

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 56744 / November 5, 2007

Admin. Proc. File No. 3-8394

In the Matter of

VICTOR TEICHER
c/o Andrew J. Levander
Dechert, LLP
30 Rockefeller Plaza
New York, NY 10112

ORDER DENYING PETITION TO MODIFY ADMINISTRATIVE BAR ORDER

Victor Teicher, the former sole general partner of Victor Teicher & Co., L.P. (“Teicher & Co.”), a former unregistered investment adviser, has petitioned to modify a Commission order imposing on Teicher a bar from association with any broker, dealer, investment company, investment adviser, or municipal securities dealer. ^{1/} The Division of Enforcement (the “Division”) opposes Teicher’s request. For the reasons set forth below, we deny Teicher’s petition.

On April 6, 1990, a jury convicted Teicher and Teicher & Co. of securities fraud for trading on the basis of material non-public information that Teicher knew had been

^{1/} Teicher requests that we modify “the order entered against him on February 27, 1995,” but that order was part of the initial decision of the administrative law judge. Teicher appealed the initial decision to the Commission, and once he did so, the initial decision ceased to have any force or effect. See, e.g., Richard J. Adams, 55 S.E.C. 85, 89 (2001) (stating that the initial decision of a law judge ceases to have any force or effect once the Commission grants a petition for review of that decision) (citing United States v. Alexander, 743 F.2d 472, 477 (7th Cir. 1984) (“If there is an administrative appeal, the initial decision of the administrative law judge is not the ‘final agency decision.’ 5 U.S.C. § 557(b).”). Accordingly, we will construe Teicher’s motion as a request to modify the bar order entered by the Commission on May 20, 1998. See infra note 4 and accompanying text.

misappropriated, fraud in connection with a tender offer, and conspiracy; Teicher also was convicted of mail fraud. ^{2/} Teicher was sentenced to eighteen months imprisonment, placed on five years probation and fined \$200,000. Teicher & Co. was fined \$600,000. On December 11, 1997, in a separate civil proceeding brought by the Commission, Teicher was enjoined by consent from violations of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934, and Rules 10b-5 and 14e-3 thereunder. ^{3/} On the basis of the criminal conviction, we instituted administrative proceedings against Teicher. Following litigated proceedings, we barred Teicher from association with any broker, dealer, investment company, investment adviser, or municipal securities dealer. ^{4/}

Teicher now requests that the Commission modify the administrative bar order to permit him to associate with an investment adviser. Teicher has created an unregistered entity, Ithaca Partners, that currently manages only the assets of Teicher's immediate family. Teicher is in charge of Ithaca Partners and the firm currently employs two "analyst/apprentices," a quantitative analyst, and a part-time bookkeeper.

Teicher seeks modification of the bar "to enable him to manage certain limited assets." Teicher asserts that "at least initially, the investment partnership would have less than fifteen investors, each of whom would be extremely sophisticated and each of whom would receive full disclosure of Mr. Teicher's prior criminal conviction" and disciplinary history. Teicher represents that, if the proposed modification is granted, Ithaca Partners would register as an investment adviser with the Commission and would allow regular inspections by Commission staff. In addition, Ithaca Partners also would retain an independent consultant to monitor all trading and investment activity. Ithaca Partners also would "arrange for one of its full-time employees to receive compliance training" and "designate [that person] as the partnership's compliance officer." ^{5/}

^{2/} United States v. Teicher, No. 88 Cr. 796 (CSH) (S.D.N.Y.), aff'd, 987 F.2d 112 (2d Cir.), cert. denied, 510 U.S. 976 (1993).

^{3/} SEC v. Victor Teicher, No. 91 Civ. 1634 (MP) (S.D.N.Y. Dec. 11, 1997).

^{4/} Victor Teicher, 53 S.E.C. 581 (1998), aff'd in part, rev'd in part, 177 F.3d 1016 (D.C. Cir. 1999) (affirming the bar against Teicher and rejecting his contention that the Commission does not have authority to impose bars from association with unregistered investment advisers).

^{5/} In his reply brief, Teicher stated that, "in order to satisfy the Staff's stated concerns," Teicher "is amenable to revising the retention of [the independent consultant] from a two-year engagement to an open-ended one subject to termination only upon Commission approval, and to have Ithaca's in-house compliance officer report directly to [the independent consultant]."

As an initial matter, the Division states that Teicher's request to modify the bar order to permit him to associate with an investment adviser "is, in essence, a request for Commission consent to associate with an investment adviser." Rule 193 of the Commission's Rules of Practice governs applications by barred individuals for consent to associate with, among others, investment advisers. ^{6/} However, Teicher has not made an application pursuant to Rule 193. ^{7/} Therefore, the issue of whether the conditions Teicher proposes for his association with Ithaca Partners satisfy Rule 193 is not before us, and we express no view on that subject.

