

INITIAL DECISION RELEASE NO. 388
ADMINISTRATIVE PROCEEDING
FILE NO. 3-13548

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

In the Matter of :
: INITIAL DECISION
FREDERICK J. BARTON :
: September 24, 2009
:

The Securities and Exchange Commission (Commission) instituted this proceeding on July 15, 2009, 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).

At a prehearing conference on July 23, 2009, I allowed the Division of Enforcement (Division) to file a motion for summary disposition. On August 10, 2009, the Division filed a Motion and Memorandum of Law in Support of Summary Disposition (Motion) that has ten exhibits.¹ See 17 C.F.R § 201.250(a). Barton did not meet the due date of September 14, 2009, for a Brief in Opposition and, to date, has not made a filing. Barton does not contest the factual allegations in the OIP or the Division's recommendation that he be barred from association with a broker, dealer, or investment adviser. (July 23, 2009, Prehearing Conference Transcript at 7-8, 10-11.)

I grant the Motion because there are no genuine issues with regard to any material fact. See 17 C.F.R § 201.250(b). I allow into evidence the materials that are part of the Division's Motion, most of which are public documents. See 17 C.F.R. § 201.323.

¹ Exhibit 1, Declaration of Mark Eric Harrison with Exhibits 1(a) through 1(g); Exhibit 2, Docket for SEC v. Barton, No. 1:08-cv-1917 (RWS) (N.D. Ga. Apr. 27, 2009) (Civil Action); Exhibit 3, Civil Action, Complaint for Injunctive and Other Relief; Exhibit 4, Civil Action, Default Judgment as to Defendants Frederick J. Barton (Barton), Barton Asset Management, LLC (Barton Asset Management) and TwinSpan Capital Management, LLC (TwinSpan) (Default Judgment); Exhibit 5, Docket for United States v. Barton, No. 1:08-cr-477 (TWT) (N.D. Ga. June 23, 2009) (Criminal Case); Exhibit 6, Criminal Case, Criminal Indictment; Exhibit 7, Criminal Case, Guilty Plea and Plea Agreement; Exhibit 8, Criminal Case, Minute Sheet for Proceedings Held in Open Court on 03/25/2009; Exhibit 9, Criminal Case, Judgment; Exhibit 10, Consent Order in Frederick John Barton, Commissioner of Securities of the State of Georgia, Case No. ENSC01010, CRD No. 1188407 (May 10, 2007).

Findings of Fact

Barton, age forty-nine, was employed by A.G. Edwards, a registered broker-dealer and/or investment adviser, as a registered representative in the period 1988 through September 2002. (Motion Exs. 1 at 1-2, 1(a)-1(c).) Barton was the Atlanta Branch Manager for A.G. Edwards from 1994 through 2002. (Motion Ex. 4 at 5.) In 2002, Barton formed Barton Asset Management, a limited liability company. (Motion Exs. 1 at 2, 1(d).) In 2003, Barton organized and controlled, through Barton Asset Management, TwinSpan, a limited liability company based in Atlanta, Georgia. (Motion Exs. 1 at 2, 1(e).) TwinSpan was registered as an investment adviser with the Commission from January 2003 until June 2007. (Motion Exs. 1(f), 1(g).) As of May 2007, TwinSpan had approximately seventy-seven clients and \$8.5 million under management. (Motion Ex. 4 at 6.) The Georgia Secretary of State dissolved TwinSpan in May 2008. (Motion Ex. 1 at 3.)

By Default Judgment in the Civil Action, Barton, Barton Asset Management, and TwinSpan were permanently enjoined from any future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and Sections 206(1) and 206(2) of the Advisers Act. (Motion Ex. 4 at 14-18.) Barton and TwinSpan were also permanently enjoined from violations of Exchange Act Rule 10b-9. (*Id.* at 16-17.) Barton was ordered to: (1) disgorge \$3,170,000, of which \$1,021,900 is joint and several with TwinSpan and \$685,000 is joint and several with Barton Asset Management; (2) pay prejudgment interest of \$945,110.92, of which \$265,936.86 is joint and several with TwinSpan and \$106,589.43 is joint and several with Barton Asset Management; and (3) pay a civil penalty of \$120,000. (Motion 4 at 18-20.)

The Default Judgment found that:

Between approximately May 1999 and December 2003, Barton, acting individually or through Barton Asset Management, fraudulently misappropriated almost the entire life savings of R.F. R.F. was a single, elderly customer of the broker-dealer employing Barton, who suffered from diminished mental capacity and Alzheimer's disease. Barton tricked R.F. into selling the securities in her brokerage account and providing him and Barton Asset Management with the proceeds of those sales.

(Motion Ex. 4 at 3.)

