 2002 until 2007. Respondent was also employed as a registered representative with various broker-dealers, such as Fortune Financial Services and H. Beck Inc., from at least 2007 until March 2011 when he was terminated from his association with H. Beck Inc. After 2007, Respondent ceased being a paid employee of Ruby but

continued to be an associated person of Ruby and continued to help with the operations of the firm. Respondent, age 40, is a resident of Aurora, Ohio.

B. ENTRY OF THE PERMANENT INJUNCTION

2. On March 15, 2012, the Commission filed a Complaint in the United States District Court for the Northern District of Ohio (“Court”), captioned SEC v. Andrew J. Franz, Civil Action Number 5:12-cv-00642 (N.D. Ohio).

3. The Commission’s Complaint alleged that Franz conducted a fraudulent scheme from 2007 to the present in which he misappropriated at least approximately \$865,969 from clients of Ruby, including \$779,418 from family members and \$86,551 from other clients. (Docket No. 1) The Commission’s Complaint also alleged that Franz misappropriated over \$172,000 from Ruby itself by stealing legitimate client fees payable to Ruby. The Commission’s Complaint also alleged that Franz returned approximately \$684,000 to Ruby disguised as client fees to conceal the firm’s dwindling client base and revenues. The Commission’s Complaint alleged that Franz violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Advisers Act.

4. On March 16, 2012, the Court entered an Order against Franz, permanently enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Advisers Act. (Docket No. 8) On May 24, 2012, the Court held an evidentiary hearing as to the matters alleged in the SEC’s Complaint. On June 14, 2012, the Court entered Findings of Fact & Conclusions of Law in support of the Court’s March 16, 2012 permanent injunction order, based on the evidence offered during the May 24, 2012 evidentiary hearing. (Docket No. 25)

5. As part of its Findings of Fact & Conclusions of Law, the Court found:

During the period from 2007 to the present, Defendant misappropriated from Ruby numerous legitimate advisory fee checks from or on behalf of clients that were directed and made payable to Ruby. He accomplished this by intercepting these fee checks at Ruby and depositing them into his own bank account. Some of these funds were returned to Ruby. (Docket No. 25 at 3)

6. As part of its Findings of Fact & Conclusions of Law, the Court further found:

During the period from 2007 to the present, Defendant misappropriated client funds by sending requests to mutual funds and annuity companies for advisory fees that were not in fact owed by clients. He accomplished this by sending additional, unauthorized fee requests for the same quarter, or by increasing the amount of fees owed in the request. The mutual funds and annuity companies complied with these requests by liquidating securities in these accounts and issuing checks to Ruby. In some instances, Defendant directed the mutual funds and annuity companies to send these additional and unauthorized fee payments

directly to his home, rather than to Ruby's offices. In other instances, Defendant intercepted the checks when they arrived at Ruby's offices. After he obtained these checks, Defendant deposited them into a personal bank account. Some of these funds were returned to Ruby. (Docket No. 25 at 3-4)

7. As part of its Findings of Fact & Conclusions of Law, the Court further found:

The Court finds, based on Defendant's own admission and the evidence otherwise submitted to the Court in this case, that Defendant's net misappropriation of funds from Ruby and its clients was at least \$75,000. (Docket No. 25 at 5)

8. As part of its Findings of Fact & Conclusions of Law, the Court further found:

In November 2011 Defendant attempted to misappropriate \$21,409.35 from the account of Eberhard Manufacturing Co. ("Eberhard"), a Ruby client, maintained at Putnam Investments. The account is a 401(k) plan for the union employees of Eberhard that had a total value of \$56,471 as of December 31, 2011. Hearing Exhibit 14. On November 1, 2011, Defendant made a telephone call to Putnam Investments, falsely identifying himself as Mr. Sam McDowell from the Allegheny Group, the broker of record for the account, in order to change the address of record on the account from Eberhard's office address to Defendant's home address. Putnam Investments made the address change. Hearing Exhibit 25 and Hearing Exhibit 13 at 5-9. On November 2, 2011, Defendant made a second phone call to Putnam Investments, this time impersonating Don Ribbeck, the Chairperson of Eberhard. During this call, Defendant requested a \$29,735.21 redemption check to be sent to Eberhard's address of record. Hearing Exhibit 26 and Hearing Exhibit 13 at 30-33. Putnam Investments issued, after withholding taxes, a \$21,409.35 check to Eberhard and mailed it to the new Eberhard address of record, which was Defendant's home address. Hearing Exhibit 27 and Hearing Exhibit 13 at 34-37. In order to issue this check requested by Defendant, Putnam Investments sold securities maintained in the Eberhard 401(k) plan account. On November 4, 2011, Defendant attempted to deposit this \$21,409.35 check payable to Eberhard into his personal bank account at Key Bank in Chagrin Falls, Ohio. Hearing Exhibits 17 and 18. Key Bank held this check as suspicious and reported it to local law enforcement. On February 10, 2012, Defendant was arrested and charged with Aggravated Theft, Telecommunications Fraud, and Identity Fraud in connection with the conduct described above. *See State of Ohio v. Andrew J. Franz, Cuyahoga County, Ohio Common Pleas Court Case No. CR-12-559575-A* (filed March 13, 2012). (Docket No. 25 at 5-6).

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II above are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act; and

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

(continued on following page)

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Elizabeth M. Murphy
Secretary