INITIAL DECISION RELEASE NO. 419
ADMINISTRATIVE PROCEEDING
FILE NO. 3-14162

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

In the Matter of	:	
	:	INITIAL DECISION
JOHN W. LAWTON	:	April 29, 2011
	:	

APPEARANCES: Adolph J. Dean, Jr., and Marlene B. Key for the Division of Enforcement, Securities and Exchange Commission

John W. Lawton, pro se

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP), on December 14, 2010, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). John W. Lawton (Lawton) filed an Answer on January 25, 2011.

At a telephonic prehearing conference on January 10, 2011, an attorney, whom the Division of Enforcement (Division) was dealing with on behalf of Lawton, stated that he was not representing Lawton in this proceeding. I held a second prehearing conference on January 20, 2011, with Lawton present. I ordered the Division to make the investigative file available to Lawton and I granted the Division's request to file a motion for summary disposition. 17 C.F.R. § 201.250.

The Division filed a Motion for Summary Disposition and Memorandum in Support (Motion) on February 4, 2011. The exhibits to the Motion are A, Lawton's Consent to a permanent injunction in SEC v. Lawton, No. 09-cv-00368 (D. Minn.); B, Order of Permanent Injunction and Other Relief in the underlying civil action; C, a January 24, 2011, letter from the Division making available the investigative file; D, a February 1, 2011, letter to Lawton from the Division transmitting three discs of documents in electronic format; E, the complaint in the underlying civil action; F, the transcript of a plea agreement hearing on November 24, 2009, in United States v. Lawton, No. 09-cr-319-PAM (D. Minn.), where Lawton pled guilty to one count of mail fraud and one count of false statements; and G, Judgment entered in the criminal case on October 19, 2010, where Lawton was sentenced to a prison term of seventy months on count one

and sixty months on count two, to run concurrently, followed by three years of supervised release, and ordered to pay a $200 special assessment and restitution in the amount of $7,091,230.75.

I take official notice of the fact that on February 7, 2011, the court in the underlying civil action issued a Memorandum Opinion and Order (Opinion and Order) denying Lawton's Motion to Vacate Permanent Injunction and ordered Lawton to pay disgorgement of $1,758,788, plus prejudgment interest from February 2009, and to pay a civil penalty in the amount of $100,000. See 17 C.F.R. § 201.323. On March 7, 2011, the court denied Lawton's Motion to Reconsider (Court Order).

In his Opposition to the Division's Motion (Opposition) filed on February 28, 2011, Lawton contends that there are material facts in dispute.[1] Attached to the Opposition are pleadings in which Lawton attempts to amend his answer in the underlying civil action, withdraw his guilty plea in the criminal action, assert his innocence, and, as a practical matter, nullify all that has happened in both the underlying civil and criminal cases.

Findings

It is well established that the doctrine of collateral estoppel prohibits Lawton's attack on the findings in the underlying civil action, and an appeal is no basis for delaying an administrative proceeding. See Michael Batterman, 57 S.E.C. 1031, 1036-37 n.10 (2004), aff'd, Appeal No. 05-0404 (2d Cir. 2005) (unpublished); Joseph P. Galluzzi, 55 S.E.C. 1110, 1116 n.21 (2002); Michael J. Markowski, 74 SEC Docket 1537, 1542 (Mar. 20, 2001), pet. denied, No. 01-1181 (D.C. Cir. 2002) (unpublished); John Francis D'Acquisto, 53 S.E.C. 440, 444 (1998); Demitrios Julius Shiva, 52 S.E.C. 1247, 1249 (1997); Kimball Securities, 39 S.E.C. 921, 924 n.4 (1960).

A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the maker of the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250. The Division has established that Lawton was enjoined from violating Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act), Exchange Act Rule 10b-5, Sections 206(1), (2), and (4) of the Advisers Act, and Advisers Act Rule 206(4)-8 on July 13, 2009, in SEC v. Lawton. Motion, Exs. A, B. Lawton was also enjoined from aiding and abetting violations of Sections 206(1), (2), and (4) of the Advisers Act, and Advisers Act Rule 206(4)-8. Id.