The Default Judgment found that, between October 2004 and October 2005, Barton and TwinSpan engaged in a fraudulent private placement that raised \$1.515 million from ten investors and that Barton diverted at least \$493,100 from the offering proceeds for his personal use. (Motion Ex. 4 at 3.) In addition, between October 2006 and January 2007, Barton misappropriated \$685,000 from an investment advisory client of TwinSpan. (Motion Ex. 4 at 4.)

As the result of a plea agreement, Barton pled guilty to one count of wire fraud in violation of 18 U.S.C. §§ 1343, 1346, and 2 in a thirteen count indictment in the Criminal Case.

(Motion Exs. 6, 7, 9.) Counts One and Two of the Criminal Indictment (Wire Fraud Relating to Investment Client R.F.) state:

From in or about May 1999, through in or about September 2004, in the Northern District of Georgia, the Defendant, FREDERICK BARTON, a professional investment advisor, did knowingly and willfully devise and intend to devise a scheme and artifice to defraud RF, an elderly client suffering from Alzheimer's disease, of money and property, by means of materially false and fraudulent pretenses, representations, and promises.

(Motion Ex. 6 at 1.)

The Defendant took advantage of the position of trust that he developed with RF, her diminishing condition over time, and the control she had given to him over her finances, and based on false pretenses took almost the entirety of her savings for himself and to fund his new company, TwinSpan, from 1999 through 2003.

(Motion Ex. 6 at 2.)

Due mainly to the fraudulent transfers from RF's accounts by the Defendant, the balance of her accounts fell from approximately \$1.3 million in 1999 to a low of just \$95 by the beginning of 2004.

(Motion Ex. 6 at 4.)

On June 23, 2009, Barton was sentenced to seventy-eight months incarceration and ordered to pay \$878,100.00 in restitution to twelve people and to serve three years of supervised release. (Motion Ex. 9.) The district court found that Barton did not have the ability to pay a fine and cost of incarceration. (Motion Ex. 9 at 5.)

The State of Georgia ordered Barton to cease and desist all offers for sale and sales of securities in violation of the Georgia Securities Act of 1973, as amended, and permanently barred him from associating with a registered dealer, limited dealer, or investment adviser in Georgia, by consent order entered May 10, 2007. (Motion Ex. 10.)

Conclusions of Law

This proceeding was instituted pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act. These statutory provisions authorize the Commission to censure, place limitations on the functions or activities of, suspend for a period of up to a year, or bar from association, a person who willfully violates any provision of the Exchange Act, the Advisers Act, or certain criminal statutes such as 18 U.S.C. § 1343 and who, at the time of the misconduct, was associated with a broker-dealer or investment adviser, if it is in the public interest to do so.

Barton committed willful violations of the securities statutes while he was associated with a broker-dealer and an investment adviser.² As set out above, Barton, in his guilty plea, acknowledged that he did “knowingly and willfully devise and intend to devise a scheme and artifice to defraud RF.” (Motion Ex. 6 at 1.)

Sanctions

The Division recommends that Barton be barred from association with a broker or dealer or investment adviser. (Motion at 11.)

The public interest considerations for a sanction pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act are:

[T]he egregiousness of the defendant’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant’s assurances against future violations, the defendant’s recognition of the wrongful nature of his conduct, and the likelihood that the defendant’s occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff’d on other grounds, 450 U.S. 91 (1981); see also Joseph J. Barbato, 53 S.E.C. 1259, 1282 n.31 (1999); Donald T. Sheldon, 51 S.E.C. 59, 86 (1992), aff’d, 45 F.3d 1515 (11th Cir. 1995). Deterrence is also a factor to be considered. See Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963.)

Barton’s conduct was so egregious that it rose to the level of a criminal violation because, for over five years, he used his professional capacity as a respected member of the securities industry to knowingly and willfully fleece unsuspecting individuals, including an older mentally incapacitated individual, of substantial sums. Because of Barton’s fraud, R.F.’s investments fell from a value of \$1.3 million to a value of \$95. (Motion Ex. 6 at 4.) RF had to take out a reverse mortgage on her home because she was left with insufficient funds to pay for her care. (Motion Ex. 3 at 10.) She died in February 2007 at age ninety-two. (Id.)

There is no evidence of remorse by Barton in this record. The evidence shows that the likelihood of future violations is high if Barton is allowed to participate in the securities industry.

My consideration of these public interest criteria causes me to conclude, for the reasons set forth above, that it is necessary and appropriate for the protection of investors to bar Barton from association with any broker, dealer, or investment adviser.

² It is well established that willfully means intentionally committing the act which constitutes the violation, and actual knowledge of a regulatory or statutory violation is not necessary. See Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

ORDER

I ORDER that, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Frederick J. Barton is barred from association with any broker, dealer, or investment adviser.

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, 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