

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

In the Matter of : INITIAL DECISION MAKING FINDINGS AND
: IMPOSING SANCTIONS BY DEFAULT
JAMES A. PHILBROOK : November 26, 2013

SUMMARY

This Initial Decision bars James A. Philbrook (Philbrook) from the securities industry.

I. BACKGROUND

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on October 18, 2013, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleges that Philbrook was convicted of theft and of violating Maine state securities law. Philbrook was served with the OIP in accordance with 17 C.F.R. § 201.141(a)(2)(i) on November 1, 2013, and his Answer to the OIP was due within twenty days of service of the OIP on him. See OIP at 3; 17 C.F.R. § 201.220(b). He has not filed an Answer to date. Accordingly, he has failed to answer or otherwise to defend the proceeding within the meaning of 17 C.F.R. § 201.155(a)(2). Therefore, Philbrook is in default, and the undersigned finds that the allegations in the OIP are true as to him.¹ See OIP at 3; 17 C.F.R. §§ 201.155(a), .220(f).

II. FINDINGS OF FACT

Philbrook was convicted in Maine Superior Court of one count of theft by misapplication of property, in violation of Title 17-A M.R.S.A. § 358(1)(B)(1), and one count of violating the Maine Uniform Securities Act, in violation of 32 M.R.S.A. § 16508. Maine v. Philbrook, Docket No. HOUSC-CR-2011-00010 (Nov. 2, 2012). He was sentenced to eight years of incarceration (with all but three years suspended and credit for time served), followed by a three-year term of probation, and ordered to pay \$195,000 in restitution. Id. In the wrongdoing underlying his conviction, from on or about June 7, 2005, to on or about July 20, 2006, Philbrook, acting intentionally or knowingly and in connection with the offer and sale of a

¹ Philbrook was advised that if he failed to file an Answer within the time provided, he would be deemed to be in default, and the undersigned would enter an order barring him from the securities industry. See James A. Philbrook, Admin. Proc. Rulings Release No. 1020 (A.L.J. Nov. 4, 2013).

security, obtained money from two individuals. Philbrook misrepresented to the individuals that he intended to make investments on their behalf in a pay-per-view television event and a college-funding business venture, but in fact did not invest their money and instead diverted their money for his own personal use.

Philbrook, 63, is a resident of Manchester, New Hampshire. From October 2002 through December 2006, Philbrook was a registered representative of The O.N. Equity Sales Company, a broker-dealer registered with the Commission. Thus, his misconduct occurred while he was associated with a registered broker-dealer.

III. CONCLUSIONS OF LAW

Philbrook has been convicted within ten years of the commencement of this proceeding of a felony that “arises out of the conduct of the business of a broker [or] dealer” within the meaning of Sections 15(b)(4)(B)(ii) and 15(b)(6) of the Exchange Act.

IV. SANCTION

Philbrook will be barred from the securities industry.² This sanction will serve the public interest and the protection of investors, pursuant to Section 15(b)(6) of the Exchange Act, and accord with Commission precedent and the sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979). Philbrook’s unlawful conduct was recurring and egregious. Extending over more than a year, it involved \$195,000.

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b), JAMES A. PHILBROOK IS BARRED from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.³

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

² Even if Philbrook were not associated with a registered broker-dealer during his wrongdoing, he would not be insulated from a bar. See Vladislav Steven Zubkis, 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 (barring unregistered associated person of an unregistered broker-dealer from association with a broker or dealer).

³ Thus, he will be barred from acting as a promoter, finder, consultant, or agent; or otherwise engaging in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock, pursuant to Exchange Act Section 15(b)(6)(A), (C).

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 a 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 a motion to correct a 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.⁴

Carol Fox Foelak
Administrative Law Judge

⁴ A respondent may also file a motion to set aside a default pursuant to 17 C.F.R. § 201.155(b). See Alchemy Ventures, Inc., Exchange Act Release No. 70708, 2013 SEC Lexis 3459, at *5-6 (Oct. 17, 2013).