Because there are no material facts in dispute, I GRANT the Division's Motion.

[1] It appears that Lawton's new facts argument is based on the work of a forensic accountant retained after Lawton entered the consent in the underlying civil action, which the court found lacks probative value because it relied heavily on information Lawton provided and relates only to a portion of the relevant time period. Opinion and Order at 5.

Sanctions

The Division requests that Lawton be barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (NRSRO). Motion at 10. Lawton takes no position on sanctions.

Section 203(f) of the Advisers Act provides that where a person has been convicted of a misdemeanor or felony within ten years of issuance of the OIP, or where a person was enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security and where the conduct occurred while the person was associated with an investment adviser, the Commission shall order certain sanctions if it is in the public interest. In making public interest considerations, the Commission considers the following Steadman factors:

> [T]he egregiousness of the [respondent's] actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the [respondent's] assurances against future violations; the [respondent's] recognition of the wrongful nature of his conduct; and the likelihood that the [respondent's] occupation will present opportunities to commit future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

The record shows that Lawton's conduct was, and continues to be, egregious. Through an investment adviser, Crossroads Capital Management, LLC (Crossroads), Lawton managed a multi-million dollar hedge fund, Paramount Partners, LP (the Fund). Opinion and Order at 4; Motion, Ex. E at 1. Investors became limited partners in the Fund. Motion, Ex. F at 15. To keep people invested in the Fund and to induce new investors, Lawton began making false statements about the Fund at some point, but certainly by January 2006. Motion, Ex. F at 15-16; Opinion and Order at 7. The Commission initiated the underlying civil action on February 18, 2009; it obtained a Temporary Restraining Order against Lawton, the Fund, and Crossroads on February 19, 2009; it obtained an Order of Preliminary Injunction on February 25, 2009; and the criminal action was initiated on October 30, 2009. Opinion and Order at 2.

Lawton's conduct caused substantial financial losses to investors. The government puts the number of investors at over fifty and their losses at between $2.5 and $7 million. Motion, Ex. F at 5-6. Lawton puts the number of victims at between ten and fifty, and losses at between $1 and $2.5 million. Id.

Lawton's conduct was of considerable duration. Lawton admitted violating the securities laws beginning in 2006, and the court ordered disgorgement from January 2006. Opinion and Order at 7.

Lawton has given no recognition of wrongdoing, and he has provided no assurances against future violations. Instead he is attempting to revoke his consent to the injunction ordered in the underlying civil action and the guilty plea he entered freely and knowingly in the criminal

case. The court in the underlying civil action noted that Lawton signed a document three times consenting to the entry of the Order of Permanent Injunction. Court Order at 2.

Lawton's conduct is an expression that he will use the legal and regulatory system to suit his purposes. Since he terminated his counsel in the underlying civil case, Lawton has made nearly daily pro se filings. Opinion and Order at 11.

This case involves an application of the collateral bar sanctions in Section 203(f) of the Advisers Act, added by Section 925 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), based on Lawton's conduct while associated with an unregistered investment adviser that occurred before Dodd-Frank was signed into law.[2] Prior to Dodd-Frank, the only sanctions authorized by Section 203(f) of the Advisers Act were to suspend or bar a person from association with an investment adviser. Dodd-Frank amended Section 203(f) to authorize the Commission to suspend or bar a person from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or NRSRO. The issue is whether the collateral bar now in Section 203(f) can be applied to Lawton.[3] Neither the Division nor the pro se litigant addressed the issue.