We have stated that administrative bars should "remain in place in the usual case and be removed only in compelling circumstances." ^{8/} This exercise of caution before modifying or lifting administrative bars "ensures that the Commission, in furtherance of the public interest and investor protection, retains its continuing control over such barred individuals' activities." ^{9/} Consideration of a range of factors guides the public interest and investor protection inquiry. ^{10/} Such factors include: the nature of the misconduct at issue in the underlying matter; the time that has passed since issuance of the administrative bar; the compliance record of the petitioner since issuance of the administrative bar; the age and securities industry experience of the petitioner, and the extent to which the Commission has granted prior relief from the administrative bar; whether the petitioner has identified verifiable, unanticipated consequences of the bar; the position and persuasiveness of the Division's response to the petition for relief; and whether there exists any other circumstances that would cause the requested relief from the administrative bar to be inconsistent with the public interest or the protection of investors.

Consistent with this approach, we have determined that there are no compelling circumstances here that would warrant modifying the administrative bar order. The underlying misconduct, participation in an extensive insider trading scheme, involved serious violations of

^{6/} 17 C.F.R. § 201.193.

^{7/} Moreover, Teicher's current submission does not meet the requirements of Rule 193. For example, although Teicher is seeking to associate with an investment adviser, he has not provided the information required by Form ADV, 17 C.F.R. § 279.1, as set forth in Section (b)(3)(iii) of Rule 193.

^{8/} Edward I. Frankel, Securities Exchange Act Rel. No. 49002 (Dec. 29, 2003), 81 SEC Docket 3778, 3785; Ciro Cozzolino, Exchange Act Rel. No. 49001 (Dec. 29, 2003), 81 SEC Docket 3769, 3775; Stephen S. Wien, Exchange Act Rel. No. 49000 (Dec. 29, 2003), 81 SEC Docket 3758, 3765-66.

^{9/} Edward I. Frankel, 81 SEC Docket at 3785; Ciro Cozzolino, 81 SEC Docket at 3775; Stephen S. Wien, 81 SEC Docket at 3766.

^{10/} Edward I. Frankel, 81 SEC Docket at 3784-85; Ciro Cozzolino, 81 SEC Docket at 3775; Stephen S. Wien, 81 SEC Docket at 3765.

the antifraud provisions of the federal securities laws, as well as mail fraud. 11/ Nine years have elapsed since the imposition of the bar, a time frame that is not unduly lengthy and, taken alone, does not weigh significantly in favor of relief. 12/

Teicher represents that, since the events giving rise to the bar order, he “has scrupulously complied with the securities laws and has been an upstanding citizen in all respects.” Nevertheless, we generally first grant incremental relief in our cases modifying bars. 13/ Since we imposed the bar order, Teicher has conducted investment activities through Ithaca Partners to manage assets of his immediate family. However, Teicher has not sought permission to associate with any entity regulated by the Commission since imposition of the bar and, therefore, there is no history of compliance in an associated capacity that would support modification of the bar order.

Moreover, Teicher seeks to re-enter the securities industry as the head of a firm. Although Teicher states that Ithaca Partners will retain an independent consultant and designate a compliance officer, Teicher will retain control of the firm. As we have noted previously, making a person responsible for supervising the owner of the firm creates a “difficult supervisory situation.” 14/

Teicher asserts that, since we ordered the bar, he has “been unable to open accounts and obtain the services of various brokerage firms,” and that this has “hampered [his] own personal trading for more than a decade.” These are consequences that he should have anticipated given that the bar order was based on his criminal conviction for multiple instances of insider trading.

11/ Michael T. Studer and Castle Sec. Corp., Exchange Act Rel. No. 50411 (Sept. 20, 2004), 83 SEC Docket 2853, 2861 (“[t]he fact that a person has been enjoined from violating the antifraud provisions ‘has especially serious implications for the public interest’”) (quoting Marshall E. Melton, Investment Advisers Act Rel. No. 2151 (July 25, 2003), 80 SEC Docket 2812, 2825).

12/ See, e.g., Cozzolino, at 3776 (“It has been 29 years since the Commission's order issued, an amount of time that, while lengthy, does not, standing alone, weigh significantly in favor of relief.”); Wien at 3767 (“It has been 21 years since the consent order issued, a time frame that is not unduly lengthy and does not weigh significantly in favor of relief.”).

13/ See, e.g., Salim B. Lewis, Exchange Act Rel. No. 51817 (June 10, 2005), 85 SEC Docket 2472.

14/ Kirk A. Knapp, 50 S.E.C. 858, 860-61 (1992).

For the reasons stated above, we find that the public interest and investor protection will not be served if Teicher is permitted to associate with an investment adviser. Therefore, we decline to modify the bar against association with any broker, dealer, investment company, investment adviser, or municipal securities dealer.

Accordingly, IT IS ORDERED that the motion of Victor Teicher to modify the administrative bar order be, and it hereby is, denied.

By the Commission.

Nancy M. Morris
Secretary