The leading case on retroactivity is Landgraf v. USI Film Products, 511 U.S. 244 (1994), where the Court stated:

> when a case implicates a federal statute enacted after the events giving rise to the suit, a court's first task is to determine whether Congress has expressly prescribed the statute's proper reach. If Congress has done so, there is no need to resort to judicial default rules. . . . Even absent specific legislative authorization, application of a new statute to cases arising before its enactment is unquestionably proper in many situations. However, where the new statute would have a genuinely retroactive effect–*i.e.*, where it would impair rights a party possessed when he acted, increase his liability for past conduct, or impose new duties with respect to transactions already completed–the traditional presumption teaches that the statute does not govern absent clear congressional intent favoring such a result.

Landgraf, 511 U.S. at 245. "The presumption against statutory retroactivity is founded on elementary considerations of fairness dictating that individuals should have an opportunity to know what the law is and to conform their conduct accordingly." Id. See also Sacks v. SEC, 2011 WL 590308 (9th Cir. 2011); Koch v. SEC, 177 F.3d 784 (9th Cir. 1999). Under Landgraf, a statute is impermissibly retroactive when it "attaches new legal consequences to events completed before [the statute's] enactment." See Landgraf, 511 U.S. at 269-70.

[2] Dodd-Frank was signed into law on July 21, 2010.

[3] Lawton was convicted for criminal conduct involving his activities in the securities industry; he was enjoined from violating certain provisions of the Securities Act, Exchange Act, Advisers Act and related rules; and he did not contest the sanctions advocated by the Division in its Motion.

Under Section 203(f) of the Advisers Act before amendment by Dodd-Frank, Lawton's illegal conduct subjects him to an associational bar from the investment advisory industry. In addition, his pre-Dodd-Frank conduct subjects him to "statutory disqualification" as such term is defined in Exchange Act Section 3(a)(39). Statutory disqualification effectively prohibits Lawton from association with a broker, dealer, municipal securities dealer, and transfer agent.[4] Thus, the portions of the collateral bar authorized by the Dodd-Frank amendments to Section 203(f) adding these sanctions do not attach new legal consequences to Lawton's pre-Dodd-Frank conduct.

Amended Section 203(f) of the Advisers Act also includes two newly created associational bars: municipal advisors and NRSROs. Because such bars did not exist at the time of Lawton's conduct, I find that they attach new legal consequences to Lawton's conduct and are impermissibly retroactive.[5]

Order

I ORDER, pursuant to Section 203(f) of the Investment Advisers Act of 1940, that John W. Lawton be barred from association with an investment adviser, broker, dealer, municipal securities dealer, or transfer agent.

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,

---

[4] In Teicher v. SEC, 177 F.3d 1016, 1020-21 (D.C. Cir. 1999), the court rejected the SEC's argument that disallowing a collateral bar "forces [the Commission] to do in two proceedings what it would be more convenient to do in one." The court based its decision on the fact that Congress established three separate systems for denying benefits of association with licensed entities; therefore, the Commission could not impose sanctions in any specific branch until it could "show the nexus matching the branch." Id. However, Dodd-Frank has now established the nexus requirement the court in Teicher found missing.

[5] Landgraf provides an exception to statutory retroactivity: "[w]hen the intervening statute authorizes or affects the propriety of prospective relief, application of the new provision is not retroactive." Landgraf, 511 U.S. at 273. Application of the Landgraf exception requires determining whether a Commission bar is a form of prospective remedial relief or a punitive sanction. Such a determination is fact-specific and the case law is ambiguous. See e.g., Commissioner Kathleen L. Casey, Address to Practising Law Institute's SEC Speaks in 2011 Program (Feb. 4, 2011); SEC v. Johnson, 87 F.3d 484 (D.C. Cir. 1996) (vacating the Commission's order imposing a six-month suspension of a securities industry supervisor as time barred under 28 U.S.C. § 2462 because the sanction sought operated as a penalty and was not remedial). I therefore decline to apply the Landgraf exception with respect to the municipal advisor and NRSRO industry bars.

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 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 occur, the Initial Decision shall not become final as to that party.

_____

Brenda P. Murray
Chief Administrative Law Judge